PARENTAL RIGHTS: CURRICULUM OPT-OUTS IN PUBLIC SCHOOLS

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The purposes of this dissertation were to determine the constitutional rights of parents to shield their children from exposure to parts of the public school curriculum that the parents find objectionable on religious, moral, or other grounds and to determine the statutory rights of parents to remove, or opt-out, their children from objectionable parts or all of the public school curriculum as set forth in the statutes of the 50 states and the District of Columbia. Many pivotal federal court cases dealing with parent rights and curricular issues, including *Mozert v. Hawkins County Board of Education* (1987), *Vandiver v. Hardin County Board of Education* (1987), *Brown v. Hot, Sexy, & Safer Productions, Inc.* (1995), *Leebaert v. Harrington* (2003), and *Parker v. Hurley* (2008) were surveyed using legal research methods. Specific types of curriculum opt-outs (e.g., sex education, comprehensive health programs, HIV/AIDS instruction) granted by each state were ascertained. States’ statutes and regulations were categorized as non-existent, restrictive, or permissive based on the scope and breadth of each state’s curriculum opt-out statute or regulation. A long list of federal court rulings have provided public schools the right to teach what school boards and administrators determine is appropriate. Parents did not have any constitutional right to opt their children out of public school curriculum. Many states’ legislatures have granted parents a statutory right to opt their children out of certain parts of school curricula. In this study, 7 states had non-existent statutes or regulations, 18 states had restrictive statutes or regulations, and 26 states had permissive statutes or regulations.
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CHAPTER 1
INTRODUCTION

A recent plan by President Obama to address students nationwide via the Internet on September 8, 2009 energized the debate over what rights parents have once their children enter a public school setting. Airing the speech to school children created great opposition among some parents across the United States (U.S.). The uproar over the speech was widespread, but in many states where school districts were under pressure from parents, plans were developed to let parents opt-out their children from viewing the speech (McKinley & Dillon, 2009). Some public school districts refused to allow students to watch the speech, while others welcomed the opportunity for students to hear the president (Prabhu, 2009). Independence, Missouri’s school district superintendent Jim Hinson received “more calls than we’ve ever had on an issue” (Keen & Toppo, 2009, p. 1). Hinson confirmed that the speech would not be shown in elementary schools, but individual teachers in upper grade levels could decide whether students should hear President Obama’s speech (Keen & Toppo, 2009). Sarasota County School District administrators in Florida gave permission for teachers to show the speech if it fit into the curriculum but allowed parents to decide whether to opt-out their children. Wellesley, Massachusetts superintendent Bella Wong allowed teachers to make decisions on a class-by-class basis (Silverleib, 2009).

In Arizona, multiple options were used by school districts’ officials. For Mesa’s public schools, parents could opt-out for their children only if they contacted the school first, the same policy used for other situations in which parents desired to shield their children from a particular part of school curricula. Other Arizona districts, such as
Tempe School District and Prescott Unified School District, demonstrated opposite ends of the dilemma. Tempe officials required all students to watch the president’s speech with no opt-out provision while Prescott’s officials did not show the speech to any students (Parker, 2009). In Texas, Ector and Midland County Independent School District officials allowed the broadcast to be available to all campuses and teachers, but it was not required viewing. The communications officer in Midland Independent School District stated, “It’s an educational opportunity and we will make educational opportunities available to our students. We’re not saying everybody has to stop doing what they’re doing though” (Campbell, 2009, p. 1). President Obama’s speech, which garnered national attention, merely exemplified the curricular issues public school districts face on a daily basis. While some parents were clearly upset about the speech and its inclusion in public schools, the very complicated and controversial issue of public schools granting curriculum opt-Outs was highlighted nationally.

Curricular issues, including President Obama’s speech, sometimes cause tension between public schools and their stakeholders. It seems logical that parents, as stakeholders, have the right to control the upbringing of their children, yet parents’ beliefs and rights sometimes clash with the public education system. At issue are the legal, religious, and moral rights of parents when dealing with public school policies, practices, and curricula. Parents have become increasingly involved in public schools by monitoring curricula, programs, and even teacher qualifications.

Public schools have historically been delegated authority for the education of the citizenry, but some parents believe public schools have taken responsibilities away that rightfully belong to parents (Bohm, 2005). Some parents believe they have the power to
make decisions regarding their own children in every aspect, including decisions about public schools and school curricula. Some parents believe schools often confuse the doctrine of temporarily yielding authority, like dropping their child off at a daycare, with the permanent relinquishment of parent authority to schools, often against their parental rights (Dahl, 2008). Thomas Paine wrote of the struggle between power and delegation of authority in *The Rights of Man* (1791): “All power exercised over a nation, must have some beginning. It must be either delegated or assumed. There are no other sources. All delegated power is trust, and all assumed power is usurpation” (p. 125).

School administrators, on the other hand, believe authority from the state allows them to decide curricular issues to benefit all students as a group in order to meet civic interests. States have many reasons for providing a public school education to their citizens. As stated in the Tenth Amendment to the U.S. Constitution, governmental powers not granted to the federal government are reserved to the states. In *San Antonio v. Rodriguez* (1973), the U.S. Supreme Court ruled education to be the responsibility of individual states rather than the federal government (Russo, 2005). Since parents and states both have an interest in the education of children, a basic tension can arise over several key educational matters. For example, parents often express concerns to school authorities about the health and sex education curricula, in particular, because the values that are taught to children about sex contradict the parents’ values. In addition, states sometimes seek to apply authority over specific curriculum and instruction requirements, even those that must be used by parents who homeschool their children (Zimmerman, 2004/2005).
In many instances, competing interests between parents and public schools revolve around the parents’ religious and moral beliefs and specific curriculum. With respect to curricula, federal courts have not recognized parents’ constitutional right to allow their children to be exempted from reading an assigned passage or any other mandatory class assignment, even if it is contrary to the parents’ religion. Religious and moral objections have represented parents’ greatest area of conflict with public schools (Ramsey, 2006). One of the most common sources of conflict is the teaching of sex education in the public schools. Many states regulate the teaching of topics such as abstinence, sexuality, sexually transmitted disease (STD) prevention, and AIDS. Although there are significant differences in sex education statutes among the states, great discretion is usually given to local school boards. Rigsby (2006) found a majority of states with statutes that require public schools to offer sexuality and STD curricula while other states allow, but do not mandate, sex education. A few states require health education and hygiene to be taught without mentioning specific requirements for sex education. Some states do not address the issue of sex education in their standard curricula at all. Thus, great variation in how particular states decide to address controversial curricular topics abounds. Despite its controversial nature, very few legal challenges to sex education statutes and specific sex education programs in public schools have been upheld by the courts.

If parents disagree with the curricula taught in public schools and believe they have no legal recourse, they may conclude their best course of action is to remove the child either for homeschooling or for private school enrollment (Rigsby, 2006). According the U.S. Department of Education’s (USDOE) National Center for Education
Statistics (NCES, 2007), of the nearly 56 million students in elementary and secondary schools, 49.8 million (89.1%) were enrolled in public schools (see Table 1). One parental option in lieu of public schools is homeschooling their children. The National Household Education Surveys Program (NHES), conducted by NCES (2008), data has been used to estimate the number of homeschooled students in the U.S. since 1999. In the data, an estimated 1.5 million students were homeschooled by 2007, which represented an increase from an estimated 1.1 million homeschooled students in the spring of 2003 (NCES, 2008). Another educational option for parents is private school enrollment. Private schools constitute 10.9% (6.1 million) of the total student population (NCES, 2008). The 1.5 million homeschooled students represent approximately 2.6% of all elementary and secondary students, an increase from the less than 2.0% (1.98 million) in 2003.

Table 1

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Public</th>
<th>Private</th>
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<tr>
<td>2003</td>
<td>55.6</td>
<td>48.5</td>
<td>6.0</td>
<td>1.1</td>
</tr>
<tr>
<td>2007</td>
<td>57.4</td>
<td>49.8</td>
<td>6.1</td>
<td>1.5</td>
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*Note. Includes enrollments in local public school systems and in most private schools (religiously affiliated and nonsectarian). Excludes private preprimary enrollment in schools that do not offer kindergarten or above. (NCES, 2007; NHES, 2008).*

Private school enrollment has remained relatively stable over the past few years (NCES, 2007; NHES, 2008). While parents certainly have had the option to send their children to private school or to homeschool, an average of 88% of elementary and secondary students still attended public schools in America. With data showing little
change in private and homeschool enrollment and increasing enrollment in public schools, the debate surrounding the rights of parents to make curricular decisions in public schools continues. While parents maintain the right to choose which school their children will attend, they do not have control over the public school’s activities and its officials (Dahl, 2008). Whether by choice or not, the great majority of parents still send their children to public school. The struggle over the control of curricula and parental objections continues with resolution sometimes only found in litigation.

Many court cases have upheld the authority of public school boards and administrators in the selection and delivery of curricula. These cases put severe limits on parental rights when they attempt to prevent schools from presenting objectionable content to children (Fossey, Mitchell, & Eckle, 2007). Courts have consistently ruled that local school districts or state education systems possess the ultimate ability and responsibility to choose curricula and that parents’ right to involve themselves in curricular decisions is limited (Rigsby, 2006). Of course, state officials cannot enforce statutes dealing with curricula or compulsory attendance that violate the constitutional rights of students and parents. When this occurs, the courts intercede (Russo, 2005).

Some parents want to opt their children out of certain curricula on moral or religious grounds but find they have no constitutional right to do so. Some states do try to meet the needs of concerned parents passing statutory rights that allow parents to remove children from a classroom, that is, opt-out their child, when they believe the instructional topic is objectionable on a moral or religious basis (Fossey et al., 2007). However, states must handle opt-out provisions carefully. If states provide an opt-out
provision based solely on religious reasons, the Free Establishment Clause of the First Amendment can be violated (Ramsey, 2006).

Problem Statement

Do parents have the right to shield their children from parts of the public school curricula when they disagree with its content or implementation based on moral or religious objections? Should public schools be required to allow a student to opt-out when parents request it due to their belief in creationism when evolution is being taught in the biology class? Is parental consent required if condoms are being distributed at the local public high school? Should public schools get parental consent prior to the distribution of confidential student surveys on topics such as parent-child relationships, drug and alcohol use, teenage sexual issues, and opinions on various topics? Has a public high school infringed on parents’ rights when a school-wide AIDS awareness assembly is held without parent notification? These questions illustrate the issues school districts and their administrators face as they work to provide educational programs for their students.

Today, while many conservative state legislatures and the U.S. Congress have been working to strengthen parents’ rights, numerous court cases have reinforced the point that public schools have great latitude in curricular decisions. In the past, the courts often viewed schools as an extension of the home, but that view has gradually changed over the years (Dahl, 2008). While parents are granted many statutory rights dealing with public education by individual states, great variation in these statutes among the 50 states and the District of Columbia (DC) occurs. Where parents live can determine whether they have the statutory right to opt-out their children from what they
deem an objectionable curriculum. This study was needed to explore what legal rights have been granted to parents concerning curriculum opt-out, where those rights originated, and how those rights can be exercised or limited. There is a delicate balancing act required between the interests of the parents and the interest of the government in the curriculum used to educate public school children.

Purpose Statement

The purpose of this study was twofold: (1) to determine the constitutional rights of parents to shield their children from exposure to parts of public school curricula parents find objectionable on religious, moral, or other grounds; and (2) to determine the statutory rights of parents to remove, or opt-out, their children from objectionable parts or all of public school curricula as set forth in the statutes of the 50 states and DC.

Research Questions

Two specific research questions were studied for clarification of parent opt-out rights in the curricula of public schools. The questions studied included:

1. What are the constitutional rights of parents to opt-out their children from the curriculum in public schools as defined by decisions of the federal courts?

2. What are the types of parental opt-out exemptions (such as religious or moral objections, sexual content, etc.) specifically granted by statute in the 50 states and the District of Columbia (DC)? How many states are classified as restrictive, permissive, or non-existent?

Significance of the Study

Based on a review of the literature, no study has been conducted with regard to the constitutional and statutory rights of parents to opt-out their children from all or some
portion of a public school’s curricula. This study was designed to provide relevant information for enhanced understanding of the delicate relationship between parental rights and the authority of public school districts to make curricular decisions. This study was designed to assist public school administrators, state legislators, individual parents, and parent rights’ groups in making choices and determining appropriate policies.

**Delimitations**

Individual states occasionally give statutory rights for curriculum opt-outs directly to local school districts or local education authorities (LEA) in order to make local administrative policy. I examined opt-out provisions passed by state legislatures and did not examine the opt-out provisions that individual school districts or LEAs may adopt.

**Definition of Terms**

- **Curriculum opt-out policies** referred to provisions that allowed students to be withdrawn from assignments or activities at public schools, which they or their parents consider to be offensive or otherwise inappropriate (Scott & Branch, 2008).

- **Statutes** referred to the laws adopted by state legislatures.

- **Opt-out statutes** were categorized as follows for this study:
  
  o **Restrictive statutes** referred to those for which parents are granted very few statutory rights to exercise curriculum opt-out provisions in public schools for their children. In this study, for a state to be placed in the restrictive category, statutory rights for curriculum opt-outs must have been limited to one or two courses or topics only.
  
  o **Permissive statutes** referred to those for which parents are granted broad statutory rights to exercise curriculum opt-out provisions in public
schools for their children. To be classified as such, permissive statutes must have granted parents broad statutory rights to exercise curriculum opt-out provisions in public schools. States in the permissive category must have offered statutory rights for curriculum opt-outs that met one or both of the following criteria: (1) more than two courses or topics allowed for opt-out and (2) opt-ins required before students can even enroll in a course.

- **Non-existent statutes** referred to those for which parents are granted no statutory rights to exercise curriculum opt-out provisions in public schools. States with no specific opt-out statutes can grant individual local school districts the authority to write their own curriculum opt-out policies.

- **Unknown statutes** referred to those states for which no curriculum opt-out provisions pertaining to public schools as part of statutory rights could be ascertained.

### Overview of Methodology

Legal research served as the methodology, representing the same method that attorneys and judges use to determine answers to legal questions. Legal research typically begins with researchers consulting secondary resources such as law review articles or legal treatises. These sources provide a general overview of the legal issue being studied. Legal researchers then conduct a search through primary sources such as federal or state statutes, federal or state court decisions, or a combination of statutes and court decisions.
All federal and state statutes, as well as all published federal and state court decisions, were accessible on the LEXIS/NEXIS database. This database was provided to the University of North Texas faculty and students as part of the library homepage. In addition, information was gained from other sources including Education Resources Information Center (ERIC), Westlaw, FindLaw, U.S. Supreme Court website, USDOE website, and various websites of university law libraries.

A primary research tool was the LEXIS/NEXIS legislative database. State opt-out statutes were found by conducting searches in the LEXIS/NEXIS legislative database using such search terms as: “parent rights,” “curriculum issues in public schools,” “opt-out,” “curriculum opt-out,” “curriculum exclusion,” “public school statutes,” “sex education,” “health education,” and “education code – parent rights.” Opt-out statutes from individual states were ascertained by examining the web sites of state education agencies and through direct contact with representatives from the particular states education agency, as necessary for data collection, via email or telephone.

Organization of the Study

This presentation is organized into five chapters and includes appendices and references. Chapter 2 provides information in the following areas: (1) common law influence on parental rights with a perspective on early American public education; (2) the recent expansion of parental rights by the federal government with the Family Educational Right to Privacy Act (FERPA), the Protection of Pupil Rights Act (PPRA), and the No Child Left Behind Act (NCLB); (3) the shift from the typical parent teacher association (PTA) parents’ involvement in public schools to numerous groups advocating for parental rights by advancing such goals as furthering the expansion of
homeschool privileges and the adoption of a Parent Rights Amendment (PRA) to the U.S. Constitution; (4) the examination of a few acclaimed U.S. Supreme Court cases which focus on parental rights in general, parental rights in education, and curricular issues in public schools; and (5) a brief historical glimpse into the development of the Tenth Amendment, which ultimately grants authority to states on issues such as public education.

Chapter 3 provides a view of the various federal court cases that have addressed the constitutional rights of parents to object to specific provisions of a public school’s curricula. Chapter 4 provides descriptions and analysis of the specific statutes and education codes from all 50 states and DC that include or exclude public education curriculum opt-out availability for parents. Chapter 5 consists of the discussion, implications for practice, and recommendations for further study.

Summary

Tensions continue to exist between parents who believe public schools are teaching curricula they find objectionable based on religious or moral grounds and public officials who govern public schools and believe public schools have the duty and authority to determine curricular context on the basis of what is best for all school children. Increasingly, some parents of public school children want opt-out rights to exempt their children from participating in portions of classes when the curricula taught is contrary to their religious or moral beliefs, yet a long list of federal court cases exists providing public schools the right to teach what school boards and administrators determine is appropriate.

Although the U.S. Supreme Court ruled in Pierce v. Society of Sisters (1925) that
parents have a constitutional right to direct the upbringing of their children, that constitutional right has subsequently been interpreted by federal courts to extend little beyond the parents’ right to decide whether their children will attend public or private schools. Once parents have elected to send their children to public schools, the parents’ constitutional right to direct the upbringing of their children is severely restricted and does not include the right to veto curricular decisions made by school officials.

Nevertheless, in many states, legislatures have granted parents certain rights to opt-out their children from certain parts of the school curricula. Although some state laws limit the opt-out right to curricular units pertaining to sex education, other states give parents a broad right to exempt their children from certain curricular units, including the right not to be exposed to the teaching of evolution. With the growth in public school enrollment and the continued reliance on statutory rights to guide curriculum opt-outs, the struggle over the control of curricula will continue to be a central issue for many parents and public schools in the years to come.
A review of the literature on parental rights to control curricula in public schools or opt-out their children from curricula with which they disagree provides the basis for this study. The review of literature in this chapter contains five sections: (1) the common law influence on the concept of parental rights in combination with a brief historical perspective of early American public education; (2) the recent expansion of parental rights by the federal government with the Family Educational Right to Privacy Act (FERPA), the Protection of Pupil Rights Act (PPRA), and the No Child Left Behind Act (NCLB); (3) the shift from the typical PTA parent involvement in public schools to the emergence of numerous groups advocating parental rights with goals that include further expansion of homeschooling privileges and the adoption of the PRA to the U.S. Constitution; (4) the examination of a few acclaimed U.S. Supreme Court cases which focus on parental rights in general, parental rights in education, and curricular issues in public schools; and (5) a brief historical glimpse into the development of the Tenth Amendment which ultimately grants authority to states on issues such as public education. This individual state control, in turn, allows possible curriculum opt-out statutes for parents, if granted by states.

Common Law and Parental Rights

For centuries, common law practice has played an important role in the development of parental rights. Under the common law, providing the opportunity for children to receive an education was the responsibility of parents. Theology played a vital role in shaping the basis for historical common law traditions dealing with parents
(Kohm, 2008). Sir William Blackstone, 18th century English law scholar, wrote in his *Commentaries on the Laws of England* (1765, p. 441), that the "duties of parents to…children…principally consist in three particulars: their maintenance, their protection, and their education." Additionally, Blackstone stated, “The last duty of parents to their children is that of giving them an education suitable to their station in life: a duty pointed out by reason and of far the greatest importance of any” (p. 438). The common law of England recognized the father as the head of the family, thus maintaining great authority over its members. Common law gave fathers near “absolute power over their children with a moral and legal obligation to protect, support and educate their children” (Kohm, 2008, p. 4). Charles de Secondat (1748), Baron de Montesquieu, renowned French political thinker and author, wrote in *De l'Esprit de Lois* (translated as the spirit of the laws), “One is ordinarily in charge of giving one's knowledge to one's children and even more in charge of giving them one's own passions” (p. 45). Under common law, parents were in complete control of all aspects of their children’s lives.

According to common law, the family was the foundation of society; therefore, it was parents' unequivocal duty to manage their children’s education. Common law actually gave parents complete control over whether their children should even be educated, and if so, in what manner (Zimmerman, 2004/2005). Puritan John Robinson’s *Of Children and Their Education* expressed the common law principle of parent-child relations:

Parents must provide carefully for two things: first that children’s wills and willfulness be restrained and repressed, and that, in time; lest sooner than they imagine, the tender sprigs grow to that stiffness, that they will rather break than bow. Children should not know, if it could be kept from them, that they have a will of their own, but in their parent’s keeping. (Teitelbaum, 2006, p. 3)
Parental rights, like other rights under common law, were derived from Judeo-Christian standards, which allowed parents, especially fathers, to exercise extensive authority over children. Parental authority was believed to be derived from God and nature because “God had ordained it and nature had displayed it” (Kohm, 2008, p.5). It meant children were required to comply with parental authority because “parents knew what was best for their children” (Stefaniuk, 1997, p. 2). The view that parents, more than anyone else, are innately concerned with the best interests of their children is a crucial common law principle. Common law was brought to America with the colonists and became the foundation of American law. Natural law arguments in favor of parental authority and parents’ rights prevailed during the early years of the American nationhood.

Many, including the Puritans, felt it was a moral and religious obligation to educate their children, leading to a more educated and productive society. Children were expected to learn to read and write so they could understand the Bible, which was their early textbook (Altenbaugh, 1999). The Massachusetts Law of 1647 enacted the first public school system in America, requiring towns of 50 families to hire a school master. This 17th century law signaled a shift toward the burden of educating the populace as more of a social responsibility. In the North American colonies of the 18th century, education was almost completely under the private funding and control of prevailing Protestant sects. The religious beliefs of early Americans played an important role in the development of education, even though the common law reality meant that, prior to compulsory attendance laws, poor children were often uneducated since families needed them to work in order to survive (Zimmerman, 2004/2005).
The structure of American education has changed greatly since the U.S. Constitution was adopted. Education, as the constitutional framers knew it in the 18th century, still occurred for the most part in private schools in contrast to the modern goal of public education available to all citizens. During the American Revolution era, Benjamin Franklin and Thomas Jefferson both endorsed the importance of education. In 1749, Benjamin Franklin proposed a public-supported secondary school known as the Philadelphia Academy. Later, he proposed laws to prohibit the quartering of British soldiers because of their intent to control the unapproved education of America’s children. Franklin wanted parents to have the freedom to educate their own children without interference from government. Thomas Jefferson supported tax-subsidized public schools as a ladder of opportunity for all economic classes. Jefferson strongly opposed government-compelled education; he wanted control in the parents’ hands (Dahl, 2008).

As a result of the great European migration to America, Benjamin Franklin supported public education. He was greatly concerned that the relatively homogenous society of colonial America might be dissolved with this massive influx of immigrants. Gradually, concerns by the nation’s elites in the late 18th and early 19th centuries brought about a change in the common understanding of what education meant. As a result, the public perception about the capacity of parents to discharge educational responsibilities evolved. It gradually came to be seen as the responsibility of education to produce “regularity and unison in government” (Teitelbaum, 2006, p. 7). Public schools became more prevalent in the U.S. due to a gradual shift from church control of private schools and the gradual shift of control of education to public officials. Justice

It is implicit in the history and character of American public education that public schools serve a uniquely public function: the training of American citizens in an atmosphere free of parochial, divisive, or separatist influences of any sort – an atmosphere in which children may assimilate a heritage common to all American groups and religions. This is a heritage neither theistic nor atheistic, but simply civic and patriotic. (pp. 241-242, Justice Brennan concurring)

During the colonial period, private schools and tutors offered the only educational opportunities for children. Teachers ruled with an iron hand. Public schools evolved as a means to educate those too poor to afford private schools. Since public schools were initially created as substitutes for private schools when states developed them in the 1800s, no one doubted the government’s control over children. Teachers taught students core common values and self-discipline. In short, in the earliest public schools, teachers taught and students listened. In the 19th century, education and training of the young took on special importance because a shift occurred with regard to parents’ tasks. Education was perceived not as the repression of negative qualities during the development of the child, which was the earlier common view, but rather to create an atmosphere where virtues and values could be taught (Teitelbaum, 2006).

Through the legal doctrine of in loco parentis, courts upheld the right of schools to discipline students, to enforce rules, and to maintain order. Rooted in English common law, in loco parentis originally governed the legal rights and obligations of tutors and private schools (as cited by Justice Thomas in Morse v. Frederick, 2007). Blackstone’s Commentaries on the Laws of England (1765) stated, “A parent may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then in loco parentis, and has such a portion of the power of the parent” (p.
promoted the belief that parents voluntarily surrender their children to the authority of school officials (Russo, 2005).

Few disagree that a family's role is the most important influence in the development of a child, yet the rights of parenthood are not absolute. The state may exercise authority over parents if it is in a child's best interest to do so, a concept known as parens patriae (Ayotte, 2000). This common law principle of parens patriae (literally "father of the country") is used as the basis for granting authority to state legislatures to create reasonable laws, such as compulsory attendance statutes, for the welfare of their residents (Russo, 2005). The state as parens patriae may restrict parents' interest in the custody, care, and nurture of their children "by requiring school attendance, prohibiting the child's labor and in many other ways" (Fields v. Palmdale School District, 2005, p. 1204). However, in Wisconsin v. Yoder (1972), an important Supreme Court case discussed later, the state's claim of parens patriae to mandate a secondary public education to children regardless of the wishes of their parents was not upheld. Some argue that a strong concept of parental rights fails to protect the choices and rights of children. To protect the individual rights of children, the state is increasingly willing to use the doctrine of parens patriae to intervene. Historically, the state exercised this power when no guardian was available for the child, but this has gradually changed, some believe for the better and some for the worse (Hamilton, 2006).

U.S. Supreme Court: Parental Rights and Curriculum

In this section, the important U.S Supreme Court decisions most often cited as precedent in parental rights and/or education cases are discussed. The Court has
upheld compulsory attendance laws, not limited only to public schools. In addition, the Court has allowed parents to send their children to private schools if they wish, but also acknowledged that state officials can reasonably regulate all schools. It has noted the state’s authority over children’s activities is broader than the state’s authority over adults in some instances, even if the parents’ interests are religiously based. Finally, the Supreme Court has stated public school officials can control inappropriate speech from students and the curricula taught in classrooms.

From time to time, parents have challenged the power of state governments to countermand parental decisions about the upbringing of their children, particularly when schools have imposed a curriculum on their children that conflicts with parents’ own religious or moral values. When parents have sought to exercise their parental rights through litigation, the courts have generally held that local school districts or state education systems possess the ultimate authority and responsibility to choose curricula, believing that parental control and rights to privacy must succumb to the broader public interest of maintaining a standard curriculum for all children (Rigsby, 2006). The U.S. Supreme Court cases in this section include *Meyer v. Nebraska* (1923), *Pierce v. Society of Sisters* (1925), *Prince v. Massachusetts* (1944), *Abington School District v. Schempp* (1963), *Wisconsin v. Yoder* (1972), and *Bethel School District No. 403 v. Fraser* (1986).

*Meyer v. Nebraska* (1923)

In *Meyer v. Nebraska* (1923), the plaintiff was convicted under a 1919 Nebraska statute prohibiting the teaching of foreign languages to children who had not yet passed the eighth grade. Meyer worked in a parochial school and taught German to a 10 year-old...
old child who had not passed the eighth grade. While the Nebraska Supreme Court upheld his conviction, the U.S. Supreme Court reversed the decision, declaring the statute to be arbitrary in that Nebraska had no reasonable and legitimate goal in passing a law prohibiting the teaching of a foreign language to children. The Court further held that the Fourteenth Amendment protected Meyer’s right to teach and the right of parents to engage the teacher in educating their children. Thus, the teacher’s conviction was unconstitutional. According to the Fourteenth Amendment, “no State shall…deprive any person of life, liberty, or property, without due process of law.” Individuals have the right to engage in common occupations of life; to marry and raise children in their home; to acquire knowledge; to worship God; and generally to enjoy civil liberties recognized as essential to the orderly pursuit of happiness by free men. Forbidding the teaching in school of any language other than English violated the Fourteenth Amendment since the protection of the Constitution extends to those who speak other languages as well as those who speak English (Meyer v. Nebraska, 1923).

Nebraska’s attorney general argued the statute was a legitimate exercise of the police power of the state. The intent, much like the statutes from 21 other states, was to “create an enlightened American citizenship in sympathy with the principles and ideals of this country, and to prevent children reared in America from being trained and educated in foreign languages and foreign ideals.” Justice McReynolds, who wrote the Meyer decision, disagreed, “The desire of the legislature to foster a homogenous people with American ideals…is easy to appreciate….But, the means adopted, we think, exceeds the limitations upon the power of the State” (Meyer v. Nebraska, 1923, p. 628). State police power can only be justified when substantially required for the security of
the fundamental rights and cannot regulate a legitimate occupation such as teaching.

This case made it clear that parents had a constitutional right to afford their children the opportunity to learn a foreign language, and Meyer as the teacher had the right to teach it.

Pierce v. Society of Sisters (1925)

The Oregon Compulsory Education Act of 1922 required mandatory attendance of all Oregon children ages 8 to 16 years old in public schools. Parents could face a misdemeanor for noncompliance for each day their child did not attend public school. The Society of Sisters, a religious order of Catholic nuns, ran several boarding schools in Oregon and feared the Oregon Act would severely hurt its revenue and prevent Catholic parents from obtaining religious training for their children. Thus, the Society filed a lawsuit against Oregon in the U.S. District Court, arguing the compulsory attendance law violated the due process clause of the Fourteenth Amendment. The case was consolidated with another lawsuit against the Oregon Act brought by the Hill Military Academy, a private, non-religious military school.

The district court’s three-judge panel unanimously agreed with the private schools and ruled that the Oregon statute violated the Fourteenth Amendment. The state of Oregon appealed directly to the U.S. Supreme Court (Pierce v. Society of Sisters, 1925). Oregon’s attorney general claimed the Court's ruling in Reynolds v. United States, which stated Mormons had no First Amendment right to constitutional exemption from anti-polygamy laws, should guide their decision in this case. In turn, the Society of Sisters claimed deprivation of a property right and a liberty interest without
due process under the Fourteenth Amendment along with an argument for religious freedom (O'Scannlain, 2007).

The Supreme Court affirmed the lower court’s decision, finding the act violated the "liberty of parents and guardians to direct the upbringing and education of children under their control" (Pierce v. Society of Sisters, 1925, p. 1078). When the Court decided the case as a parental right grounded in the Fourteenth Amendment with no connection to the First Amendment’s free exercise of religion clause, Hill Military Academy triumphed along with the Society of Sisters (O'Scannlain, 2007). The Court decided parents had the right to control the upbringing of their children and could comply with compulsory attendance laws by having their children educated in non-public schools. In Pierce, parental rights operated as a form of quality control, allowing parents to send their children to private schools if they wished. However, the Court acknowledged that state officials can reasonably regulate all public and private schools, teachers, and pupils (Russo, 2005).

Pierce held parochial and private schools’ right to teach is as natural and inherent as the right of a tutor to teach the German language to a student, as was held in Meyer. The absolute right of these schools to teach and the right for parents to send their children to parochial and private schools for an education fall within the concept of “liberty” as expressed in the Fourteenth Amendment. The Court’s decision was not based on religious liberty grounds; instead, the Court struck down the law based on the personal liberty of parents and guardians to direct the upbringing and education of children under their control.
Since 1925, the Pierce decision has sometimes undermined many traditional religious values, providing both direct and indirect consequences for religious freedom. While Pierce preserved the rights of parents to send their children to private religious schools, it has been cited in support of less traditional rights including contraception, abortion, and sodomy (O'Scannlain, 2007). For example, in Griswold v. Connecticut (1965), the Court discussed the peripheral rights recognized in the Meyer and Pierce cases. Later, the Court relied upon Griswold and similar cases in the pivotal abortion case, Roe v. Wade (1973), commenting that “the Constitution places limits on a State’s right to interfere with a person’s most basic decisions about family and parenthood” (Zimmerman, 2004/2005, p. 5).

Prince v. Massachusetts (1944)

In Prince v. Massachusetts (1944), a mother was convicted of violating the state of Massachusetts’ child labor laws; her child was selling religious pamphlets and engaged in street preaching. The mother challenged her conviction, arguing that she was being denied her freedom of religion and equal protection under the Fourteenth Amendment. The U.S. Supreme Court heard the case and stated:

The custody, care and nurture of the child reside first in the parents, whose primary function and freedom include the preparation for obligations the State can neither supply nor hinder. There is a private realm of family life which the State cannot enter. But the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. And neither rights of religion nor rights of parenthood are beyond limitation. (p. 166)

As a parent, the mother claimed she had a right to bring up her child in a manner she deemed appropriate. She also argued that her child had a constitutional right to practice her faith such as “to preach the gospel…by public distribution” of religious tracts consistent with the scripture: “A little child shall lead them” (Prince v. Massachusetts,

Edward and Sidney Schempp were parents who filed suit against the Pennsylvania Public School Act (24 Pa. Stat. 15-1516), which required a reading of 10 Bible verses, followed by a recitation of the Lord’s Prayer at the opening of each school day. The exercises were closed with the flag salute and other announcements. According to the statute, participation was voluntary. Students were allowed to either leave the room or remain and not participate. Although the statute did allow a child to be excused from the reading upon written request from the parents, the plaintiffs believed the statute was unconstitutional because it created an establishment of religion in violation to the First Amendment. The Court found that the reading of the verses constituted a religious observance in effect and thus was prohibited. The availability of excusal or exemption simply had no relevance to the legality of the statute. These practices were essentially religious exercises designed, at least in part, to achieve religious aims through the use of public school facilities during the school day. While the Court did find the Bible verse statute unconstitutional, the Court still made it clear that public schools should have great latitude in other areas of curricula. “It is not the business of this Court to gainsay the judgments of experts on matters of pedagogy. Such decisions must be left to the discretion of those administrators charged with the supervision of the Nation’s public schools” (Abington v. Schempp, 1963, p. 281, Justice Brennan concurring).
Wisconsin v. Yoder (1972)

*Wisconsin v. Yoder* may be the Supreme Court’s strongest affirmation of *Meyer* and *Pierce* (Zimmerman, 2004/2005). At the time of this litigation, Amish children typically attended school through the eighth grade to gain basic skills in order to read the *Bible*, be productive citizens and farmers, and interact with non-Amish people. Wisconsin’s compulsory attendance law required children to attend school until age 16. Parents of the Amish and Mennonite faiths were found guilty of violating Wisconsin’s compulsory attendance law for refusing to send their children to public school after eighth grade. The parents argued that compulsory attendance infringed upon their religious beliefs and threatened their fundamental religious belief of remaining “aloof from the world.” Essentially, their way of life was endangered by the compulsory attendance law. Initially, the Wisconsin Circuit Court affirmed the parents’ convictions but the Wisconsin Supreme Court later reversed, ruling in favor of the Amish. The state of Wisconsin then appealed to the U.S. Supreme Court. In *Wisconsin v. Yoder* (1972), the Court remarked:

> A state’s interest in universal education is not totally free from a balancing process when it impinges on other fundamental rights and interests, such as those specifically protected by the free exercise of religion clause of the First Amendment and the traditional interest of parents with respect to the religious upbringing of their children, so long as the parents prepare the children for additional obligations. (p. 215)

In its arguments before the Supreme Court, the state of Wisconsin maintained its interest in "establishing and maintaining an educational system [that] overrides the defendants’ right to the free exercise of their religion" (*Wisconsin v. Yoder*, 1972, p. 213). Wisconsin believed the Amish way of life, no matter how admirable and virtuous, should not prevent the reasonable regulation of education. In addition, the state
contended that liberty, in an ordered society, does not allow every individual to make his or her own standards, especially when overall societal benefits must be guarded. Relying on *Prince*, the state of Wisconsin argued that exempting Amish children from the mandatory attendance requirement failed to recognize Amish children’s right to a secondary education regardless of the wishes of their parents. Justice Douglas’s partial dissent agreed that children had rights apart from their parents (Russo, 2005).

The Court disagreed and suggested the state had asserted the *parens patriae* interest against the wishes of the parents and could determine the religious future of the child (Zimmerman, 2004/2005). Chief Justice Burger, delivered the Court’s opinion:

The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition. (p. 232)

*Yoder* seems to be the most notable exception to judicial support for compulsory attendance laws. The Court’s decision was primarily motivated by concern about the possible destruction of the community’s almost 300-year-old way of life. It must be clear that for religious groups other than the Amish, the courts have consistently denied religious-based applications for exceptions to compulsory attendance requirements (Russo, 2005).

**Bethel School District No. 403 v. Fraser (1986)**

Matthew Fraser, a student at Bethel High School, was selected to deliver a nominating speech during an assembly on behalf of another student running for vice president of the student body. During the speech, Fraser used explicit and graphic sexual metaphors, which violated a rule prohibiting the use of obscene language in school. The next day, Fraser received a 3-day suspension and was removed from the
list of speakers at graduation. His father filed suit in U.S. District Court, and alleged infringement upon his son’s First Amendment right to freedom of speech. The district court found in favor of Fraser, but Bethel School District No. 403 appealed. The Ninth Circuit Court of Appeals affirmed the lower court’s decision and considered Fraser’s speech no different from the protest armband in Tinker v. Des Moines Independent Community School District (1969). The Ninth Circuit concluded the school’s disruptive conduct rule was vague.

The Bethel School District then appealed to the U.S. Supreme Court. The Court stated:

Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the “work of the schools.” The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board. (p. 686)

The Supreme Court reversed the lower courts’ decisions thereby giving Bethel School District every right to monitor and control inappropriate speech. The Court referenced Justice Black’s dissenting remarks in Tinker v. Des Moines (1969, p. 526): “I wish therefore…to disclaim any purpose…to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to public school students” (Bethel School District v. Fraser, 1986, p. 686). There seems little doubt that if public school officials can control speech, they can certainly control what content, that is, what curriculum, is taught in the classrooms.

Federal Extension of Parental Rights in Education: FERPA, PPRA, and NCLB

There are numerous proposals for legislation that address the promotion of parental rights. Extraordinary turmoil about society’s views on parenting is now being driven by political pressures at the local, state, and federal levels. Political pressure in
education can be applied to local school boards and state legislatures. Upset parents can vote individual board members and legislators out of office if they do not feel their interests are protected, or they can organize to promote legislation that addresses their interests. On a national level, there has been political pressure, often led by conservative groups, which has resulted in the creation of national policies or federal acts such as Family Educational Rights and Privacy Act (FERPA), Protection of Pupil Rights Act (PPRA), and No Child Left Behind Act (NCLB).

Family Educational Rights and Privacy Act (FERPA)

In May, 1974, Congress passed a statute that eventually became known as FERPA. Originally called the Buckley Amendment, FERPA attempts to grant increased parental oversight in their children’s educations. According to Senator Buckley, his motivation behind the bill was protection of individual rights:

My initiation of this legislation rests on my belief that the protection of individual privacy is essential to the continued existence of a free society. There has been clear evidence of frequent, even systematic violations of the privacy of students and parents by the schools. (White, 2007, p. 5)

FERPA requires the USDOE to adopt regulations to protect students’ privacy rights with regard to surveys or data-gathering activities conducted, assisted, or authorized by an education agency, including schools. Regulations control the use, dissemination, and protection of such data.

FERPA gives parents certain rights regarding their children’s educational records, and these rights transfer to students at age 18. The law grants parents or eligible students the right to inspect and review the student’s education records and the right to request a school to correct inaccurate records or hold a formal hearing if refused. FERPA requires schools to obtain parents’ consent to release information from
a student’s education record. However, FERPA does allow schools to share some information, without parent consent, with certain agencies and officials. This FERPA-allowed information consists of directory information such as student name, address, telephone number, date of birth, honors, and attendance (USDOE, 2009a). If parents suspect their rights as delineated in FERPA have been violated, they can contact the USDOE Family Policy Compliance Office with their concerns. The law applies to all schools that receive funds from any applicable USDOE program. If a serious violation by an education agency is established, USDOE funding can be withdrawn.

Protection of Pupil Rights Act (PPRA)

The PPRA of 1978, also known as the Hatch Amendment, is a law intended to protect the rights of students and their parents in programs funded by the USDOE. With the passage of PPRA, the federal government granted parents the right to review any materials in connection with a survey done in a school (Dahl, 2008). PPRA is intended to protect the rights of parents and students in two ways:

- It seeks to ensure that schools and contractors make instructional materials available for inspection by parents if those materials will be used in connection with any ED-funded survey, analysis, or evaluation in which their children participate; and
- It seeks to ensure that schools and contractors obtain written parental consent before minor students are required to participate in any ED-funded survey, analysis, or evaluation that reveals confidential information. (USDOE, 2009b, p. 1)

Regulations provide a procedure for filing complaints first at the local district level, then with the USDOE. If there is no voluntary resolution, federal funds can be withdrawn from those in violation. Beginning in late 1984, some parental rights’ groups began using a form letter (Appendix A) to preserve their children’s rights under PPRA.
**No Child Left Behind (NCLB)**

In January, 2001, President George W. Bush released his educational reform entitled “No Child Left Behind” (NCLB, 2002). Dr. Rod Paige, U.S. Secretary of Education, testified before the Senate that NCLB represented a crucial step for the country to move toward excellence in education. Parental involvement plays a critical role in education, whether it be a public, private, or charter school. For excellence to occur, schools and administrators must ensure that no parent be excluded from the educational process (Schlueter, 2001). NCLB became law in January, 2002, and the USDOE created documents to assist education agencies, school districts, administrators, and parents. “NCLB is built on four common-sense pillars: accountability for results; an emphasis on doing what works based on scientific research; expanded parental options; and expanded local control and flexibility” (USDOE, 2003, p. 1). NCLB requires parents to receive comparative data on their children’s academic standing as well as easy-to-read accountability report cards on K-12 schools and districts (known as adequate yearly progress or AYP).

“Under NCLB, school districts are required to notify parents if their child is eligible for school choice” (USDOE, 2003, p. 23). If their child’s school is labeled as needing improvement based on not meeting AYP for 2 consecutive years or longer, parents have the option of transferring their child to another public school or public charter school in the district. In addition, parents can choose to transfer their child if the school meets the individual state’s definition of a persistently dangerous school. NCLB supports parental involvement in schools by requiring parent notification of ways to become involved at their child’s school. Parents of students in Title I schools are even
“guaranteed annual notification of their ‘right to know’ about teacher qualifications by their school district” (USDOE, 2003, p. 21).

Parental Rights and Advocacy Groups: From PTA to PRA

Traditionally, Americans have held strong beliefs about the importance of the family and the great authority and discretion parents have in directing the lives of their children. Discussion about parental rights is universal (Ayotte, 2000). Consequently, some parents have become quite active when it comes to their children’s educations. They believe there is an eroding of parental rights as dictated by court cases. At the same time, schools want and need parental involvement but school administrators are concerned about parental activism that seems to wrest control of schools’ curricula from local school boards.

For more than a century, parents have been involved in schools through their local PTA, an organization that is woven into the very fabric of American life and the culture of thousands of public schools. In 1897, Alice McLellan Birney and Phoebe Apperson Hearst founded the National Congress of Mothers in Washington D.C. “The National PTA was created to meet a profound challenge: to better the lives of children” (National PTA, 2010, para. 2). During a time when women could not vote and public activism was frowned on, the National PTA (2010) began when more than 2,000 people – predominantly mothers, but also fathers, teachers, and legislators – demanded action to aid the country’s children. Since the inception of the PTA, many National PTA goals have become reality, including but not limited to, the creation of kindergarten classes, hot lunch programs, mandatory immunization, child labor laws, the public health service, and the juvenile justice system. Throughout the years, it seems apparent that local
public school PTAs have influenced millions of parents to become involved in their children’s educations. According to the National PTA, current membership consists of more than 5 million volunteers in 25,000 local units.

Many parents have been involved in their local public schools but some have become disenchanted and explored other options. Homeschool is an alternative form of education that has gained popularity. In the 1970s and 1980s, parents began to express serious concerns about public education, so homeschooled experienced a renaissance. Some parents came to believe they could do a better job teaching their children than professional educators or they sought to protect their children from what they viewed as morally objectionable curricula in public schools. Since the 1980s, the number of parents choosing to educate their children at home has increased greatly. State legislatures have amended their compulsory school attendance laws to recognize this trend. State and federal courts have upheld the rights of parents to homeschool (Fuller, 1998).

Still, homeschool parents early on faced many obstacles. Only a few curricular suppliers would sell to homeschool parents, so these parents spent time in libraries to devise their own curricula. Homeschool parents fought court battles. In 1983, Michael Farris, lawyer and political activist, founded the Homeschool Legal Defense Association (HSLDA), a law firm dedicated to defending the rights of families to educate their own children at home (HSLDA, 2010). In the 1990s, Farris co-authored the Parental Rights Amendment (PRA) aimed to preserve parents’ rights to educate and raise their children (Farah, 2009).

“Today in American culture, few people are unfamiliar with homeschools. Most
either know someone who homeschools their children…selecting this increasingly popular alternative to public and private school education” (Romanowski, 2001, p. 1). In the 2003 and 2007 NHES, parents were asked their particular reasons for homeschooling their children (NCES, 2007, 2008). The three reasons selected by the parents of more than two-thirds of students were: (1) concern about the school environment, (2) the desire to provide religious or moral instruction, and (3) dissatisfaction with the academic instruction available at other schools. Fuller (1998) stated parents decide to homeschool for a variety of reasons including religious beliefs, disenchantment with the local schools, and a general desire to spend more time with their children. Homeschooling is on the rise in many states, like Florida, where there have been as much as a 20% increase. Many believe the increase is due to families no longer being able to afford private-school tuition but still wanting to avoid public schools. An increased availability of online courses might contribute to the rising popularity of homeschools (Balona, 2010). As stated earlier, in 2007, NCES estimated 1.5 million students were homeschooled.

Over the past few decades, homeschool has become a popular educational option for some parents who disagree with the public school curricula. Many other parents, while continuing to send their children to public schools, still expect empowerment when it comes to their children’s education. A growing involvement in various political groups with intense focus on education and parental rights has developed, creating a huge rift among various political ideologies. Some groups, such as People for the American Way Foundation (PFAW, n.d.), are concerned that federal expansion of parental rights is really a means for a few to challenge the public school
curricula available for all children, not simply for their own. PFAW believes some religious rights’ groups aim to control what public school children see, read, and learn by state and federal legislation, restrictive school board policies, and legal action. Some believe these types of proposals damage public education by allowing individual parents to disrupt entire courses they find objectionable, or to alter classes to avoid topics they deem offensive, rather than opting their child out of a particular class. Many believe work should occur to prevent this assault on public schools in the name of parental rights. In many school districts, many parents currently have the right to opt-out their children from sexuality and AIDS education, as well as specific activities or assignments that conflict with their religious beliefs. Most school districts already have policies encouraging parents and educators to work together to resolve differences of opinion.

In stark contrast to groups like PFAW, many conservative groups seek reform because of their belief that parental authority has been undercut by various judicial decisions and educational programs. One such group, ParentalRights.org (n.d.), has the following motto at the top of each webpage: “protecting children by empowering parents.” ParentalRights.org (n.d.) believes “the right of parents to direct the upbringing and education of their children has been recognized and upheld for centuries. But there are dark clouds on the horizon” (para. 1). One major concern for these conservative groups is the denial of parental rights by federal judges in court cases. Freedom Federation (2009), another conservative parental rights group with similar concerns, claims as its purpose: “To secure the fundamental rights of parents to the care, custody, and control of their children regarding their upbringing and education” (para. 2). Mirroring the message of the Freedom Federation, Drennan
(2010) of the Alliance for the Separation of School and State wrote “School Wars: Who Will Win?”:

You probably know there’s a war going on regarding public schools. It’s a complicated war of many fronts with a few examples being Evolution vs. Creationism, Abstinence vs. “Comprehensive” sex-education, Alternative lifestyles vs. traditional families, whole language vs. phonics, and others. (para. 1)

Eagle Forum (n.d.) has been supporting “traditional” education since 1972 (para. 1). Eagle Forum advocates an ideology based on these premises: every child being taught to read by phonics; opposition to the “dumbing down” of a curriculum through the implementation of outcome-based education and courses in self-esteem, diversity, and multiculturalism; support for parents’ rights to protect their children against what the group considers immoral instruction and to homeschool without unfair government regulations; and opposition to government financed daycare. In *The Phyllis Schlafly Report* newsletter, “Who defines American culture?” (2006) was the statement, “My, how public schools and teachers unions have changed since 1951!” Eagle Forum encourages use of the National Education Association’s (NEA) *The American Citizens Handbook* (Morgan, 1941) that was published for teachers and provided selections suitable for memorization including the Golden Rule, the Ten Commandments, the Lord’s Prayer, the Boy Scout oath, and patriotic songs.

Another group, Texas Justice Foundation (TJF, 2010a), was founded to protect “fundamental freedoms and rights essential to the preservation of American society” (para. 1). TJF (2010a) seeks to protect parental rights in education and educational freedom through litigation. TJF (2010c) promotes the fundamental right of parents to direct the education of their own children with the motto, “If no child is to be left behind, then no parent should be left out” (para. 1). Many of these advocacy groups criticize
public schools for graduating students who cannot adequately read, write, or calculate. These groups fear school administrators’ authority to control curricula and determine students’ values, morals, and attitudes. These groups are extremely concerned about what they perceive as overzealous rulings that parents’ rights to control the upbringing of their children do not extend inside the public school.

Groups such as Eagle Forum (n.d.), TJF (2010b), and California Student Exemption Project (2004) provide form letters so parents can give notice and declare their parental rights to public school officials (as exhibited in the appendices). The parent rights form letter provided by TJF’s (2010b) Notice and Declaration of Parental Rights document is 12 pages long and makes reference to controversial topics including creative problem-solving, death, divorce, drug education, dream interpretation, gender roles, origins of the universe, population control, suicide, and witchcraft.

These form letters create problems for public schools. The PFAW (n.d.) claimed that the NEA reports school districts across the country are flooded by parental rights form letters demanding their children should not be involved in any school activities or studying any curricula, textbooks, audio-visual materials, or supplementary assignments that includes 94 topics such as witchcraft, divorce, and gender roles without parents’ prior written consent. The general counsel for the National School Boards Association reinforced the difficulty with such lists by stating, “Try running a high school class on Shakespeare’s Romeo and Juliet? You’ve got teen-aged sex, children disobeying their parents, and a suicide pact. Macbeth? You start with witchcraft and go from there” (Applebome, 1996, p. 2).
In recent years, not only have advocacy groups been more active but there has also been extensive governmental action concerning parental rights at both the federal and state level (Schlueter, 2008). This movement has proceeded in at least three directions: (1) proposing statutory changes in state law, (2) proposing amendments to state constitutions, and (3) proposing an amendment to the U.S. Constitution. In 1995, Texas became the first state to pass a bill recognizing the fundamental parental right to direct the upbringing of children (Sabourin, 1999). The Texas Legislature recognized the role of parents. Chapter 26 of the Texas Education Code (TEC) is entitled “Parental Rights and Responsibilities” and states “parents are partners with educators, administrators, and school district boards of trustees in their children’s education” (TEC § 26.001(a)). When the legislature set the objectives for public education, two sections that empower parents were included: (1) Section 26.001 (b) establishes that the rights listed is not an inclusive list by stating “this chapter does not limit a parent’s rights under other law”; (2) Section 26.001 (c) provides “unless otherwise provided by law, a board of trustees, administrators, educator, or other person many not limit parental rights.” TEC clearly allows parents access to teaching materials, but many parents want unlimited access to classrooms (Fossey & Rogers, 2009).

In 1996, some conservative groups, including religious organizations such as Christian Coalition and Of The People (OTP), began a national campaign working toward a Parental Rights Amendment with the goal of amending all 50 state constitutions (Sabourin, 1999). Since 2001, the PRA movement has sought an amendment to the U.S. Constitution that codifies the Meyer-Pierce principle of the fundamental rights of parents “to direct the upbringing of their children” (Schlueter,
Conservative groups such as Christian Coalition, Citizens for Excellence in Education, Eagle Forum, Focus on the Family, Homeschool Legal Defense Association, Rutherford Institute, and numerous others have joined the movement to support passage of the PRA (PFAW, n.d.).

In March, 2009, House Joint Resolution 42 (H.J. Res. 42) was brought before the U.S. House of Representatives proposing an amendment related to parental rights to the U.S. Constitution. In May, 2009, Senate Joint Resolution 16 (S.J. Res. 16) was brought before the U.S. Senate proposing the same parental rights’ amendment. According to Christian News Wire (2009), there are currently 129 co-sponsors in the U.S. House of Representatives and six co-sponsors in the U.S. Senate. The proposed Parental Rights Amendment (PRA) is divided into three sections:

- **Section 1:** The liberty of parents to direct the upbringing and education of their children is a fundamental right.

- **Section 2:** Neither the United States nor any state shall infringe upon this right without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served.

- **Section 3:** No treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article. (S.J. Res. 16 & H.J. Res. 42, 111th Congress, 2009)

More than 40 education, health, women’s, child advocacy, and civil liberty groups are organized against the PRA. Opponents include the American Academy of Pediatrics, the American Association of School Administrators, the National PTA, the NEA, and the American Civil Liberties Union (Applebome, 1996). PFAW (n.d.) believes the move toward a PRA is simply part of the religious right’s large scale campaign against public schools by promoting vouchers, censoring books from classroom use, and injecting sectarian activity into public schools.
Tenth Amendment: Opportunity for Opt-out Statutes

Thomas Jefferson observed, "The Tenth Amendment is the foundation of the Constitution." Members of the Philadelphia Convention, reacting to the constricted amount of congressional power under the previous Articles of Confederation, presented a Constitution with an increased amount of federal authority (Lash, 2008). When the newly drafted Constitution was presented to the states for ratification, concerns immediately arose about the unchecked authority of the federal government. In response, the Framers assured the states that a Bill of Rights would be quickly drafted to limit federal authority. The Tenth Amendment reads: "The powers not delegated to the U.S. by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." It was broadly understood to establish a rule of strict construction of federal power. One of the Framers, Alexander Hamilton, declared "whatever is not expressly given to the federal head is reserved to the members" (Lash, 2008, p. 5). A recent instance of federal power being harnessed is found in United States v. Lopez (1995) where the U.S. Supreme Court stated the "working of the National Government" did not suffice as a legitimate purpose and struck down Congress’ Gun-Free School Zones Act of 1990 (DeRosa, 2004, p. 3).

Since there is no mention of public education in the U.S. Constitution, the authority to provide public education has been reserved to individual states. The constitution of every state provides for a system of public education. Legislatures in every state have established public school organizations that delegate some authority to local school districts (Fuller, 1998). States have many reasons for providing a public school education to its citizens and courts agree that parents must ensure their children
are educated. Religious beliefs have always seemed to be parents’ greatest area of conflict with public schools (Ramsey, 2006). While states and their public schools have authority to control the curricula, many allow parents to opt-out of at least part of a curriculum or to exempt children from a classroom based on moral or religious grounds. Although parents want to exercise curriculum opt-outs, there is no constitutional right for this (Fossey et al., 2007). One of the earliest opt-out policies, cited in Dunn’s *What Happened to Religious Education?* (1958), was adopted by the Philadelphia School Board in 1843: “RESOLVED, that no children be required to attend or unite in the reading of the Bible in the Public Schools, whose parents are conscientiously opposed thereto” (as cited in *Abington v. Schempp*, 1963).

From a judicial perspective, public schools have the right and ability to determine curricula. State laws or statutes provide the only legal option for parents to gain opt-out rights regarding a specific public school curriculum for their children, and these opt-out rights vary considerably from state to state (Fossey et al., 2007). Statutes that encompass curricula and parental rights vary across individual states. For example, Wyoming only has an option for HIV/AIDS instruction, but Texas has a very broad, parent-friendly option. In Wyoming, at request by a parent, a child may not “receive instruction in *specific* HIV prevention topics at school” (Wyoming Department of Education, 1998). On the other hand, Texas allows the exemption of students from *any* class or activity if it “conflicts with the parent’s religious or moral beliefs.” Texas Education Code, 26.010 (a) covers “Exemption from Instruction” and is cited below:

A parent is entitled to remove the parent’s child temporarily from a class or other school activity that conflicts with the parent’s religious or moral beliefs if the parent presents or delivers to the teacher of the parent’s child a written statement authorizing the removal of the child from the class or other school activity. A
parent is not entitled to remove the parent’s child from a class or other school activity to avoid a test or to prevent the child from taking a subject for an entire semester.

Of course, state officials cannot enforce statutes dealing with curricula that violate the constitutional rights of students and parents (Russo, 2005).

The struggle for public school administrators and parents continues. Some think parental rights’ proposals go too far and damage public education by allowing disruption of public education by allowing children to opt-out of entire courses. Many believe that opt-outs disrupt and damage public education when an entire course may be avoided. In these instances, parental rights’ proposals have gone too far. Others believe it is the right of parents to direct the upbringing and education of their children as recognized and upheld for centuries. For the best interest of a democratic society, there must be cooperation. Most school districts already have policies encouraging parents and educators to work together to resolve differences of opinion.

Since education is not mentioned in the federal constitution, the Tenth Amendment sets the precedent for states to be responsible for public education. The battle continues between parents’ rights to make decisions regarding the curricula their children are taught, based on their moral or religious views, and the schools’ right to teach curricula that serve a broader, general civic interest. Some parents continue to fight for the adoption of a Parental Rights Amendment, something that seems improbable in today’s political climate. More and more parents want opt-out rights from particular curricula in public schools, but numerous federal court cases exist that grant authority to public schools to teach what they believe is appropriate for children to learn.

The Founding Fathers believed a system of free public education would sustain the growth of democratic citizenship. Public education has made a great difference for
the education of all, but the landscape has changed greatly. While legally parents must send their children to school, they now have more options than ever before including, charter schools, homeschoools, and e-schools or Internet-based schools. Even so, nearly 90% of American parents continue to send their children to public schools (NCES, 2007). Thus, the struggle over the control of curricula remains a central issue for many parents and public schools. However, both sides should work together to maintain a beneficial balance to sustain a democratic society.
CHAPTER 3

CATALOGUE OF FEDERAL COURT CASES WITH PARENTAL RIGHTS IMPLICATIONS IN PUBLIC EDUCATION

Introduction to the Cases

In this study, I examined a critical question with regard to parents’ legal right to opt-out their children from all or part of public school curricula they find objectionable. Specifically, what are the constitutional rights of parents to opt-out their children from curricula in public schools as defined by decisions of the federal courts? Fossey et al. (2007) indicated numerous federal court cases support the authority of public schools to control curricula while severely limiting parental rights in the area of curriculum opt-outs. With respect to curricula, courts have not recognized parents’ constitutional rights to shield their children from reading an assigned passage or completing a mandatory class assignment, even if it is contrary to the parents’ or children’s religion. If parents disagree with the public school, their best course of action is to remove the child to either homeschool or a private school (Rigsby, 2006). While parents have the constitutional right to send their children to a private school, they do not have control over the public school’s activity and its officials (Dahl, 2008).

Many of the cases in this study were pursued based on a claimed violation of the First or Fourteenth Amendment of the U.S. Constitution. The First Amendment states the government shall make no law respecting an establishment of religion. In American society, freedom of religion as protected by the Constitution is deeply rooted. The Supreme Court has determined that the government can limit freedom of religion only when there is a compelling state interest and the methods to limit are least restrictive...
(Harkins, 1988). The Fourteenth Amendment provides that no state shall “deprive any person of life, liberty, or property, without due process of law.” The Fourteenth Amendment protects citizens from intrusion by the government of many basic rights without good reason, a protection known as substantive due process (Thornton, 2009, p. 2).


Numerous federal court cases have addressed curricular issues or parental rights. These cases were not selected as part of this study because they did not contain both curricular and parental rights components. For example, *Epperson v. Arkansas* (1968) and *Edwards v. Aguillard* (1987) were two important U.S. Supreme Court cases addressing curricula for evolution science and creation science. In *Epperson*, an Arkansas statute made it unlawful for a teacher in any state-supported school or university to teach evolution science. Susan Epperson, a biology teacher at Central High School in Little Rock, received a new textbook that contained a chapter on evolution. She sought clarification on the statute and her rights as a science teacher. The U.S. Supreme Court ruled the Arkansas anti-evolution statute invalid because it was contrary to the First and Fourteenth Amendments (Buchanan, 2005). *Edwards*, the Supreme Court’s other evolution science case, dealt with Louisiana’s Balanced Treatment for Creation-Science and Evolution-Science Act. This act prohibited the teaching of evolution unless accompanied by instruction in creation science. Schools were not required to teach either theory, but if one was taught, both must be taught. Again, the U.S. Supreme Court invalidated another anti-evolution statute. Since Louisiana’s Creation-Science Act advanced a particular religious belief in order to
discredit the teaching of evolution, the Court ruled it violated the First Amendment. While these two important cases dealt with curricular issues, parental rights were not affected.


In another federal case, *Boring v. Buncombe County Board of Education* (1998), Boring, a high school drama teacher, was reassigned to another position after she had selected a controversial play for her students to perform in a statewide competition. School officials became upset about the teacher’s choice of a play. As a defense, the teacher claimed she had the prerogative to select and produce the play because teachers have a First Amendment right to participate in the development of curriculum. While the court agreed that the play was part of the school’s curricula, it did not see development of curriculum as a constitutional entitlement for classroom teachers. In the opinion of the Fourth Circuit Court of Appeals, school officials, not teachers, develop the curriculum. In this case, the school board, in good faith, exercised its legal authority to reprimand Boring, based on her selection of the controversial play. In *Boring*, the Fourth Circuit stated:

> Someone must fix the curriculum of any school, public or private. In the case of a public school, in our opinion, it is far better public policy, absent a valid statutory directive on the subject, that the makeup of the curriculum be entrusted to the local school authorities who are in some sense responsible, rather than to the teachers, who would be responsible only to judges, had they a First Amendment right to participate in the makeup of the curriculum. (p. 371)

In sum, *Edwards, Aquillard*, and *Boring* were important federal cases which dealt with curricular topics, but they did not touch on any parental rights’ issues.


*Ryans v. Gresham* (1998) was a case in which the court dealt with parental rights
issues but not curricular issues. This case dealt with a mother who wanted to visit her son's classes over a three day period. Charles Ryans, a fifth-grade student at Livingston Intermediate School in Texas, claimed he was afraid to attend class because he was being mistreated. He complained to his mother that his teachers and classmates disliked him because of his race (Schlueter, 2001). The parent, Mrs. Ryans, had previously sought help from the school district for her son. In a previous parent-teacher conference, the teacher, Charlene Gresham, refused to speak with the parents. The principal granted the mother the right to observe her son's classrooms, including Gresham's. During one of the classroom visits, the mother requested Gresham leave the classroom to discuss something outside in the hall but the teacher declined. After the parent had been in the class for an hour, the teacher requested the parent to leave the class. The parent refused; the police became involved, and ultimately the parent was arrested. A lawsuit was filed against the school district in U.S. District Court. In his ruling, the judge stated, “The Ryans' claim, indeed, really aims to establish that their constitutional right to direct their son's education imposes upon schools and school officials an obligation to permit them to attend his classes” (Ryans v. Gresham, 1998, p. 602). The judge disagreed with the parents’ claim and ruled in favor of the school district, stating that there is no legal requirement in Texas requiring schools to grant parents access to classes.

In recent years, another type of parental rights' cases, which do not deal with curricular issues, has occurred. These cases were not selected as part of this study because they did not contain both curricular and parental rights components. Parents have filed suit to overturn school districts’ school uniform policies. Although these cases
do not deal specifically with curricular issues, the federal court decisions offered an indication of parents’ rights to object to important school policies. Three of these cases have been decided at the federal appellate court level, and in all three cases, the courts ruled in favor of the school district.

**Canady v. Bossier Parish School Board (2001)**

The first case involving a school district’s uniform policy is *Canady v. Bossier Parish School Board* (2001). In this case, a group of parents sued to enjoin a Louisiana school district from enforcing its school uniform policy on the grounds that the policy “violated their children’s First Amendment rights to free speech, failed to account for religious preferences, and denied their children’s liberty interest to wear clothing of their choice in violation of the Fourteenth Amendment” (p. 439). Although the Fifth Circuit Court of Appeals acknowledged that students have a constitutionally protected interest in their choice of clothing, the court ruled that this constitutional protection is not absolute. The court addressed several issues. First, the court ruled the school uniform policy was viewpoint neutral and would be upheld if it furthered some substantial governmental interest. Second, the court rejected the argument that parents made about the cost of purchasing the uniforms. The parents argued it was a financial burden that violated the Louisiana Constitution’s guarantee of a free public education. The court pointed out that uniforms could be purchased inexpensively, no more than the normal cost of school clothes. In *Canady*, the school district argued that its school uniform policy served the district’s governmental interest in improving the educational process through reduced disciplinary problems and increased test scores. Since parents did not produce any evidence challenging the district’s claim, the court ruled that the school
district’s uniform policy would be upheld.

**Littlefield v. Forney ISD (2001)**

The next school uniform case, *Littlefield v. Forney ISD* (2001), occurred when Forney ISD began requiring students to wear collared shirts of particular colors and blue or khaki pants, skirts, shorts, and shoes. The school district maintained that the uniform policy sent a message that school is a place to work. Other benefits would be increased attendance, increased safety by allowing staff members to more easily distinguish students from outsiders, and reduction of socioeconomic tension. Failure to comply with the uniform policy would result in disciplinary action, but there was an option for parents to opt-out. Parents with strong religious or philosophical objections could apply each year for an exemption. During the implementation phase for Forney ISD, 72 parents applied for exemptions with 12 being granted.

Some parents were upset with the uniform policy, based on religious grounds, and filed claims in district court. They claimed the “wearing of uniforms is both a form of coerced speech…and it is an infringement on free expression” and “it violated their fundamental right to control the upbringing and education of their children which was guaranteed by the Fourteenth Amendment” (*Littlefield v. Forney ISD*, 2001, pp. 281-282). The district court dismissed the claims, so the parents appealed to the Fifth Circuit Court of Appeals. Upon review, the court did not believe that free expression rights of students entitled parents to veto the school district’s school uniform policy. The district court decision was affirmed, upholding the authority of the public school to enforce a school uniform policy even though parents might disagree for religious reasons.

The last school uniform case, *Blau v. Fort Thomas Public School District* (2005), began when Amanda Blau, sixth-grade student at Highlands Middle School in Fort Thomas, Kentucky, and her parents did not agree with the newly-adopted dress code. The new dress code was approved by the campus site-based, decision-making group known as the Highlands Council. The rationale for the new campus policy was to enhance the learning environment, reduce discipline issues, assist with school safety, bridge socio-economic differences between families, and provide some financial savings to parents. Amanda Blau’s father, an attorney, filed suit in district court against the Fort Thomas Public School District because his daughter opposed the dress code and wanted to be able to “wear clothes that look ‘nice on her’, that she ‘feels good in’ and that express her individuality” (*Blau v. Fort Thomas Public School District*, 2005, p. 386). The father claimed the dress code violated his daughter’s First Amendment right to freedom of expression and his right to control the dress of his child. The district court dismissed the claims of the parent.

When the *Blau* case was appealed to the Sixth Circuit Court of Appeals, the court cited *Tinker vs. Des Moines* (1969) regarding children not losing their constitutional rights at the schoolhouse gates. However, the appellate court stated that “the U.S. Supreme Court has frequently emphasized that public schools have considerable latitude in fashioning rules that further their educational mission…” (p. 393). The Sixth Circuit affirmed the lower court’s dismissal and supported the school dress code with these remarks:

The U.S. Supreme Court has recognized a fundamental right of parents to make decisions concerning the care, custody, and control of their children. And while
this right plainly extends to the public school setting, it is not an unqualified right. While parents have a fundamental right to decide whether to send their child to a public school, they do not have a fundamental right generally to direct how a public school teaches their child. Whether it is the school curriculum, the hours of the school day, school discipline, the timing and content of examinations, the individuals hired to teach at the school, the extracurricular activities at the school or, a dress code, these issues of public education are generally committed to the control of state and local authorities. (p. 395)

In its holding, the court emphasized that parental rights do not extend in “directing how a public school teaches their child.” Cases such as Blau v. Fort Thomas Public School District, while not selected as part of this study due to exclusion of curricular issues, still reinforced parents’ limited options in public schools.

Federal Cases Addressing Both Parental Rights and Curriculum Issues

This study’s catalogue of federal court cases includes various parental rights and curricular issues in public schools. The cases encompassed the following: (1) parents requesting an exclusion from a state-adopted reading program; (2) parents requesting removal of district-required equivalency tests requirements for their child entering public school from homeschool; (3) parents opposing a district-approved AIDS curriculum presented during a high school assembly; (4) parents objecting to multiple reading curricula ranging from components of a family in elementary school to wizard and imagery in later grades; (5) parents objecting to required community service curriculum for graduation; (6) parents objecting to religious songs being part of their child’s high school music curricula; (7) parents wanting to remove their child from an entire health class due to moral objections; and (8) parents objecting to various school-related surveys.

Courts are often asked to address whether the implementation of various educational programs in public schools invades the free exercise of religion rights of
students and parents (Harkins, 1988). The U.S. Supreme Court and other courts ultimately rule on constitutional issues that govern freedom of religion in state institutions like public schools. Federal judges sometimes seem to exacerbate the problem by adopting interpretations of the establishment and free exercise clauses, which often conflict with each other. Judge Hull of the U.S. District Court for the Eastern District of Tennessee considered Mozert v. Hawkins County Public Schools (1987) and declared the religion clauses would not be interpreted as to allow parents to dictate what curriculum could be used in public schools (Mykkeltvedt, 1989). Mozert, a major federal case dealing with both parental rights and curriculum issues, begins the catalogue of cases addressed in this chapter.

Mozert v. Hawkins County Board of Education (1987)

Mozert is often used by federal courts to give broad authority for schools to control the curriculum (Fossey et al., 2007). In this case, the parents argued they had a constitutional right to shield their children from exposure to a state-mandated reading program, adopted by the Tennessee Board of Education, promoting various worldviews and acceptance of diversity through reading passages in Holt Basic Reader textbooks (Coleman, 1998). Some parents objected to readings for a variety of reasons including a short story about a Catholic Indian because it talked about Catholicism; a reading passage about a boy making toast for a girl because it disparaged gender differences according to the Bible; an excerpt from Anne Frank’s Diary of a Young Girl, in which she wrote about her non-orthodox belief in God; and a reading-based discussion of the Renaissance for promoting human self-esteem and self-worth, a belief incompatible with the parents’ faith (Gutmann, 1989). The parents expressed concern about
adherence to a specific civic education curriculum because some of the readings might inculcate different values from theirs and subsequently interfere with the children’s faith (Coleman, 1998).

Initially, Hawkins County school officials tried to placate the parents by allowing the children to use an older series of reading texts. Ultimately, the school board decided to disallow options other than the required reading curriculum, so the parents filed suit (Fossey et al., 2007). Subsequently, the plaintiffs, a set of 14 parents and 17 children, brought action under 42 U.S.C.S. § 1983 against the Hawkins County Board of Education, claiming the required reading textbooks violated their First Amendment right to the free exercise of religion. The district court ruled in the parents’ favor, granted an injunction, ordered students who objected to reading the Holt textbooks to be excused, and awarded financial compensation to the parents. The school district appealed to the Sixth Circuit Court of Appeals, which reversed the judgment.

In Mozert v. Hawkins County Board of Education (1987), the appellate court held the plaintiffs did not show how the reading textbooks had created an actual burden on the profession or exercise of their religion. According to the court, a constitutional violation of free exercise would have occurred if the school board had pressured the children to avow a particular belief but this did not occur. The Sixth Circuit additionally cited the Supreme Court’s decision in Bethel School District No. 403 v. Fraser, which affirmed that public schools have a duty to teach “fundamental values essential to a democratic society” (Fossey et al., 2007).

Thus, the Free Exercise Clause of the First Amendment does not allow parents to dictate the conduct of schools' internal procedures according to the Mozert court
ruling, which utilized Supreme Court Justice Douglas’ remarks from Sherbert v. Verner. “The Free Exercise Clause affords an individual protection from certain forms of governmental compulsion; it does not afford an individual a right to dictate the conduct of the Government’s internal procedures” (Mozert v. Hawkins County Board of Education, 1987, p. 1070). In essence, public school curricula must be charged with intent to promote or prohibit religious beliefs to violate the Free Exercise Clause. In Mozert, the federal court upheld the states’ authority to compel the reading of approved textbooks, even though some minority groups such as Christian fundamentalists might find the textbooks objectionable for civic education. The court affirmed the importance of such civic qualities as respect, tolerance, independence, and a sense of public fairness as qualities that should be taught in public schools (Gutmann, 1989).

Vandiver v. Hardin County Board of Education (1987)

The Vandivers decided their son, Brian, should re-enter public high school after one year of homeschool. The principal of West Hardin High School, Mr. Kelley, and the parents agreed Brian would take equivalency tests to gain credit for the homeschool coursework he had completed the previous year. To lessen his load, the school and the parents agreed Brian would take tests for two subjects and complete correspondence courses to gain credit for the other missing classes. Several weeks later, the parents changed their minds due to concerns about the amount of studying their son was doing, and they requested West Hardin High School drop the equivalency testing requirement. Mr. Kelley, the principal, submitted the Vandiver’s request to the local school board, which denied the parents’ request. Afterward, Brian Vandiver refused to take the equivalency tests “on the basis of his religious belief that the load was unfair and more
than God would want him to bear” (Vandiver v. Hardin County Board of Education, 1987, p. 929). Since the student did not complete the public school’s requirements, he was not reclassified as a senior.

The following school year, the Vandivers appealed the district’s decision about their son’s situation and requested to speak at a school board meeting. Unfortunately, upon notification that their speaking time was reduced to 30 minutes and none of their son’s teachers were going to speak on Brian’s behalf, the parents declined to attend the meeting. In April 1989, they filed a lawsuit in U.S. District Court seeking to force the school district to award academic credit for Brian’s home study. The court upheld the school district’s decisions on the basis of a Kentucky statute that stated: “The local school district shall be responsible for the appropriate assignment of a student transferring from a non-accredited school” (704 Ky. Admin. Regs. 3:307, § 2).

Brian Vandiver and his parents appealed the judgment to the Sixth Circuit Court of Appeals. The court found the school’s policies on testing and academics valid with neutral applications for all students. The trial court’s decision was affirmed, with the appellate court concluding that the testing requirement did not violate the First Amendment or the due process or equal protection clauses.


Some parents of students in grades K-5 at Lowell Elementary School of School District 200 in Wheaton, Illinois were upset over a supplemental reading program entitled the Impressions Reading Series. The parents claimed the school continued to “teach, instruct and otherwise educate students” using the reading series and believed it focused on “some supernatural beings, including wizards, sorcerers, giants and
unspecified creatures with supernatural powers.” They argued the stories would “indoctrinate children in values directly opposed to their Christian beliefs…” (Fleischfresser v. Directors of School District 200, 1994, p. 688). The parents even asserted that their children were being trained to cast spells and become witches by the school. Consequently, the parents objected to the use of the reading series based on religious reasons and filed a case in U.S. district court.

The district court found it difficult to accept the parent’s claim, not seeing how Lowell Elementary School had created a religion and promoted witchcraft. The court denied the parents’ claims, and the parents appealed to the Seventh Circuit Court of Appeals. In Fleischfresser (1994), the Seventh Circuit again disagreed with the parents and remarked on the legitimate purpose of the reading series:

The inclusion of a variety of stories serves to stimulate a child’s senses, imagination, intellect, and emotions: according to the publisher, this is the best way to build reading skills. This reading series includes the works of C.S. Lewis, A.A. Milne, Dr. Seuss, Ray Bradbury, L. Frank Baum, Maurice Sendak and other noted authors of fiction. Further, these works, and so many others that are part of any elementary classroom experience have one important characteristic in common; they all involve fantasy and make-believe to a significant degree. The parents would have us believe that the inclusion of these works in an elementary school curriculum represents the impermissible establishment of pagan religion. (p. 688)

The Seventh Circuit rejected the parents’ assertions that stories with witches, goblins, and Halloween violated the Establishment Clause and held that “Halloween is an ‘American tradition’ and is a purely secular affair” (McDowell, 2007, p. 3). In addition, the court upheld the right of School District 200 to select and implement the reading curriculum and applauded the district’s provision of a quality public school education. Support of all public schools was reinforced by this court-issued statement: “If we are to eliminate everything that is objectionable to any [religious group] or inconsistent with
any of their doctrines, we will leave public schools in shreds” (*Fleischfresser v. Directors of School District 200*, 1994, p. 690).

*Fleischfresser* was decided before the arrival of the now famous boy wizard, Harry Potter, who appeared in author J.K. Rowling’s novels and movies. These books became a publishing phenomenon and are found in most school libraries. The case of *Counts v. Cedarville School District* dealt with parents who objected to Harry Potter books in the school library because some parents believed the books would lead to disrespect for authority and promote witchcraft and the occult. As in *Fleischfresser*, the court disagreed and did not feel the Harry Potter books promoted a religion (McDowell, 2007).


Chelmsford High School and its parent teacher organization (PTO) had contracted with Suzi Landolphi, owner of the corporation *Hot, Sexy, & Safer Productions, Inc.*, to provide an AIDS awareness program. Members of the school staff and PTO had previewed the promotional videotape about Landolphi’s presentation and recommended the program. Parents filed suit against the Massachusetts school district, claiming that mandatory attendance at an AIDS awareness assembly at Chelmsford High School deprived their children of their privacy rights and their right to an educational environment free from sexual harassment.

The parents, plaintiffs in the case, were extremely upset with the content of the program. They alleged sexually explicit monologues and suggestive skits with minor students. Landolphi, the program presenter, ostensibly told the adolescent audience they were going to have a “group sexual experience with audience participation.” There
were numerous alleged inappropriate actions, including lewd talk advocating oral sex, masturbation, homosexual activity, and condom use during premarital sex. In addition, Landolphi was accused of characterizing loose pants on a particular male student as “erection wear,” encouraging another male student to “display his orgasm face” for the camera, remarking to a male student that he had a “nice butt,” and making many other similar inappropriate comments (Brown v. Hot, Sexy, & Safer Productions, Inc., 1995, p. 529).

According to the First Circuit Court of Appeals, plaintiffs were required to demonstrate a deprivation of an identified liberty or property interest protected by the Fourteenth Amendment to make a substantive due process claim. If there is no deprivation of a specific liberty or property interest, the plaintiff must prove that the state’s conduct “shocks the conscience.” The parents in this case claimed their children’s attendance met both of these criteria. The court failed to agree that parents should have an opportunity to take action against state officials (i.e. school district) for “exposure to patently offensive language” which does not constitute “conscience shocking” behavior (Brown v. Hot, Sexy, & Safer Productions, Inc., 1995, p. 534).

In this case, the First Circuit Court of Appeals used the Supreme Court’s explanation of the Fourteenth Amendment, which clarifies that a privacy right protects against significant government intrusions into certain personal decisions. Only rights that “can be deemed ‘fundamental’ or ‘implicit in the concept of ordered liberty’ are included in this guarantee of personal privacy” (Brown v. Hot, Sexy, & Safer Productions, Inc., 1995, p. 532). The First Circuit recognized that parents have a right
for the custody, care, and nurture of their children as deemed in the Meyer and Pierce cases, but the court denied parental rights to control the curriculum in public schools:

The Meyer and Pierce cases, we think evince the principle that the state cannot prevent parents from choosing a specific educational program – whether it be religious instruction at a private school or instruction in a foreign language. That is, the state does not have the power to “standardize its children” or “foster a homogenous people” by completely foreclosing the opportunity of individuals and groups to choose a different path of education. We do not think, however, that this freedom encompasses a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children...If all parents had a fundamental constitutional right to dictate individually what the schools teach their children, the schools would be forced to cater a curriculum for each student whose parents had genuine moral disagreements with the school's choice of subject matter. (pp. 533-534)

The court ruled there were insufficient facts to substantiate a claim for sexual harassment under a hostile environment standard. The First Circuit found Brown’s claims had no merit because the conduct displayed by the defendants during the program did not rise to the level of conscience shocking behavior. The plaintiffs argued that the school district’s AIDS awareness assembly violated their right to privacy under the Fourteenth Amendment, which limits the government from intruding upon personal decisions. The First Circuit disagreed with this view, thus ruling against an expansion of the constitutional right for parents to direct the upbringing of their children. Upcoming challenges to sex education curriculum seem unlikely to be successful when based on First and Fourteenth Amendment objections. Federal courts have held there is no constitutional right for a parent to educate their child on sex-related topics (Rigsby, 2006).


Daniel Immediato was a student at Rye Neck High School in New York. The school district had a community service program requiring students to complete 40
hours of service within their 4 years of high school in order to earn their diploma. Under the program's requirements, students were required to complete service work as volunteers. The program was intended to give students the opportunity to work for non-profit corporations, public agencies, and charities, including religiously-affiliated institutions. Otherwise, students were given great latitude and options in choosing the organization with which they would work. According to the school district, only two students had ever been denied approval, one for working in the student's father's store and another who was paid for babysitting. The program did not allow any opt-out provisions for those students who objected.

Even though they acknowledged that community service was admirable, the Immediatos believed it should be left to the individual, not mandated by the school. In fact, when Daniel asked his parents if the school could require community service, they explained the government cannot force someone to serve others (Stefaniuk, 1997). As a result, the parents filed a complaint against the school district in district court alleging their son had been forced to surrender his constitutional rights. They wanted the mandatory community service ruled unconstitutional. According to the parents, it imposed involuntary servitude upon their son in violation of the Thirteenth Amendment, negated their parental right guaranteed by the Fourteenth Amendment to control the upbringing of their son, and violated Daniel's right to privacy (Immediato v. Rye Neck, 1996). The parents claimed that the organization for which Daniel must volunteer services would gain benefits, which amounted to servitude. Since this servitude must occur or Daniel would not graduate high school, it became essentially involuntary servitude, a violation of the Thirteenth Amendment (Phillips, 1997).
Two major methods for implementing mandatory service requirements into the public school curricula existed. One was community service whereby students volunteer for agencies. To document service, students could compose essays, complete reports, share with classmates, or get a form signed by the agency granting community service hours. This allowed students to elaborate about the personal benefit gained from the community service. The other method of service requirements was service learning, which was incorporated into the classroom activities. For example, an ecology class could clean trash and debris from a neighboring pond as a course-related activity. Stefaniuk (1997) suggested that while many parents think these types of mandatory requirements have merit, they believe the requirements encroach on their parental rights. According to these parents, mandating service is very coercive since no opt-outs are allowed. Daniel Immediato and his parents agreed with this sentiment:

Daniel Immediato argued that a decision to serve others should be left to one’s own conscience, not to the school board…The school district argued the program was consistent with the State’s interest in educating students about the needs of their communities. (Stefaniuk, 1997, pp. 6-7)

The Second Circuit Court of Appeals upheld the school district’s community service requirement and dismissed the involuntary servitude argument by declaring the requirement was educational and “education is unquestionably a legitimate state interest” (Immediato v. Rye Neck, 1996, p. 462). The court emphasized, “The Supreme Court…has never expressly indicated whether this ‘parental right’ [to control the upbringing of their children] when properly invoked against a state regulation, is fundamental” (p. 461). Accordingly, a fundamental right is not at stake every time a governmental rule encroaches upon a person’s individual freedom. While Daniel
Immediato chose not to complete community service to finish his high school curriculum, this did not infringe on his personal freedoms (Phillips, 1997).

**Bauchman v. West High School (1997)**

Rachel Bauchman was a 10th grade student at Salt Lake City’s West High School. Rachel was a member of the school’s choir, which was led by longtime choir director, Mr. Torgerson. Eventually, Rachel’s mother filed suit in district court against West High School, Mr. Torgerson, the school district, and some of its administrators, alleging the “advocacy, endorsement, and proselytizing of his [Mormon] religious beliefs and practices during his public school classes and Choir performances” (*Bauchman v. West High School*, 1997, p. 546). Mrs. Bauchman, who was Jewish, made numerous claims: (1) the choir students performed many Christian songs; (2) the choir students performed at religious locations having crucifixes and other religious symbols; (3) the choir students were ridiculed for voicing opinions against Mr. Torgerson’s religious beliefs; (4) Mr. Torgerson planned a trip for select members to perform at churches in Southern California; and (5) the choir planned to sing two Christian songs (*The Lord Bless You* and *Friends*) at the high school’s 1995 graduation ceremony. The parent believed the music class’ curriculum was a violation of the Establishment Clause and thus violated her daughter’s rights.

Mrs. Bauchman sought an injunction to stop the use of religious music in the choir class and to prevent its use at the graduation ceremony. Torgerson, the choir director, substituted new songs for those in question into the graduation ceremony program. West High School principal, Mr. Boston, addressed the entire graduation class about the critical necessity for seniors to adhere to the changes in the program without
disruption. Additional security guards were hired by the principal for the ceremony. During the final choir practice before the event, Mr. Boston insisted upon compliance from choir members and threatened penalties against disruptive students but the conflict worsened. The student choir president, in a confrontation with Mrs. Bauchman, suggested the choir might still sing the songs and the parent responded by calling the student leader a “bitch.” Upon hearing rumors that the choir might still sing “Friends,” Mr. Torgerson passed out a personal note pleading for choir members’ cooperation and stating he would not direct any songs not on the program. At the graduation ceremony, the valedictorian made reference to the situation in his speech. Another student took the podium and urged the crowd to sing “Friends” since it was a long-held tradition. While the principal quickly took the microphone and urged compliance, he was drowned out by the crowd singing (Mangrum, 2005). The district court dismissed all of Bauchman’s claims.

Bauchman then appealed to the Tenth Circuit Court of Appeals. Numerous groups such as the American Jewish Committee, Anti-Defamation League, General Church Board of Seventh-Day Adventists, Presbyterian Church U.S.A., and United Church Board for Homeland Ministries of the United Church of Christ were allowed to file *amicus curiae*, or friends of the court, briefs. These groups took various positions in the case with some supporting Bauchman and others supporting the school. Eventually, the Tenth Circuit Court of Appeals heard the case and declared:

While the Free Exercise clause protects, to a degree, an individual’s right to practice her religion within the dictates of her conscience, it does not convene on an individual the right to dictate a school’s curricula to conform to her religion...Accordingly, public schools are not required to delete from the curriculum all materials that may offend any religious sensibility. (p. 557)
The court examined the facts of the case and declared there was a clear secular and curricular reason for the selection of songs with religious content. The court cited *Doe v. Duncanville ISD* (1995), a Fifth Circuit decision, which declared, “Any choral curriculum designed to expose students to a full array of vocal music culture therefore can be expected to reflect a significant number of religious songs” (p. 554).

**Swanson v. Guthrie ISD (1998)**

Annie Swanson had always been homeschooled primarily for religious reasons. Annie’s parents wanted to teach their daughter Christian principles not included in the public school curriculum (Fuller, 1998). Eventually, the Swansons thought she should take some classes such as a foreign language, music, and a science class at the public school on a part-time basis because this would better prepare her for college. During the last 9 weeks of Annie’s seventh grade school year, the parents received permission from the Guthrie ISD superintendent for her to participate in two classes. She performed well in the classes. The following year, Annie’s parents again requested permission for their daughter to attend eighth grade on a part-time basis, but this time the request was denied by the new superintendent, Mr. Bowman. The parents were informed they would need school board permission. Subsequently, the Guthrie School Board adopted a part-time attendance policy which stated “all students enrolling in Guthrie Public Schools must do so on a full-time basis” (*Swanson v. Guthrie ISD*, 1998, p. 697). The only exception given in this new policy was for fifth-year seniors and special education students. Later, the school board modified its policy, stating it would reconsider if and when Oklahoma’s Department of Education ever changed its rule to provide state funding for part-time students. The Guthrie School Board expressed deep concern that
allowing homeschooled or private-schooled children to attend classes on a part-time basis without any state funding would put a financial strain on their district. Since public education is funded under the supposition that students attend on a full-time basis, it is extremely difficult for public schools to allow admission of part-time students (Fuller, 1998).

The Swansons filed a lawsuit in district court against the school district. It was dismissed, so they appealed the decision to the Tenth Circuit Court of Appeals. The parents believed the district’s prevention of part-time attendance infringed upon their free exercise of religious beliefs. The court disagreed because the full-time attendance policy was neutral with wide-spread application, making it non-discriminatory. The Swansons reiterated their constitutional right to raise and educate their children. The court confirmed the parents’ constitutional right to direct Annie’s education but stated this right is limited. The parents explained they did not want to alter the public school’s curriculum, which put them on a different level from parents wanting to exempt their children from particular classes as found in the Mozert case. The court did not agree.

Comparing the Swansons’ request to Mozert, the appellate court stated the following:

We see no difference of constitutional dimension between picking and choosing one class your child will not attend, and picking and choosing three, four, or five classes your child will not attend. The right to direct one’s child’s education does not protect either alternative. (p. 700)

Furthermore, the parents claimed their daughter was being deprived of a free public education without due process, but the court ruled there was no property interest involved in a part-time public education and dismissed this claim. While the Swansons represented this case as discrimination based on religious grounds, the Tenth Circuit affirmed the lower court’s decision by supporting Guthrie ISD’s policy. In short, the
Tenth Circuit ruled that public schools cannot be forced to accept homeschool students on a part-time basis (Fuller, 1998).


This case does not contain both elements, parental rights and curricular issues, but is included because many parents believed the decision in this case renewed their total control over their children’s upbringing. However, the findings in this case are very limited in scope. *Troxel* is one of the most recent parental rights cases to be heard by the U.S. Supreme Court. The background of the case concerns a statute from the state of Washington (Wash. Rev. Code § 26.10.160 (3)) permitting any person to ask a state court for child visitation rights at any time if it serves the best interest of the child. Tommie Granville and Brad Troxel had a long-term relationship but were not married. As a result of their relationship, they had two daughters. Ultimately, the couple separated, but Troxel continued regular visitation with his children. When Brad Troxel died in 1993, his parents continued regular visitation with their grandchildren. Eventually, the mother decided to limit the grandparents’ visitation to one day per month. The Troxels filed a petition in court pursuant to the statute requesting two weekends of overnight visitation per month and two weeks in the summer. Granville asked the court to maintain her limit of one visitation day per month for the grandparents.

The lower court, in compliance with the state of Washington statute, granted the grandparents visitation of one weekend per month, one week during the summer, and 4 hours on each of their birthdays. The Washington Court of Appeals reversed the decision stating “limitation on non-parental visitation actions was ‘consistent with
the constitutional restrictions on state interference with parents’ fundamental liberty interest in the care, custody, and management of their children” (Troxel v. Granville, 2000, p. 62). The case was then appealed to the Washington Supreme Court, which ultimately found the visitation statute unconstitutional by stating parents have a fundamental right, guaranteed by the Constitution, to rear their children.

Ultimately, the Supreme Court granted certiorari, or review by the U.S. Supreme Court. The Supreme Court cited both Meyer and Pierce to support its assertion that the “liberty interest at issue in this case – the interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court” (Dahl, 2008, p. 151). As a result of Troxel, many parents believed the U.S. Supreme Court revitalized their rights of total control in their child's upbringing, yet Troxel is very limited because it involved a state statute that was too broad by allowing “any person” to petition for visitation rights “at any time” if visitation was in the best interest of the child. Justice Souter, in his concurring statement of the Court’s decision, said, “the statute’s authorization of “any person” at “any time” to petition and receive visitation rights subject only to a free-ranging best interest…sweeps too broadly and is unconstitutional on its face” (p. 2006, Justice Souter concurring). Even Justice Stevens, in his dissenting remarks, made it clear that the “parent’s rights with respect to [a] child have thus never been regarded as absolute…” (p. 2072, Justice Stevens dissenting).


Mr. Leebaert believed his son, Corky, had a constitutional right to be excused from attending health class in the seventh grade from his public school, Ludlowe Middle
School in Fairfield Public Schools, Connecticut. Connecticut law required health and safety curricula in public schools to include human growth and development, nutrition, first aid, disease prevention, community health, physical, mental, and emotional health including suicide prevention, substance abuse prevention, dangers of gang membership, and accident prevention (Conn. Gen. Stat. § 10-16b (a)). In addition, Connecticut law required the State Board of Education to “develop curriculum guides to aid local and regional boards of education in developing family life education programs” (Leebaert v. Harrington, 2003, p. 3). Family life topics included human sexuality, family planning, parenting, and the numerous aspects of family life. However, Connecticut law did not require local or regional education agencies to implement family life education programs (Conn. Gen. Stat. § 10-16d) nor did it require students to participate in family life programs that might be offered at a public school (Conn. Gen. Stat. § 10-16e). State law required ongoing instruction on acquired immune deficiency syndrome (AIDS) with the “content and scheduling of this instruction [to] be within the discretion of the local or regional board of education” (Conn. Gen. Stat. § 10-19b).

The parent, Leebaert, believed Corky should be able to opt-out of the entire fourth-quarter health class, but school superintendent Harrington disagreed. She stated the law allowed parents to excuse their children from only 6 of the 45 days of their health class, the 6 days of instruction that covered family life and AIDS. The parent continually informed the school his son would not be attending the health class and the school continually informed him that the student could only opt-out of the 6 days. Corky Leebaert never attended, and therefore, received an “F” in the class.
The parent filed suit in district court requesting the school district to change the failing grade. The parent sought a permanent injunction ordering clarification on separate health and family life curricula, a permanent injunction prohibiting failing grades for students who utilize opt-out rights, and reimbursement of attorney fees. The district court dismissed Leebaert’s case, and he appealed to Second Circuit Court of Appeals.

A major point argued by the parent was his constitutional right to direct the upbringing and education of his son, which warranted his right to excuse his son from instruction as a fundamental right. The court did not agree with the “fundamental right” issue, commenting:

In defining the scope of the parental right to direct the upbringing and education of children, the First and Tenth Circuits have held it does not include a right to exempt one’s child from public school requirements…We agree. *Meyer, Pierce*, and their progeny do not begin to suggest the existence of a fundamental right of every parent to tell a public school what his or her child will and will not be taught. (pp. 140-141)

The parent claimed his interests were the same as that of the Amish parents in *Yoder*, but the court disagreed on the grounds that this parent was not “aided by a history of three centuries as an identifiable religious sect” as were the Amish (p. 144). The Second Circuit Court of Appeals affirmed the judgment of the district court.

**Fields v. Palmdale School District (2005)**

A group of parents in Palmdale, California were informed by their children that they had been asked about sexual topics in their public elementary school. Questions were administered as part of a school district survey being completed on psychological barriers to learning. In *Fields* (2005), parents of these elementary school children brought both federal and state suits against the Palmdale School District and its officials.
for “violating their right to privacy and their right to control the upbringing of their children” (p. 1200), because school employees administered a survey to their elementary school children that contained questions about sex.

Case specifics involved Kristi Seymour, a volunteer mental health counselor, who collaborated with the California School of Professional Psychology and the Children’s Bureau of Southern California to develop the survey. Prior to administering the survey, a letter was mailed to parents of the children to be surveyed which specified that the “survey questions were about early trauma (for example, violence) and there was a warning that answering questions may make [the] child feel uncomfortable” (Fields v. Palmdale, 2005, p. 1201, footnote 1). Seymour then administered a psychological questionnaire to first, third, and fifth grade students in Palmdale. The parents stated they would have never consented to the survey if they had better understood the content of the questions. A federal trial court dismissed all of the parents’ claims. On appeal, the Ninth Circuit Court of Appeals affirmed the lower court’s decision. Judge Reinhardt stated:

We agree, and hold that there is no fundamental right of parents to be the exclusive provider of information regarding sexual matters to their children, either independent of their right to direct the upbringing and education of their children or encompassed by it. We also hold that parents have no due process or privacy right to override the determinations of public schools as to the information to which their children will be exposed while enrolled as students. (p. 1200)

While states cannot prevent a parent from choosing a specific education program (i.e. school), parents have no constitutional right “to follow their own idiosyncratic views as to what information the schools may dispense” (Fields v. Palmdale, 2005, p. 1206). Parents have no right to prevent schools from providing information, sexual or otherwise, when and as the school determines appropriate to do so (Fossey et al.,
Just like *Brown v. Hot, Sexy, & Safer Productions, Inc.*, parents objected to sexual content provided at the public school, this time in a survey given to elementary children. The Ninth Circuit stated that parents have neither a fundamental due process right to be exclusive providers of information on sexual matters for their children, nor do parents have privacy rights that override public school officials as to information to which children could be exposed (Russo, 2005).

C.N. v. Ridgewood (2005)

In 1998, following the tragedy of Columbine, a community organization in the Village of Ridgewood, New Jersey decided it would be important to survey students to determine needs and attitudes to provide guidance in Ridgewood’s allocation of resources and appropriate youth programs. The survey was designed by the Search Institute of Minnesota and consisted of 156 multiple-choice questions. The front cover of the survey indicated it would be strictly confidential with no survey code numbers and no personal identifiable information such as age, grade, sex, racial group, or parent family make-up. The survey sought information about students’ drug and alcohol use, physical violence experience, thoughts of suicide, personal and parental relationships, and sexual activity. While the school district was going to be the venue for administering the survey, the survey was considered by the school district to be a community project. In May 1999, the Superintendent of Ridgewood notified all parents by letter that a survey would be administered to students ages 12-19 in the upcoming school year. The letter made it clear that participation was voluntary and anonymous. Many organizations, including the PTA, held informational meetings about the survey and
affirmed its community value. It was continually stressed that a parent’s right to opt-out of participation would be respected.

Without prior notification of the exact date, the survey was administered by the schools. Some parents, including Carol Nunn, were upset and stated Ridgewood Board of Education violated their children’s right under Family Educational Records Privacy Act (FERPA), the Protection of Pupil Rights Amendment (PPRA), and the U.S. Constitution because the survey was involuntary and non-anonymous. Nunn filed suit in district court seeking relief on her constitutional claims and an injunction against the release of the survey results. The lower court dismissed all claims, and determined that the survey had been voluntary and anonymous.

The case was appealed to the Third Circuit Court of Appeals. Additionally, the Family Policy Compliance Office of the USDOE was asked to investigate the PPRA claim. The school board claimed that prior parental consent was not required, as mandated by PPRA, since the survey was voluntary. “The Compliance Office, however, found that the District had violated the PPRA because …the District ‘required’ students to take the survey” (C.N. v. Ridgewood, 2005, p. 173, footnote 16). It was difficult for the school district to prove their “voluntary” survey argument when school officials reported 100% participation for students in grades 7-12. In actuality, PPRA was not even in effect until January 1, 2001, and the Ridgewood survey was administered in the fall of 1999.

Without a parent consent form and an absence of any advance notice of the administration dates for the survey, the Third Circuit Court of Appeals felt the survey was involuntary but determined that the survey was administered anonymously. Consequently, the court reached a similar result as in Palmdale by finding in favor of the
Ridgewood school board, even though parents objected to the official use of a voluntary, anonymous survey that sought information about drug and alcohol use, sexual activity, experiences of physical violence, attempts at suicide, personal associations, parental relationships, and views on matters of public interest. The court agreed that school officials neither violated the privacy rights of students nor the rights of parents to make important decisions regarding control of their children (Russo, 2005).


This case is one of the most recent and controversial regarding the rights of public schools in controlling curricula by determining whether a “public school violated parents’ constitutional rights when it exposed young students to picture books depicting same-sex couples without affording the opportunity to exempt their children” (Thornton, 2009, p. 1). In January 2005, Jacob Parker was given a diversity book bag in his kindergarten class at Estabrook Elementary School in Lexington, Massachusetts. The book bag included a picture book titled *Who’s in a Family?* that showed many types of families such as extended families, interracial families, families without children, single-parent families, a family with two dads, and a family with two moms. The book ended with the question “Who’s in a Family?” with the answer “the people who love you the most!” Jacob’s parents expressed great concern because the last two types of families discussed were homosexual. The Parkers met with the principal, Joni Jay, to request their son not be exposed to further discussions of homosexuality and reiterated their right to opt-out. The parents cited a Massachusetts statute (Mass. Gen. Laws Ch. 71, § 32A), which required that parents receive prior notification and the opportunity to exempt or opt-out their children from human sexual education curriculum. The principal
did not believe the Parker situation was governed by this statute. At a subsequent meeting, William Hurley, superintendent of Lexington’s schools, upheld the principal’s decision, which led to Mr. Parker’s arrest for refusal to leave the building until his demands were met. The superintendent stated the school district would not give notice of activities that referred to different sexual orientation to parents (Thornton, 2009).

The Wirthlin family was another set of plaintiffs involved in this case. In March, 2006, Joey Wirthlin’s second grade teacher read aloud *King and King*, a book about a prince who is required to get married by the queen. The prince cannot find any princesses he likes, and he falls in love with another prince. The Wirthlins were upset and attended a conference with the teacher and Ms. Jay, the principal. The parents expressed their objection because the book, in their view, attempted to indoctrinate their child with a view of homosexuality that was contradictory to their religious beliefs. The Wirthlin’s request was denied by Ms. Jay in the same manner as the Parkers. Both families filed a suit in district court seeking a declaration of their constitutional rights, damages, and an injunction against the school district. The injunction sought to mandate the school provide opt-out opportunities and allow parents to observe any classroom discussions on “views of human sexuality, gender identity, and marriage constructs; and a prohibition against the presentation of materials that graphically depicted homosexual physical contact to students before seventh grade” (*Parker v. Hurley*, 2008, p. 94).

In *Parker*, the district court believed the parents were sincere about their religious beliefs being offended, but the parents did not describe a constitutional burden on their
rights or on those of their children. The lower court dismissed the claims, so the Parkers and Wirthlins appealed to the First Circuit Court of Appeals. The First Circuit stated:

Plaintiffs do not contest the defendants have an interest in promoting tolerance, including for the children (and parents) of gay marriages....Given that Massachusetts has recognized gay marriage under its state constitution, it is entirely rational for its schools to educate their students regarding that recognition. (p. 95)

Despite its consideration of the children’s young age, the court determined that the school’s actions did not prevent the parents from freely exercising their religion or directing the upbringing of their children. When faced with these concepts at public school, parents may still teach their children that homosexuality is contrary to their religious beliefs. “Simple exposure at school to ideas contrary or objectionable to one's religion does not amount to infringement on one’s free exercise rights” (Thornton, 2009, p. 3). The court acknowledged that “public schools are not obliged to shield individual students from ideas which potentially are religiously offensive” (Parker v. Hurley, 2008, p. 106).

Summary and Conclusion

Since the Mozert decision in 1987, federal courts have consistently ruled that schools, not parents, control curriculum (Fossey et al., 2007). In the past, schools were seen as an extension of the home, but that view has gradually changed due partly to judicial decisions that restrict parents’ right to control what the school teaches their children. Today, parents maintain the right to choose which school their child will attend (public or private), but their right to control the school’s curriculum is surrendered to the school and its officials once the child enters a public school classroom (Dahl, 2008). Parents who choose not to send their children to public schools must provide them with instruction elsewhere, either in private schools or homeschooling.
Numerous federal cases have made it clear that a parent’s right “to direct their child’s education” in a public school setting is limited at best. In Swanson v. Guthrie (1998), the Tenth Circuit Court of Appeals stated:

Federal courts addressing the issue have held that parents have no right to exempt their children from certain reading programs the parents found objectionable, or from a school’s community-service requirement, or from an assembly program that included sexually explicit topics. (p. 700)

When a fundamental right is allegedly burdened or restricted by a law, the law is presumed to be unconstitutional. On the other hand, when a law restricts a right that is not fundamental, there is no presumption of unconstitutionality. The Meyer, Pierce, Prince, and Yoder Courts did not classify the right to direct the education and upbringing of children as a fundamental right but rather classified the right as a liberty interest (Dahl, 2008). The Fifth Circuit Court of Appeals in Littlefield v. Forney ISD (2001) reminded the parents “it has long been recognized that parental rights are not absolute in the public school context and can be subject to reasonable regulation” (p. 291). The parents argued that Troxel decision reinforced their parental position, but the U.S. Supreme Court stated the Troxel case “is an entirely different balance of interests from the right of parents to send their children to a public school in clothes of their own choosing” (p. 289).

Educators must decide whether their task is to supplant parents with regard to the education of their children, a radical new meaning to education and loco parentis, or whether their duty is to work with parents in educating children (Russo, 2005).

Beginning in the 1980s, federal court cases began making clear that the Meyer-Pierce doctrine, which asserts that parents have the fundamental right to control the upbringing of their own children, does not extend to a parental right to control the curriculum in a
public school. In short, federal appellate courts have consistently ruled that parents have no constitutional right to shield their children from parts of the public school curriculum that they find objectionable. Although the U.S. Supreme Court articulated a constitutional right of parents to direct the upbringing of their children in the early 20th century with its *Meyer* and *Pierce* rulings, lower federal courts have made clear that this right does not extend to controlling the curriculum in a public school. The courts’ position on this matter was made most strongly in *Brown v. Hot, Sexy, & Safer Productions, Inc.* (1995), in which the First Circuit rejected every argument parents made about how a Massachusetts’ school district violated their children’s constitutional and legal rights when it subjected them to an inappropriate and highly offensive presentation on AIDS. But the *Brown* decision represents complete harmony with other federal court decisions on parents’ rights to challenge a public school’s curriculum, extending from *Mozert v. Hawkins County Board of Education* (1987) to *Parker v. Hurley* (2008).

Thus, the answer to the research question raised in this chapter can be stated quite succinctly. Parents have no constitutional right to remove their children from any part of the public school curriculum, even if the parents’ objection is based on religious or moral grounds.
CHAPTER 4

STATUTORY RIGHTS FOR PARENTS TO OPT-OUT OF PUBLIC SCHOOL CURRICULUM

A second critical research question with regard to parents’ legal right to remove their children from all or part of a public school’s curriculum was examined in this study. Federal case law makes it clear: parents have no constitutional right to remove their children from any part of public school curricula, even if the parents’ objection is based on religious or moral grounds. Nevertheless, although federal courts do not allow curriculum opt-outs on constitutional grounds, parents do have recourse in many states. Individual states have statutes or administrative regulations that grant curricular exemptions or opt-outs in varying situations for public schools. Chapter 4 includes the statutes and regulations of all 50 states and the District of Columbia (DC) to determine what statutory availability exists for parents of each state, if any, to opt-out their children from the public school curricula. Specifically, this chapter includes the types of curriculum opt-outs or exemptions (such as sex education, comprehensive health programs, HIV/AIDS instruction) granted by statutes or regulations in all 50 states and DC. For this chapter, I identified all the statutes or administrative regulations in all 50 states and DC that grant a specific parental right of public school curriculum opt-outs. Based on the analysis of these statutory and regulatory provisions, I categorized the states into three groups: states with opt-out laws that are “restrictive,” states with opt-out laws that are “permissive,” and states that are categorized as “non-existent” (meaning that these states have no curriculum opt-out law).
As set forth in Chapter 3, federal case law establishes that parents who file lawsuits arguing that they have a constitutional right to remove their children from public school curricula have almost no chance of success. However, assistance is sometimes provided to parents through individual state statutes that allow opt-out provisions, even though little uniformity exists among the states with regard to statutes that allow parents to opt-out of controversial topics, like sex education, in public school curricula. Some states have rigorous statutory provisions that allow parents an absolute right to opt-out their children of certain parts of the curriculum. Others allow great discretion to individual school boards and schools, creating difficulty for parents and public school administrators.

Terminology

In Chapter 4, recurring terms, including statute, opt-outs, opt-ins, family life education, sex education, comprehensive health education, and HIV/AIDS instruction needed to be clarified and defined for this study. A statute is a “law established by an act of the legislature” (Walsh, Kemerer, & Maniotis, 2005, p. 2). Under the U.S. and state constitutions, statutes are considered the primary foundation of the law. According to Webster’s Dictionary (2006), a statute is a written legislative act that gives an authoritative order, decree, or command. Most state statutes, sometimes referred to as codes, are organized by subject matter and can be found electronically on state legislative or government websites. Typically, state statutory compilations include a criminal code, a family or civil code, an education code, a probate code, a welfare code, and many other codes that cover a wide variety of topics (Olson, 1999).
As defined earlier, *curriculum opt-outs* allow public school students to be exempted or excused from assignments or activities they or their parents consider to be offensive or otherwise inappropriate (Scott & Branch, 2008). In many statutes, terminology other than opt-outs is used. For example, terms such as *exempt, excuse, allow to withdraw from,* and *choose not to participate in* are often used in curriculum opt-out statutes. *Exempt* and *excuse* are the most common terms used. In some states, students can be excused from only the specific part of the course that parents consider offensive under these opt-out provisions. In other states, the opt-out provisions allow students to miss the entire course if parents find it objectionable. Another practice, which gives parents even more authority dealing with an offensive curriculum, is known as *opt-in.* In states where the opt-in applies, public schools are only allowed to include students in particular courses, such as sex education or comprehensive health, after a parent is notified of the content and then, prior to any instruction, the parent specifically grants written permission for their child to be enrolled in the course.

*Family life education* curriculum is comparable from state to state. Maine, for example, defines *family life education* as education in K-12 regarding human development and sexuality, including education on family planning and medically accurate and age-appropriate information about sexually transmitted diseases (STDs; Maine Revised Statutes Annotated 22 § 1902 (1-A) (West 2010)). This is very similar to Virginia Code § 22.1-207.1, where *family life education* includes family living and community relationships, human reproduction and sexuality, and the etiology, prevention, and effects of STDs.
Sex education curricular requirements across many states are equivalent. For example, the Missouri statute requires that instruction relating to human sexuality and STDs be medically accurate; instruction that presents abstinence from sexual activity as the preferred choice; instruction that emphasizes STDs as serious health hazards; discussion that stresses the dangerous connection of sexual activity to human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS); conversations about the possible emotional and psychological consequences of preadolescent and adolescent sexual activity and the consequences of adolescent pregnancy; and instruction that advises students of the laws pertaining to their financial responsibility to children born in and out of wedlock (Missouri Annotated Statutes, § 170.015 (West 2010)).

In Arizona, school districts with sex education curricula are required to “include instruction on the laws relating to sexual conduct with a minor for pupils in grades seven, eight, nine, ten, eleven, and twelve” (Arizona Revised Statutes Annotated § 15-10-2.3 (West 2010)). Arizona’s sex education curriculum is outlined in administrative regulations that emphasize abstinence from sexual intercourse, the consequences of STDs, the emotional and psychological consequences of preadolescent and adolescent sexual intercourse and pregnancy, the Arizona laws pertaining to the financial responsibilities of parenting, and legal liabilities related to sexual intercourse with a minor (Arizona Administrative Code § R7-2-303. 3 (b)). Both family life and sex education cover most of the same curricular topics such as human growth, human sexuality, study of STDs, and family relationships. After review and comparison of the
numerous curricular requirements from the various states, I determined that family life education and sex education encompass essentially the same content.

Representative of the typical comprehensive health education curricular requirement in most states is the Delaware statute. It requires K-12 health instruction to include: tobacco, alcohol and other drugs; injury prevention and safety; nutrition and physical activity; family life and sexuality; personal health and wellness; mental health; and community and environmental health (Delaware Administrative Code Title 14, § 851.1.1.3). Another comparable comprehensive health curriculum is found in the policy for DC public schools. As prescribed in District of Columbia municipal regulations, comprehensive health must cover the following content areas: tobacco, alcohol, and other drug education; CPR, first aid, safety; injury and violence prevention; human sexuality and family; nutrition and dietary patterns that contribute to disease; prevention and control of disease; and consumer and environmental health (DC Municipal Regulations, title 5, § 23.04).

HIV/AIDS curriculum in New Mexico requires HIV/AIDS instruction to at least include: (a) definition of HIV and AIDS; (b) the symptoms and prognosis of HIV/AIDS; (c) ways HIV/AIDS are spread; (d) ways to reduce the risks of getting HIV/AIDS, stressing abstinence; and (e) societal implications and resources for medical care (New Mexico Administrative Code § 6.12.2.10, C (3) (2010)). Rhode Island law defines the state’s AIDS curricular requirements with the similar standards of providing accurate information on the transmission of AIDS with an emphasis on prevention through sexual abstinence (Rhode Island General Laws, § 16-22-17 (a) (West 2010)). For a complete list of the type of curriculum opt-outs allowed by each state, see Table 2.
Table 2

*Opt-out Statutes by Curricular Type and by State*

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<tr>
<th>STATE</th>
<th>Opt-out statutes</th>
<th>If yes, type of opt-outs</th>
<th>STATE</th>
<th>Opt-out statutes</th>
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Classification of States Based on Opt-Out Statutes

Based on the review of statutes, administrative codes, and education codes, each of the 50 states and DC were classified into one of three categories: *non-existent*, *restrictive*, and *permissive* (see Table 3). No state was classified as *unknown* because the statutory curriculum opt-out provisions in public schools were obtained for all states.

*States with Non-existent Curriculum Opt-Out Statutes for Parents*

There is insufficient information to classify seven states in either the restrictive or permissive columns as shown in Table 3. States classified with *non-existent* statutes are Alaska, Delaware, Hawaii, Kentucky, Nebraska, North Dakota, and South Dakota. A *non-existent* state does not grant parents any statutory rights to exercise curriculum opt-out provisions in public schools. These seven states were put in the *non-existent* category because no specific curriculum opt-out statutes or administrative regulations were identified.

Several of the non-existent states, while lacking specific opt-out statutes, do grant individual local school districts the authority to write their own curriculum opt-out policies. These local options provided by these states were ascertained while ensuring the accuracy of numerous states’ classifications. After extensive study of every state’s legislative and education codes, sometimes statutory rights for curriculum opt-outs were not found or there was a need to double-check unclear statutes. As a result, I sent email correspondence to various representatives in many states’ departments of education. The email was written as follows:

I am working on a dissertation about curriculum exemptions, or opt-outs, for each state. Does [insert state’s name] allow any parental opt-outs dealing with curriculum they disagree with such as sex education, comprehensive health, etc. for ANY reason? Your assistance is greatly appreciated.
Table 3

State Classifications by Number of Opt-out Statutes

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Note. N=Non-existent, state has no opt-out statute. R=Restrictive, state has 1 or 2 opt-out statutes, e.g., health education. P=Permissive, state has more than 2 opt-out statutes or has opt-in statute that requires prior parent permission for some curricula.
In response to the email, Janet Ray, a member of the Delaware Department of Education’s Curriculum Development Workgroup, stated: “In Delaware, there are no specific policies for curriculum opt-outs. In special circumstances, districts have created an alternative education plan with the family that covers similar information” (personal communication, March 19, 2010). Of the seven non-existent states, as verified by their education departments, only Kentucky, North Dakota, and South Dakota are known to provide local options for curriculum opt-outs to parents.

The Kentucky Department of Education’s consultant, Cathy Bush (personal communication, March 19, 2010), responded: “That would be a local decision. However, I do believe parents have that option. Each school has their own policy. We do not have record of their policies.” In another response, Valerie Fischer (personal communication, March 22, 2010), Director of Adult Education and School Health for the North Dakota Department of Public Instruction, stated:

The North Dakota Department of Public Instruction does not have a policy on sex education opt-out, but each district communicates with parents about the health education topics and may allow parents to choose to opt-out their children of sex related curriculum upon request.

On behalf of South Dakota, Karen Keyser (personal communication, March 23, 2010), Health and Physical Education Coordinator, Department of Education, replied:

The best answer that I can provide is that parents are given the option to remove their child from a health class, (or whatever class that this may apply to) during the time period in which sex education is taught. According to the 2008 South Dakota School Health Profiles, the three main reasons for school districts to allow students to be exempted from taking a required physical education course are religious reasons, long-term physical or mental disability, and cognitive disability. While there is not a specific question relative to exemptions from Health Education on the School Health Profiles, I would guess that these are the same reasons one would be allowed to be exempted from Health Education.

While the seven non-existent states do not have specific opt-out statutes, it seems
probable that most of these states, like Kentucky, North Dakota, and South Dakota, allow local school boards to adopt local policies that permit parents to opt their children out of some curricular units, particularly sex education.

**States with Restrictive or Limited Curriculum Opt-Out Statutes for Parents**

Seventeen states and DC are classified as restrictive states (see Table 3). Restrictive states are those states which have granted parents limited statutory rights to exercise curriculum opt-out provisions in public schools. In this study, for a state to be placed in the restrictive category, statutory rights for curriculum opt-outs must be limited to one or two courses or topics only. Many states grant curriculum opt-outs for more than two courses or curricular areas. The restrictive states are Alabama, Arkansas, District of Columbia, Idaho, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Missouri, Montana, New Mexico, New York, Oklahoma, Pennsylvania, Vermont, West Virginia, and Wyoming.

When surveying the statutory rights for opt-outs within restrictive states, several subgroups were identified. The first and largest subgroup consists of 10 restrictive states that allow curriculum opt-outs for sex education. The 10 states are Alabama, District of Columbia, Idaho, Kansas, Louisiana, Massachusetts, Missouri, Montana, New Mexico, and Oklahoma. Three of these states in the first subgroup, District of Columbia, Idaho, and Montana, allow only sex education opt-outs. A statute or administrative regulation in this subgroup might have been written without specific procedures to obtain an opt-out, such as that found in Louisiana’s statute, which reads: “Any child may be excused from receiving instruction in ‘sex education’ at the option and discretion of his parent or guardian” (Louisiana Revised Statute, title 17, § 281 (D) (2010)).
Idaho’s statute (Idaho Code § 33-1611 (2010) and titled “Excusing Children from Instruction in Sex Education” provides very specific guidelines by stating:

Any parent or legal guardian who wishes to have his child excused from any planned instruction in sex education may do so upon filing a written request to the school district board of trustees and the board of trustees shall make available the appropriate forms for such request. Alternative educational endeavors shall be provided for those excused.

Unlike Louisiana, Idaho’s sex education opt-out statute specifies there must be a written request filed with the board of trustees and the board must provide some type of form so parents can make an opt-out request. A representative sex education opt-out statute, limited only to sex education, is found in Massachusetts law (Massachusetts General Laws Annotated 71 § 32A (West 2010)). It requires public schools to provide parents the opportunity to excuse their child from sex education curriculum through written notification directed to the school principal. The statute stresses that “no child so exempted shall be penalized by reason of such exemption.” On the other hand, one of the more distinctive sex education opt-out provisions is found in a position statement issued by the Montana Board of Public Education, which reads:

Any parent who believes their child is not developmentally ready for the particular curriculum content information adopted by the local district may ask to have their individual child taken out of class when the information in question is presented. This may be an alternative offered to parents by local schools when human sexuality education or sensitive topics are presented. This allows the parent of an individual student the opportunity to say “Do not teach this to my child”; it does not give that parent the right to say “Do not teach this to any child.”

Montana’s procedure allows parents to take their child out of sex education class if they believe “their child is not developmentally ready for the particular curriculum” and includes a warning that it does not give “that parent the right to say ‘Do not teach this to any child.’”
Six restrictive states form the second subgroup consisting of Alabama, Kansas, Louisiana, Missouri, Montana, and Oklahoma; each have opt-out statutes for the combination of sex education and AIDS instruction. These are the only opt-outs provided by the six states since the definition of restrictive states allows a maximum of two curriculum opt-outs. Alabama Code § 16-41-6 (West 2010) allows “any child whose parent presents to the school principal a signed statement … of such subjects that conflict with the religious teachings of his church shall be exempt from such instruction.” A Missouri statute requires that the school district notify each parent of “the basic content of the district’s or school’s human sexuality instruction to be provided to each student… and the parent’s right to remove the student from any part” (Missouri Revised Statutes § 170.015.1 (West 2010)). Stated in § 170.015.1 is the instructional requirement that districts provide the latest information about STDs including HIV and AIDS. Another example that covers both sex education and HIV/AIDS instruction is found in Oklahoma’s statutes. Oklahoma law provides that “[n]o student shall be required to participate in AIDS prevention education if a parent or guardian of the student objects in writing to such participation” (Oklahoma Statute § 70-11-103.3 (C) (West 2010)) and that “[n]o student shall be required to participate [sic] in a sex education class or program which discussed sexual behavior or attitudes if a parent or guardian of the student objects in writing to such participation” (Oklahoma Statute § 70-11-249.1 (West 2010)). While the second subgroup allows opt-outs for sex education and HIV/AIDS instruction, a few of the other states have statutes limited to one curricular area only.
The third subgroup is comprised of New York, West Virginia, and Wyoming which possess statutes that only allow limited opt-outs in HIV/AIDS instruction and do not permit general sex education opt-outs. New York Commissioner of Education Regulation Title 8, § 135.3 (2) (i), states:

No pupil shall be required to receive instruction concerning the methods of prevention of AIDS if the parent or legal guardian of such pupil has filed with the principal of the school which the pupil attends a written request that the pupil not participate in such instruction, with an assurance that the pupil will receive such instruction at home.

The focus of New York’s regulation is exclusively “concerning the methods of prevention of AIDS” and does not allow a complete opt-out of AIDS-related instruction. If parents of public school children in New York choose to opt-out of AIDS-related instruction, the statute requires “an assurance that the pupil will receive such instruction at home” (New York Commissioner of Education Regulation Title 8, § 135.3 (2) (i)).

Since opt-outs are limited to AIDS prevention only in New York, parents sometimes demand more extensive curriculum opt-out rights. In 1996, Reverend Freelon Kerry sought an exemption for his daughters from Watertown City School District’s entire AIDS curriculum and child sexual abuse training. Denied at the local level, the parent appealed to the New York’s state’s commissioner of education. The commissioner ruled in Decision No. 13,562 that Watertown City’s school district correctly exempted Kerry’s children from only the "methods of prevention" portion of the AIDS curriculum, in compliance with the AIDS opt-out provision. In addition, the district correctly refused to exempt the children from either the remaining portions of the AIDS curriculum or the child sexual abuse program on the grounds that it lacked the authority to waive these instructional requirements. Thus, Reverend Kerry’s appeal was dismissed. Most states have similar appeal procedures for parents, usually through their
state’s education department, when relief is not granted at the local school district level.

Within the third subgroup, the policies of West Virginia and Wyoming, dealing with parental opt-outs of HIV/AIDS curriculum and materials, are very similar in scope to New York’s regulation. The West Virginia statute requires “an opportunity shall be afforded to the parent or guardian of a child subject to the instruction in the prevention, transmission, and spread of AIDS…” to “exempt such child from participation” (West Virginia Board of Education 50A, § 2422.45). Similarly, the Wyoming policy allows parents, if they submit a written request, to have their “child not receive instruction in specific HIV prevention topics at school” (Wyoming Department of Education, 1998). While the three states New York, West Virginia, and Wyoming permit HIV/AIDS curriculum opt-outs, parental rights are very limited because the removal from instruction is only specified in the area of AIDS prevention.

Pennsylvania and Vermont have a similar blend of curriculum opt-outs to each other and form the fourth subgroup. Pennsylvania allows opt-outs for curriculum addressing AIDS and Vermont allows opt-outs for communicable diseases, including AIDS. Pennsylvania Code § 4.29 (c) (an administrative regulation) designates, “A school entity shall excuse a pupil from HIV/AIDS instruction when the instruction conflicts with the religious beliefs or principles of the pupil or parent or guardian of the pupil and when excusal is requested in writing.” Vermont law defines diseases to include “HIV infection, other sexually transmitted diseases, as well as other communicable diseases” (16 Vermont Statute § 131 (West 2010)). Vermont allows a parent to excuse their children from instruction by stating “the teaching of disease, its symptoms, development and treatment, conflicts with the parent’s religious convictions”
(16 Vermont Statute § 134 (West 2010)). The other curriculum opt-out allowed by both Pennsylvania and Vermont is for animal dissection. Animal dissection opt-out statutes, found in 14 states including Pennsylvania and Vermont, are discussed later in this chapter.

Some restrictive states do not have any consistent characteristics that assist grouping with other states. This final subgroup of restrictive states consists of exclusive combinations of statutes. For example, Iowa is the only restrictive state allowing opt-outs for the combination of both physical education (P.E.) and health education, while P.E. is the only course students may be exempted from in Arkansas. Iowa’s statute allows students to be exempt from “either physical education or health courses” if the “course conflicts with the pupil’s religious belief” (Iowa Code § 256.11(6) (West 2010)). Arkansas law allows parents to remove their children from P.E. classes if it “will violate the student's religious beliefs and would not be merely a matter of personal objection” (Arkansas Code § 6-16-132 (4) B (ii) (a) (b)). In order for the opt-out to be viable, the parent or student “must be members of a recognized religious faith that objects to physical education as part of its official doctrine or creed.” The last variation of an opt-out combination occurs in the state of Indiana with the subjects of health education and hygiene. Under Indiana law, hygiene and sanitary science instruction must “explain the ways that dangerous communicable diseases are spread and the sanitary methods for disease prevention and restriction” (Indiana Code, § 20-30-5-9 (a)). A student may be excused if his parent “objects in writing, to health and hygiene courses because the courses conflict with the student's religious teachings” (Indiana Code § 20-30-5-9 (d)).
The most common statutory right for parental opt-outs, occurring in 10 of the 18 restrictive states, is for sex education. To be classified as a restrictive state, parents are allowed either one curriculum opt-out or a combination of two curriculum opt-outs. Most of the restrictive states, 14 of 18, allow curriculum opt-outs in two curricular areas. Arkansas, District of Columbia, Idaho, and West Virginia are the restrictive jurisdictions that statutorily permit an opt-out in only one curriculum area. The majority of states, classified as permissive states, provide opt-outs in more than two curricular areas.

*States with Permissive or Broad Curriculum Opt-Out Statutes for Parents*

The last classification of states is *permissive*, which constitutes a much broader stance of parental rights using curriculum opt-outs in public schools. In this study, 26 permissive states have granted parents broad statutory rights to exercise curriculum opt-out provisions in public schools (see Table 3). States labeled in the permissive category must have statutory rights for curriculum opt-outs that meet one or both of the following criteria: (1) more than two courses or topics are allowed for opt-out; and/or (2) opt-ins required before students can even enroll in a course. Permissive states are Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Maine, Maryland, Michigan, Minnesota, Mississippi, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. As with restrictive states, several subgroups can be identified after surveying the statutory rights for opt-outs within permissive states.

The first and largest subgroup of permissive states consists of 25 states, all of which, with the exception of Ohio, allow opt-out provisions for sex education. Unlike many of the restrictive states, sex education opt-outs are just one of several exemptions
allowed by most permissive states. One of the more intriguing statutes in this subgroup is California’s statute, because it advances parents’ responsibility for “impacting values regarding human sexuality to their children” as follows:

> It is the intent of the Legislature to encourage pupils to communicate with their parents or guardians about human sexuality and supervise their children’s education on these subjects. The Legislature intends to create a streamlined process to make it easier for parents and guardians to review materials and evaluation tools related to comprehensive sexual health education and HIV/AIDS prevention education, and, if they wish, to excuse their children from participation in all or part of that instruction or evaluation. The Legislature recognizes that while parents and guardians overwhelmingly support medically accurate, comprehensive sex education, parents and guardians have the ultimate responsibility for imparting values regarding human sexuality to their children. (California Education Code § 51937 (West 2010))

While California’s Code is unusual due to its parental focus, Washington’s opt-out statute addresses sex education opt-outs without the parental focus and is representative of many permissive states. Washington’s statute is composed of four common components: (1) “any parent who wishes to have his or her child excused from instruction in sexual health education may do so filing a written request”; (2) request must be filed “with school district board of directors or its designee, or the principal of the school”; (3) “any parent may review the sex education curriculum”; and (4) “students may not be penalized as a result of being excused from sex education curriculum” (Washington Revised Code § 28A.300.475 (6)). These four components are common to most permissive states.

As previously mentioned, Ohio is the only state that does not specifically allow opt-outs for sex education curriculum. Ohio forms the second and smallest subgroup of permissive states. While Ohio does not allow sex education opt-outs, instead, Ohio law requires public schools to grant opt-outs in three curricular areas, not found in any other states: “instruction in venereal disease education,” “personal safety and assault
prevention” in kindergarten through sixth grade, and “cardiopulmonary resuscitation (CPR)” (Ohio Revised Code § 3313.60 (5) (c), (d), and § 3313.60 (8)). All Ohio curricular exemptions require a “written request of the student’s parent or guardian” (Ohio Revised Code § 3313.60 (5) (b)).

Two other large subgroups deal with HIV/AIDS and health curricula. The third permissive subgroup, consisting of 22 of 26, allows opt-outs for HIV/AIDS instruction. However, Colorado, Michigan, Mississippi, and South Carolina do not specifically mention HIV/AIDS instruction in their statutes. Florida’s 2009 Statute is representative of the majority of permissive states’ statutes because it explicitly mentions but encompasses more than HIV/AIDS instruction, as follows:

Any student whose parent makes written request to the school principal shall be exempted from the teaching of reproductive health or any disease, including HIV/AIDS, its symptoms, development, and treatment. A student so exempted may not be penalized by reason of that exemption. Course descriptions for comprehensive health education shall not interfere with the local determination of appropriate curriculum which reflects local values and concerns. (Florida Statute Annotated § 1003.42 (3) (West 2010))

The fourth subgroup, consisting of 17 of the 26 permissive states, provides opt-outs for health courses or comprehensive health education. The states of Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Michigan, Minnesota, New Hampshire, New Jersey, Rhode Island, South Carolina, Tennessee, Texas, and Wisconsin allow parents to remove their children from any or all parts of health classes. A prototypical statute for health curriculum opt-outs, similar to the sex education statutes, is found in South Carolina’s opt-out law:

A public school principal, upon receipt of a statement signed by a student’s parent or legal guardian stating that participation by the student in the health education program conflicts with the family’s beliefs, shall exempt that student from any portion or all of the units on reproductive health, family life, and pregnancy prevention where any conflicts occur. No student may be penalized as
a result of an exemption. School districts shall use procedures to ensure that
students exempted from the program by their parents or guardians are not
embarrassed by the exemption. (South Carolina Code Annotated § 59-32-50
(West 2010))

New Jersey’s opt-out statute, which is more simplified and generic than South
Carolina’s code, permits parents to excuse their children from “any part of instruction in
health, family life education or sex education that is in conflict with his conscience or
sincerely held moral or religious beliefs” (New Jersey Statute Annotated § 18A:35-4.7
(West 2010)).

The eight permissive states of Colorado, Maryland, Michigan, Mississippi,
Nevada, North Carolina, Tennessee, and Utah form the fifth subgroup with statutes that
mandate curriculum opt-ins. An opt-in is different from an opt-out. An opt-in empowers
parents dealing with a controversial public school curriculum because it requires prior
approval by parents before their children may be enrolled in a specific course. This
mechanism reduces the possibility that their children might come into contact with
objectionable subject matter. States requiring opt-ins are categorized as permissive
because opt-ins grant very deliberate and extensive parental rights when dealing with
curricula. In all eight of the opt-in states, parents must give prior written consent for
students to participate in sex education courses. Public schools’ receipt of prior written
approval by parents is a critical component of opt-ins. Utah’s opt-in statute (Utah
Administrative Rule, R277-474-1) mandates that “students may not participate in human
sexuality instruction or instructional programs… without prior affirmative parent/guardian
response on file.” In 2009, the state of Tennessee adopted school-curriculum legislation
(House Bill 0812) that “requires local education agencies (LEAs) to obtain written
permission from parents or guardians for students to take family life courses.”
The advance opportunity for parents to receive “an overview of the topics and materials” and even the “prior opportunity to review materials used in the course” are key components of opt-ins. Colorado and Michigan statutes exemplify opt-in guidelines.

Colorado’s statute states:

School officials shall receive prior written approval from a parent or guardian before his or her child may participate in any program discussing or teaching sexuality and human reproduction. Parents must receive, with the written permission slip, an overview of the topics and materials to be presented in the curriculum. (Colorado Revised Statute Annotated § 22-25-104 (6)(b) (West 2010))

Michigan provides for pupil opt-ins with an administrative regulation which states:

A pupil shall not be enrolled in a class in which the subjects of family planning or reproductive health are discussed unless the pupil’s parent or guardian is notified in advance of the course and the content of the course, is given a prior opportunity to review the materials to be used in the course, and is notified in advance of his or her right to have the pupil excused from the class. The state board shall determine the form and content of the notice required in this subsection. (Michigan Administrative Code § 380.1507 (3))

While seven of the eight opt-in states, excluding Michigan, only permit opt-ins or opt-outs for not more than two courses or curricular topics, the criterion used for restrictive states, all opt-in states are classified as permissive states. For this study’s purpose, any state that implements curriculum opt-ins overrides the number of courses allowed for opt-outs due to the empowerment effect for parents. This broad parental right to control whether a child even enrolls in a certain course, or opting in, warrants classification of an opt-in state as permissive.

South Carolina and Washington form the sixth subgroup of permissive states by allowing opt-outs specifically for physical education. Both states, while emphasizing the importance of being “physically fit” in their statutes, still allow exemptions based on religious objections. For example, South Carolina law provides:
The parent and student must show that the student’s attending physical education classes will violate their religious beliefs and would not be merely a matter of personal objection; and the parent or student must be members of a recognized religious faith that objects to physical education as part of its official doctrine or creed. (South Carolina Code Annotated § 59-29-80, (B)(2)(a) and (2)(b))

The state of Washington addresses its P.E. opt-out by providing flexibility to parents to allow their children to be “excused … on account of physical disability, employment, or religious belief, or because of participation in directed athletics or military science and tactics or for other good cause” (Washington Revised Code § 28A.230.050 (West 2010)).

Three permissive states, Arizona, Minnesota, and Texas, form the last subgroup. These states are the most permissive of all because they have the broadest curriculum opt-out statutes for parents. These statutes grant extensive statutory rights to parents, permitting opt-outs for any class, school activity, and instructional materials in which parents object. There are no specific courses or topics listed such as sex education, comprehensive health education, HIV/AIDS instruction, P.E., or even animal dissection as seen in all other statutes. Arizona’s opt-out law mandates school districts to develop guidelines “by which parents who object to any learning material or activity on the basis it is harmful may withdraw their children from the activity or from the class or program” (Arizona Statute Annotated § 15-10-2.3 (West 2010)). Minnesota’s opt-out law is very similar because it ensures parental rights to review instructional materials, and “if the parent, guardian, or adult student objects to the content, to make reasonable arrangements with school personnel for alternative instruction” (Minnesota Statute Annotated § 120B.20 (West 2010)).

Texas may have the most permissive opt-out statute in the U.S. Although federal
case law does not generally support parental rights in public education, Texas statutory
law provides significant support for parents. The Texas Education Code sets forth the
mission and objectives of Texas public schools. The very first objective listed in this
section of the statute declares, “Parents will be full partners with educators in the
education of their children” (Texas Education Code § 4.001). Texas Education Code
Chapter 26 is another entire chapter dedicated solely to “Parent Rights and
Responsibilities.” In Chapter 26 of the Texas Education Code, parents’ rights are
discussed and include procedures to appeal denied complaints, access to student
records, access to teaching materials, requests for public information, student directory
information, and exemption from instruction. Section 26.010 of the Texas Education
Code is the curriculum opt-out provision for Texas. It allows parents to deliver a written
request to the teacher of the child to remove them from objectionable instruction. This
broad opt-out provision asserts:

(a) A parent is entitled to remove the parent's child temporarily from a class or
other school activity that conflicts with the parent's religious or moral beliefs if the
parent presents or delivers to the teacher of the parent's child a written statement
authorizing the removal of the child from the class or other school activity. A
parent is not entitled to remove the parent's child from a class or other school
activity to avoid a test or to prevent the child from taking a subject for an entire
semester. (b) This section does not exempt a child from satisfying grade level or
graduation requirements in a manner acceptable to the school district and the
agency. (Texas Education Code § 26.010 (2010))

The Texas statute recognizes both religious and moral beliefs as grounds for exempting
students from instruction. While Section 26.010 grants broad permissive rights to
parents, in regards to unlimited curricular courses or topics, it limits parents from
exempting their child to “avoid a test,” “taking a subject for an entire semester,” and
“satisfying grade level or graduation requirements.”
Animal dissection opt-outs are currently provided by statute by 14 states. California, Florida, Illinois, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Virginia give statutory rights for animal dissection opt-outs. Four other states, Maine, Maryland, Massachusetts, and New Mexico, have department of education policies that allow students to object to dissection and request an alternative assignment. These opt-outs usually require prior notification from the school to parents if animal dissection is part of its curriculum, including procedures on choosing alternatives without penalty (Animalearn, 2010).

The Humane Society of the U.S. (2009) advocates for policies to allow students to refuse participation in classroom activities harmful to animals. The Humane Society suggests, in some cases, teachers may still require dissections because they are unaware of the existence of adequate alternatives. Most dissection opt-out statutes only apply to grades K-12. The National Science Teachers Association (NSTA, 2005) opposes laws which limit teachers, as professionals, the right to use dissections. While NSTA believes students should have the opportunity to learn by performing hands-on dissections, alternatives are recommended for students whose beliefs make dissections difficult for them. Representative of animal dissection opt-out statutes is Oregon’s dissection opt-out law which states:

(1) A K-12 public school student may refuse to dissect any vertebrate or invertebrate animal or the parent or legal guardian of a K-12 public school student may refuse to allow the student to dissect any vertebrate or invertebrate animal.

(2) A school district that includes dissection as part of its coursework shall permit students to demonstrate competency in the coursework through alternative materials or methods of learning that do not include the dissection of animals. These alternative materials and methods may include but are not limited to:
   (a) Videotapes, DVDs and CD-ROMs;
   (b) Models;
(c) Films;
(d) Books;
(e) Computer programs;
(f) Clay modeling; and
(g) Transparencies. (Oregon Revised Statute § 337.300 (West 2010))

New Mexico’s dissection opt-out policy (set forth in an administrative regulation rather than a statute) is similar to Oregon’s dissection opt-out law. The New Mexico dissection opt-out policy mentions “alternative techniques” to dissections such as “using computer 2-D or 3-D simulations, videotape or videodisk simulations, take-apart anatomical models, photographs, or anatomical atlases” (New Mexico Administrative Code § 6.30.2 (8)). Alternative to animal dissections are increasing. In March 2010, Connecticut’s legislative committee on education passed HR 5423 that “prohibit a school district from requiring any student who raises a conscientious objection to dissection” (National Anti-Vivisection Society, 2010, para. 1). As curricular topics, such as animal dissection, assault prevention training, and diversity training continue to expand, parental opt-out rights will continue to expand.

Summary and Conclusion

Parents in public schools continue to request and even demand curriculum opt-out rights. In California, parents in the Alameda Unified School District were upset because a new gender curriculum, addressing bullying and harassment in elementary schools, mentions gay alternative families in its diversity training. School board president Mike McMahon, not supporting the curriculum since it did not allow an opt-out option, stated “There are people very invested in this issue” (Gleason, 2009, para. 2). In Florida, thousands of students are opting out of P.E. after legislation was passed (Florida Statutes Annotated § 1003.455 (4) (West 2010)). The Florida statute allows
P.E. opt-outs if a parent requests that their middle school child “enroll in another course from among the courses offered as options by the school district.” For many, these courses offered as options are remedial courses and elective courses such as band, choir, and drama (McGuirt, 2010).

While parents may want extensive curriculum opt-out rights, federal case law makes it clear that parents have no constitutional right to excuse their children from any part of public school curricula, even if the parents’ objection is based on religious or moral grounds. Nonetheless, parents continue to express increasing concern and sensitivity about public school curricula, particularly sex education. In Brown v. Hot, Sexy, & Safer Productions, Inc. (1995), which dealt with alleged sexually offensive remarks made at a high school AIDS assembly, the First Circuit Court of Appeals stated that parents do not possess the freedom that “encompasses a fundamental constitutional right to dictate the curriculum at the public school.” Parents in Parker v. Hurley (2008) believed the public school was indoctrinating their children to homosexuality in contradiction to their religious beliefs. Nonetheless, the First Circuit Court of Appeals exclaimed that “public schools are not obliged to shield individual students from ideas which potentially are religiously offensive” (Parker v. Hurley, 2008, p. 106). It seems probable, with a few states now recognizing same-sex marriage, that diversity training and sexual orientation information will begin to show up in the curricula of those states, as evidenced in Parker. It seems probable that these states might adopt opt-out statutes allowing parents to remove their children from participating in such curriculum. In addition, some of these same states’ current opt-out statutes for sex education may be adequate to allow opt-outs for sexual orientation curriculum, unlike
the Massachusetts statute used in *Parker*. These federal court cases, and many others, essentially deny the expansion of the constitutional right for parents to direct the upbringing of their children into the public school curriculum.

Although federal courts do not allow curriculum opt-outs, many states have recognized the importance of parental rights in education and the sensitivity to curricula such as sex education. As a result, many states provide statutory rights allowing parents to opt-out of all or part of courses such as sex education and family life education. As shown in Figure 1, the most common curriculum opt-out is for sex education, allowed by 35 states. Eight states are even more parent-friendly by prohibiting public schools from teaching sex education to children unless the parents opt-in. An opt-in requires prior approval by parents before their children may be enrolled in a specific course, reducing the likelihood of their children might be taught objectionable subject matter. As Figure 1 exhibits, 33 states have statutes that allow opt-outs from HIV/AIDS instruction making it the second largest curricular category. Twenty-seven states, some restrictive and mostly permissive, allow opt-outs in their statutes for both sex education and HIV/AIDS curricula. The smallest curricular category for opt-outs is P.E., allowed by only seven states.
A few states, such as New York and Ohio, provide some distinctive opt-out statutes. For instance, in New York, a parent may only opt-out of instruction that covers the prevention of AIDS. In Ohio, there are statutory rights given to parents for opt-outs from courses not seen in other states such as CPR, and personal safety and assault prevention. The procedural process is uniform with 31 states specifically requiring a written parent note in their opt-out statutes. Eighteen states give authority to the local education agency to develop the procedure for curriculum opt-outs. Further information from this study such as types of objections required for opt-outs, specified opt-out method, and specific statutes can be located in Appendix E.

Texas may have the most permissive curriculum opt-out statute in the U.S. (Texas Education Code § 26.010 (West 2010)). Since the adoption of the statute in 1995, there has been no published litigation over opt-outs in Texas. The conclusion can be made that the implementation of the statute has not been a problem for Texas public schools. In fact, having such a permissive law may actually be helpful to school
authorities when they are confronted by parents objecting to some curricular element, whether sex education, evolution, HIV/AIDS instruction, animal dissection, the celebration of Halloween, etc. In my opinion, as a Texas administrator for the past 13 years, opt-out and opt-in statutes are extremely helpful from a policy standpoint. Parents are a critical part of the educational process, and it is important, within limits, to value their input into curricular decisions in public schools, or in other words, to be parent-friendly. The Texas statute (Texas Education Code § 26.010) and all of the other states’ opt-out statutes are practical and sensible ways to help both parents and school administrators.

Answers to all parts of the research question are presented in this chapter. What statutory availability exists for parents of each state, if any, to remove their children from the public school curricula? (See Table 3.) Forty-four states, including DC, provide some type of statutory or regulatory rights to parents with curriculum opt-outs in public schools and are classified as either restrictive or permissive in this study. The remaining seven non-existent states do not have opt-out statutes. It is safe to conclude that most, if not all, permit local school boards the right to grant parents the opportunity to excuse their children from some curricular units, particularly sex education. It is difficult to conclude that the lack of an opt-out statute means the state is unfriendly to parental rights to opt-out of some part of the curriculum because those states may be relying on local school boards to provide the option.

The types of curriculum opt-outs or exemptions (for curriculum such as sex education, comprehensive health programs, or HIV/AIDS instruction) granted by statutes from all 50 states and DC were compiled for this study (see Table 2).
Curriculum opt-outs are provided through statutes for sex education, comprehensive health programs, HIV/AIDS instruction, P.E., and animal dissection in 44 of the 50 states and DC. Thirty-five states allow curriculum opt-outs in sex education, 33 states allow curriculum opt-outs in HIV/AIDS instruction, 17 states allow curriculum opt-outs in health education, 14 states allow curriculum opt-outs for animal dissection, and 7 states allow curriculum opt-outs for P.E. Ohio allows a unique combination of opt-outs not found in any of the other states which were venereal disease education, personal safety and assault prevention in grades K-6, and CPR instruction.

The examination of the statutes that grant the specific parental right of public school curriculum opt-outs led to states being classified as restrictive, permissive, or non-existent (see Table 3). There are 18 restrictive states with one or two curriculum opt-outs allowed; 26 permissive states with more than two curriculum opt-outs allowed; and 7 non-existent states with no statutory rights for curriculum opt-outs. The majority of states are permissive in granting parents curriculum opt-out rights in public schools.
CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

Across the nation, public schools face a continuing dilemma as they attempt to balance curricular requirements with parental requests to allow their children to opt-out of a curriculum the parents find objectionable. State education agencies set curricular standards for public schools in order to maintain a statewide standard of quality and curricular content, and school districts are legally required to comply with these statewide standards. These standards are implemented for each grade level and provide guidelines for high school graduation.

Without a doubt, education is a “legitimate state interest,” and the states have the constitutional authority to impose curricular standards on the public schools (Phillips, 1997, p. 2). Again and again, federal courts have stated that parents’ constitutional right to direct the upbringing of their children does not extend into the curricular decisions of public schools. These federal court cases have emphasized that public schools have the right to teach what administrators, school boards, and state education agencies determine to be appropriate. As the Second Circuit Court of Appeals stated in Leebaert v. Harrington (2003), “Meyer, Pierce, and their progeny do not begin to suggest the existence of a fundamental right of every parent to tell a public school what his or her child will and will not be taught” (p. 146).

Thus, a dilemma occurs for public schools when administrators attempt to enforce curricular standards that conflict with the religious or moral beliefs of some parents. While school districts have no constitutional duty to allow parents any right to opt-out their children from a curriculum when parents have objections, common sense
and a reasonable respect for the religious and moral values of parents suggests that
schools should accommodate parents’ religious and moral concerns about particular
curricular offerings if an accommodation can be made without disrupting the school’s
mission.

The public education landscape has evolved in recent years. While public
education continues to play a crucial role in maintaining our democracy, overall public
satisfaction with public education may be on the wane. Parent-rights groups have
become well-organized and increasingly knowledgeable about legal rights being
granted to parents by state and federal legislation. For example, advocacy groups
typically maintain sophisticated web sites and often provide form letters for parents to
use at public schools. Increasingly, these parent groups are pushing for a Parents Right
Amendment to the U.S. Constitution, which would give them the constitutional right to
object to schools’ curricula.

In addition, parents now have more alternatives to public school enrollment than
ever before via homeschooling and private, charter, or online school enrollment.
Consequently, parents discontented with public schools are more likely to put their
children in an alternative educational environment, thus reducing the overall student
enrollment in public schools. Nevertheless, for whatever reason, nearly 90% of U.S.
parents still send their children to public schools. In 2007, according to the NCES, this
90% enrollment in public schools equated to 49.8 million of the nearly 56 million
elementary and secondary students. Thus, so far at least, the percentage of parents
who abandon public schools for some sort of alternative education for their children is
relatively small.
Although parents with religious or moral objections to public school curricula have no constitutional right to shield their children from objectionable curricula, many state legislatures have granted parents statutory rights to opt-out of certain parts of school curricula. While some states provide statutory opt-out relief for parents regarding a finite list of specific curricular units, pertaining to sex education and HIV/AIDS, other states provide broad statutory opt-out relief for parents to exempt their children from curricular units which include, but are not limited to, comprehensive health education, P.E., and animal dissection. The investigation of the various opt-out statutes granted by each state was the second central purpose of this study.

It seems likely that the struggle between public schools and some parents over school curricula will continue into the foreseeable future. Thus, statutory guidance about the parental right to exempt their children from objectionable curricula is vital to both parents and school officials. In this study, the statutory rights of parents to opt-out their children from objectionable parts or the public school curricula as set forth in the statutes of the 50 states and the District of Columbia (DC) were determined. From the findings, the state in which a family lives is the crucial factor for determining whether parents have any statutory opt-out right regarding removing their children from a curriculum they deem objectionable.

Findings for the Research Questions

The two specific research questions about the constitutional and legal rights of parents to opt-out their children from parts of a school’s curriculum based on legal or moral objections have been answered as follows:

1. What are the constitutional rights of parents to opt-out their children from the
curriculum in public schools as defined by decisions of the federal courts?

The review of all published federal court cases dealing with both parental rights and curricular issues revealed that parents have no constitutional right to opt-out their children from any part of public school curricula, even if the parents’ objection is based on religious or moral grounds. Indeed a line of federal court decisions stretching from the Sixth Circuit’s 1987 decision in Mozert v. Hawkins County to the First Circuit’s decision in Parker v. Hurley in 2008 have shown that the federal courts have become increasingly emphatic in affirming the principle that parents have no constitutional right to object to parts of public school curricula on religious or moral grounds.

2. What are the types of parental opt-out exemptions (such as religious or moral objections, sexual content, etc.) specifically granted by statute or regulation in the 50 states and the District of Columbia (DC)? How many states are classified as restrictive, permissive, or non-existent?

As discussed in Chapter 4, 43 states and the District of Columbia have provided some sort of statutory or regulatory right for parents to opt-out their children from controversial parts of the public school curricula, including sex education, comprehensive health programs, HIV/AIDS instruction, P.E., and animal dissection. Sex education curriculum opt-outs were most common and provided by 35 states, while 33 states provided HIV/AIDS curriculum opt-outs. Health education opt-outs were allowed in 17 states, animal dissection opt-outs were allowed in 14 states, and 7 states allowed curriculum opt-outs for P.E. A unique combination of curriculum opt-outs was found in Ohio, which authorized parental opt-outs for CPR instruction and for venereal disease
education, personal safety, and assault prevention in grades K-6. Eight states were even more parent-friendly by prohibiting public schools from teaching sex education to children unless parents opted-in by providing their permission prior to their children’s enrollment in the sex education course.

In summary, 18 states were classified as restrictive with one or two curriculum opt-outs allowed; 26 states were classified as permissive with more than two curriculum opt-outs allowed; and seven states were classified as non-existent due to lack of any statutory rights for curriculum opt-outs. Although seven states did not possess opt-out statutes, an important note relates to the states lacking opt-out statutes or state-level regulations giving local school boards the authority to adopt local policies permitting parents to opt-out their children from some curricular units, particularly from sex education.

Implications for Practice

This study’s findings benefit public school administrators and provide a legal guide for dealing with parents who express concerns about any curriculum they find objectionable based on religious or moral reasons. The findings benefit public school teachers and offer insight into potential areas of curricular concern that their students’ parents may have. Teachers would be alarmed if they realized the types of form letters provided by various advocacy groups, including the 12-page document from TJF (2010b) found in Appendix D, and the numerous curricular objections from which parents are invited to opt-out their children.

For years, many classroom teachers have simply handled these types of controversial issues within their classrooms and without the benefit of any formal
guidance. For example, 20 years ago while serving as a middle school science teacher, I automatically found alternative assignments for students if parents objected to their students conducting frog dissections. At that time, the most sophisticated alternative to conducting an actual dissection was having the students use a basic, computerized frog dissection program kept on a floppy disk, which was nothing compared to the technology-based options available today. Not only do educators now have a guide to the statutory opt-out provisions in their specific state, but they also have information about what rights various state legislatures have given to parents who object to curricular elements.

These results benefit legislators in the various states who can now compare between curriculum opt-out policies in other states. States must balance the legitimate government interest in providing a well-rounded public education with the legitimate curricular concerns of parents, who must be assumed to be registered voters. With these findings in hand, parents can better understand their rights in controlling the upbringing of children who attend public schools. Parents can use these findings to gauge the parent-friendliness of their state when dealing with controversial public school curricula. Parents can find information in this study to assist them politically for motivating their state legislators and local school boards members to expand parental opt-out rights regarding certain parts of public school curricula they find objectionable.

The opt-out statutes are provided state by state in the results, and this information could be used for the careful expansion of curriculum opt-out rights. Sarah Browning (personal communication, March 25, 2010), Special Assistant to the Commissioner, New Hampshire Department of Education, spoke on the need to
balance the interests of parents and schools regarding curricular concerns and observed:

Schools can authorize an opt-out in any area where the parent raises what the district believes to be a creditable objection to a section of material, provided that the student is engaged in a similar scholastic activity during the pertinent class time.

Clearly, the strategic development of opt-out statutes and regulations by state legislatures and state education departments must maintain the integrity of curricular requirements while balancing the sincere beliefs of parents with religious or moral objections. “The ultimate motivation of public educators is to serve the public good, ensuring the product they offer is of the highest quality and providing that product to as many children as possible within constitutional constraints from individual states” (Fuller, 1998, p. 5). Most educators genuinely work for the best interests of their students and community. Parents, more than anyone else, have a sincere, vested interest in the education of their children. Both public school administrators and parents must work together to maintain a beneficial balance to sustain a democratic society. I conclude that curriculum opt-outs, within reasonable limits, provide benefits for both educators and parents.

Recommendations for Future Study

The following suggestions for further research of curriculum opt-outs should be considered:

1. Design a study to survey public school administrators from a permissive state and a non-existent state to determine the rate at which parents express concerns about objectionable curricula and differences between the two types of states.

2. Design a study to compare curriculum opt-out provisions adopted by local school
boards in the seven non-existent states.

3. Design a study to investigate the chronology of the legal and historical developments behind opt-out statutes and to survey state legislators to determine their support of parental opt-out rights.

Conclusion

As the findings demonstrate, most states provide some legal mechanism for allowing parents to opt-out their children from parts of the public school curricula they find objectionable on religious and moral grounds, even though schools have no constitutional obligation to do so. Sex education and other curricular topics dealing with sexuality are the most common topics addressed in opt-out statutes and regulations. Clearly, a consensus has been reached by policy makers across the U.S. that it is in the best interest of schools and families to give parents some legal right to shield their children from instruction on the sensitive issue of sexuality in public schools.

In the years to come, it will be interesting to see whether other states will expand parental opt-out rights and pass legislation or adopt regulations along the lines of the Texas opt-out statute, which allows parents to exempt their children from any part of public school curricula they find objectionable. Certainly, it does not seem likely that states will repeal any opt-out provisions or make said provisions more restrictive. These opt-out provisions, although they vary greatly from state to state, operate as sensible safety valves by removing one area of potential conflict between schools and parents. As such, opt-out statutes provide a sensible public policy response to conflicts in the schools that arise from parents time to time over moral and religious issues.
APPENDIX A

HATCH AMENDMENT, OR PROTECTION OF PUPIL RIGHTS AMENDMENT (PPRA), LETTER
Following is the Hatch Amendment letter, this letter is designed to guarantee that parents can and do maintain the right to determine their child's educational path. We have done the letter on a white background with black letters in order to better enable you to copy it.

We suggest you copy it to your word processor program, add the pertinent data, such as name, school etc. make and print four copies - one for the teacher, one for the principal, one for the superintendent of schools and one for yourself. These are best delivered in person. Be polite, but be firm! This is your child, not theirs. God gave you the responsibility of raising that child not the schools and it is you that God will hold accountable for that child He has entrusted to you!  (Proverbs 22:6 NIV - 

**Train a child in the way he should go, and when he is old he will not turn from it.**

**Hatch Amendment Letter**

From:______________________________________________

Address: ___________________________________________________________

To:_______________________________________________ Principal

of____________________________, ______________________, USA

Dear ________________________:

I am the parent of_____________________ who attends_____________________

school. Under U.S. legislation and federal court decisions, parents have the primary responsibility for their children's education, and pupils have certain rights which the school may not deny.

Parents have the right to be assured their children's beliefs and moral values are not undermined by the schools. Pupils have the right to have and to hold their values and moral standards without direct or indirect manipulations by the schools through the curricula, textbooks, audio-visual materials or supplementary assignments.

Under the Hatch Amendment, I hereby request that my child NOT be involved in any school activities or materials listed unless I have first reviewed all the relevant materials and have given my **written consent** for their use:

- Psychological and psychiatric treatment that is designed to affect the behavioral, emotional, or attitudinal characteristics of an individual or designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings of an individual or group;
- Values clarifications, use of moral dilemmas, discussion of religious or moral standards, role-playing or open-ended discussions of situations involving moral issues, and survival games including life/death decision exercises;
- Contrived incidents for self-revelation; sensitivity training, group encounter sessions, talk-ins, magic-circle techniques, self-evaluation and auto-criticism; strategies designed for self-disclosure including the keeping of a diary or a journal or a log book;
- Sociograms, sociodrama; psychodrama; blindfold walks; isolation techniques;
• Death education, including abortion, euthanasia, suicide, use of violence, and discussions of death and dying;
• Curricula pertaining to drugs and alcohol; Nuclear war, nuclear policy and nuclear classroom games; Globalism, one-world government or anti-nationalistic curricula; Discussion and testing on interpersonal relationships; discussions of attitudes toward parents and parenting;
• Educating in human sexuality, including pre-marital sex, contraception, abortion, homosexuality, group sex and marriages, prostitution, incest, bestiality, masturbation, divorce, population control, and roles of males and females; sex behavior and attitudes of student and family;
• Pornography and any materials containing profanity and/or sexual explicitness;
• Guided-fantasy techniques; hypnotic techniques; imagery and suggestology;
• Organic evolution, including Darwin's theory; Discussions of witchcraft, occultism, the supernatural, and mysticism; Political and/or religious affiliations of students or family; income of family; Non-academic personality tests; questionnaires of personal and family life attitudes.

The purpose of this letter is to preserve my child's rights under the Protection of Pupil Rights Amendment (The Hatch Amendment) to the General Education Provisions Act, and under its regulations as published in the Federal Register of September 6, 1984, which became effective November 12, 1984. These regulations provide a procedure for filing complaints first at the local level, and then with the U.S. Department of Education. If a voluntary remedy fails, federal funds can be withdrawn from those in violation of the law. I respectfully ask you to send me a substantive response to this letter attaching a copy of your policy statement on procedures for parental permission requirements, to notify all my child's teachers, and to keep a copy of this letter in my child's permanent file.

Thank you for your cooperation.

Signed this ___________ Day of __________, _____.
APPENDIX B

CALIFORNIA STUDENT EXEMPTION PROJECT:

STUDENT EXEMPTION FORM LETTER
STUDENT EXEMPTION
To the School Board Members, Superintendent, Principal, teachers and agents of the ___________________________ School District.

This letter will serve as legal notice pursuant to 20 U.S.C. Section 1232(h) and the California Education Code, including, but not limited to, Sections 221.5, 51100, 51101, 51501, 51513, and 51937-51939, that you are not to teach, instruct, advise, counsel, discuss, test, question, examine, survey or in any way provide information, data or images to my child(ren) concerning:

☐ sex education, family life education, health, human sexuality,
☐ pupil’s personal beliefs or practices in sex, family life, morality, and religion,
☐ pupil’s parents’ or guardians’ beliefs and practices in sex, family life, morality, and religion,
☐ sexually transmitted diseases, venereal diseases, HIV/AIDS,
☐ gender identity, sexual orientation, sexual preference,
☐ homosexuality, lesbianism, bisexuality, transgender or transsexual issues, 
☐ or any alternatives to monogamous heterosexual marriage,

without my express written permission on an incident-by-incident basis. This restriction shall extend to:
☐ teachers and teacher aides,
☐ administrators, school counselors,
☐ school health personnel, special guests, or presenters,
☐ California Department of Education or other state departments or their agents,
☐ or anyone speaking or acting on behalf of the school or school district,

and shall be in force whether said child or children are on school grounds, or are off-campus. This shall pertain to all writings as defined by California Evidence Code Section 250, including, but not limited to:
☐ classroom instruction, presentations, school-approved displays on campus,
☐ reading assignments, class discussions, homework assignments,
☐ books, magazines, newspapers, or other printed or written material,
☐ photographs, movies, films, slides, filmstrips, projector images, DVDs, CDs, video tapes, audio tapes, MP3 files,
☐ CD-ROMs, computer and Internet programs and activities,
☐ field trips, assemblies, theatrical or musical performances,
☐ individual or group-assigned activities, extracurricular activities,
☐ or any other context in which the school or its agents interact with my child(ren).

I respectfully request that I be notified in writing at least 15 days in advance of all future instruction, events, or activities, etc. from which my child(ren) may need to be exempted, so that I may work with you in making alternate accommodations for his/her continuing education. This request is made as a direct result of my sincerely-held religious beliefs and personal moral convictions, as well as the individual, emotional, and developmental needs of my child(ren), and the laws cited above. I thank you in advance for respecting my rights as a parent in dealing with these matters. This notice has been prepared with the advice of legal counsel and supersedes any prior authorization you may have on file.

My child(ren) and/or ward(s) to whom this notice applies is (are): (name and grade)
____________________________________________________________________________________________

Thank you for respecting my family's personal moral convictions regarding these matters. Please do not hesitate to contact me if you have any questions or comments.
Signed ___________________________ Date __________________
Address ______________________________________________________________________________________
Daytime/Evening Phone __________________________________________________________________________

NOTICE TO PARENTS/GUARDIANS: Please retain a signed, dated copy of this letter for your personal records.
© CALIFORNIA STUDENT EXEMPTION PROJECT, P.O. BOX 782, SACRAMENTO, CA 95812
Form SE 01-14-04
APPENDIX C

GENERIC OPT-OUT FORM LETTER
STUDENT OPT-OUT NOTICE

To the _______________________________ School District.

Dear Sir or Madam,

1. Upon your receipt of this document, you are placed on legal notice that I, the undersigned parent(s), have elected to invoke my parental rights under Federal and State Statutes and Case Law regarding the instruction of sexuality to my child(ren).

2. You are not to instruct my child about human sexuality without first providing me, on an incident-by-incident basis, at least 15 days prior notice, and obtaining my written permission after allowing me the opportunity to review your materials/lesson plan.

3. You are specifically forbidden from addressing issues of homosexuality, bisexuality, lesbianism, transvestitism, transsexuality, sado-masochism, pedophilia, beastiality or other alternatives to monogamous heterosexual marriage to my child in any manner or form that would convey the message to my child that such orientations/behaviors are immutable, unchangeable or harmless.

4. This prohibition extends to any legitimization or normalization of these sexual orientations/behaviors no matter how your program or approach is defined or packaged, including but not limited to any instruction, materials or conversation related to “diversity” “tolerance” “multi-culturalism” “gender studies” “family life” “safe schools” “hate crimes” “AIDS education” or the like.

5. This prohibition extends to all school system employees and agents in any setting, on or off campus, in which my child(ren) is/are in the care of the school.

6. I am aware that politically active “gay and lesbian” teachers and other school system employees across America have organized for the purpose of legitimizing homosexuality and related sexual orientations to schoolchildren, using various pretexts such as the theme of “school safety.” I consider it the duty of the school to protect my child(ren) from any such activities.

7. This document shall supersede any previously signed permission forms you may have on file.

The child(ren) to which this opt-out notice applies is/are

________________________________   ________________________________
________________________________   ________________________________

Signed,

_____________________________ ______  ___________________________ ______
Parent or Legal Guardian Date Parent or Legal Guardian Date

Parents: For maximum legal protection, send this notice by certified mail. Keep a signed, dated copy for your records and give a copy to your attorney. After submitting this notice, do not sign any blanket permission slip offered by the school. All important communication with the schools should be in writing. This form is copyrighted by The Pro-Family Law Center, 6060 Sunrise Vista Drive, Suite 3050, Citrus Heights, CA 95610 (916) 676-1057. You have permission to copy and distribute this notice to others if your purpose is to protect children from homosexual activism in the schools. Copies of this form and other resources for parents, including information on how to form a local parent’s rights group, are available without charge at www.abidingtruth.com. Valid in all 50 states. Consult with your attorney about specific parental rights laws in your state.
APPENDIX D

TEXAS JUSTICE FOUNDATION: NOTICE AND DECLARATION OF
PARENTAL RIGHTS
NOTICE AND DECLARATION OF PARENTAL RIGHTS

My name is ____________________________________________.

My residence address is_____________________________________.

This Notice applies to the child(ren) identified below, all of whom are younger than 18 years of age (provide name and date of birth):

____________________________________________________
____________________________________________________
____________________________________________________
____________________________________________________
____________________________________________________

The Educational Institution at which the foregoing child(ren) is/are attending for the ________ academic school year is ________________________________________ (hereafter "Educational Institution"). My filing of this Notice and Declaration of Parental Rights with the Educational Institution is actual notice of my rights to this Educational Institution, its employees, agents and contractors, and also to __________________________ Independent School District (hereafter "School District") of which this Educational Institution is a part. The Educational Institution and School District, their employees and agents, may be referred to, or addressed, either individually or collectively as "you".

1. I have the statutory rights, fundamental rights, duties and authority discussed herein for the foregoing child(ren) because I am the [ ] parent; [ ] guardian; [ ] managing conservator of the child(ren), including, but not limited to (i) the right to have physical possession, to direct the moral and religious training, and to establish the residence of my child(ren); (ii) the duty of care, control, protection, and reasonable discipline of my child(ren); (iii) the duty to support my child(ren), including providing my child(ren) with clothing, food, shelter, medical and dental care, and education; (iv) the right to the services and earnings of my child(ren); (v) the right to consent to my child(ren)'s marriage, enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological and surgical treatment; (vi) the right to represent my child(ren) in legal action and to make other decisions of substantial legal significance concerning my child(ren); (vii) the right to make decisions concerning my child(ren)'s education; and (viii) any other right or duty existing between a parent and child by virtue of law. (Texas Family Code §151.003).

You, as state agencies, have no authority to "adopt rules or policies or take any other action that violates the fundamental right and duty of a parent to direct the upbringing of the parent's child." (Texas Family Code §151.005; Act of May 26, 1997, H.B. 425, §3, 75th Leg., R.S.)
2. The very first objective of public education is that I am a full partner with you in the education of my child(ren), and I expect to be treated as such. (Texas Education Code §4.001[b]). This fact is restated again in §26.001(a), which also provides that I am to be encouraged by you to actively participate in creating and implementing the educational programs for my child(ren). (Texas Education Code §26.001[aj]). Your Campus Improvement Plan is even required to provide for a program to encourage parental involvement at my child(ren)'s campus. (Texas Education Code §11.253 [dj]).

In fact, the United States Congress has specifically stated, as a founding principle of the U.S. Department of Education, that "The Congress finds that ...parents have the primary responsibility for the education of their children, the States, localities, and private institutions have the primary responsibility for supporting that parental role;...". (Department of Education Organization Act, Pub. L. 96-88, Title I, §101, Oct. 17, 1979, 93 Stat. 669, codified in 20 U.S.C. §3401[3]). You are now aware, and on notice, of your responsibility to support my parental role and rights.

3. I hereby assert, exercise and place you on actual notice of my rights (please note this is not, nor is it meant to be, an exhaustive list of all of my rights):

**Review of Student and Education Records:**

I have the right to inspect and review the education records of my child(ren) (Family Educational Rights and Privacy Act [FERPA], 20 U.S.C. §1232g) and all written records of this School District concerning my child(ren), including but not limited to attendance records, test scores, grades, disciplinary records, counseling records, psychological records, applications for admission, health and immunization information, teacher and counselor evaluations, reports of behavioral patterns, teaching materials, textbooks, teaching aids, and every test taken by my child(ren) after it is administered and scored. (Texas Education Code §26.004, §26.006). Section 1983 remedies are available to me for any violation(s) of FERPA. (42 U.S.C. §1983). I ______ (do/do not) give you my consent to release records of my child(ren) if they are requested under the Freedom of Information Act. (20 U.S.C. §1232g). I also ______ (do/do not) give you my consent to make directory information about my child(ren) public. (20 U.S.C. §1232g[a][5][B]).

If there has been a violation of my or my child(ren)'s rights under FERPA, or I have any reason to believe a violation has occurred, I have the right to, and may, timely file (within 180 days of the date that I knew or should have known of the violation) a complaint with the U.S. Department of Education's Family Policy Compliance Office at 600 Independence Avenue, S.W., Room 1366, Washington, DC 20202-4605, (202-260-3887), TDD (202-260-8956).

**Surveys and Evaluations, Psychological Exams / Invasion of Privacy:**

I ______ (do/do not) give my written consent to the Educational Institution or School District to require or otherwise subject my child(ren) to any survey, analysis, personal inventory or evaluation that reveals information concerning political affiliations; mental and psychological problems potentially embarrassing to the child(ren) or his/her family; sex behavior and attitudes; illegal, anti-social, self-incriminating and demeaning behavior; critical appraisals of other individuals with whom the child(ren) has/have close family relationships; legally recognized privileged or analogous relationships, such as those of lawyers, physicians, and ministers; or income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program). (Protection of Pupil Rights Amendment [PPRA], 20 U.S.C. §1232h) (Texas Education Code §26.009).
This includes my allowance/prohibition for my child(ren) to be given or administered any psychological examination, test or treatment by any school employee, agent or affiliate, unless proof is provided to me in writing, before any such psychological examination, test or treatment is given, that said examination, test or treatment is required by state or federal law regarding requirements for special education. (Texas Education Code §26.009).

This includes, but is not limited to: (1) all surveys, personal inventories, questionnaires, or any other document that is personally intrusive, invading the privacy of my child(ren), myself, or our family, and/or that delves into the psyche or thoughts of my child(ren), (2) any method of obtaining information, individually or in a group activity, that is not directly related to academic instruction and that is designed to elicit information about attitudes, habits, traits, opinions, beliefs or feelings of my child(ren), and/or (3) any activities that have been designed to affect behavioral, emotional, or attitudinal characteristics of my child(ren). (34 Code of Federal Regulations §98.4[c][1] and [2]).

This further includes, but is not limited to: (1) Structured Reaction Questionnaires; (2) Self-Evaluation/Self-Assessment Exercises, Surveys, Questionnaires; (3) Needs Assessment Instruments/Exercises; (4) Self-Exploration Programs, Exercises, Projects, Assignments; (5) Requests or Invitations for Self-Referral to Individual or Group Counseling Services.

If there has been a violation of my or my child(ren)’s rights under the PPRA, or I have any reason to believe a violation has occurred, I have the right to, and may, file a complaint with the U.S. Department of Education’s Family Policy Compliance Office at 600 Independence Avenue, S.W., Room 1366, Washington, DC 20202-4605, (202-260-3887), TDD (202-260-8956).

Developmental Guidance/Counseling Programs:

I __________ (do/do not) give my written consent for my child(ren) to participate in, be enrolled in, be solicited for, or be subjected to, in any form or fashion, any comprehensive and/or developmental guidance or counseling program (Texas Education Code §33.004), or integration of such guidance into other curriculum. If I have given my consent, the counselor must be certified, if applicable (§33.002), you must annually conduct a preview of the program for me including all materials and curriculum (§33.004[b]), any materials and curriculum not included in the preview may not be used (§33.004[b]), and the counselor must work and consult with me as the parent for not only the planning and implementation of the developmental guidance and counseling program but also to promote the education and success of my child(ren)(§33.005 and §33.006).

If I did NOT give my consent above, then this includes the complete prohibition of the following: (1) Structured Reaction Questionnaires; (2) Self-Evaluation/Self-Assessment Exercises, Surveys, Questionnaires; (3) Needs Assessment Instruments/Exercises; (4) Self-Exploration Programs, Exercises, Projects, Assignments; (5) Requests or Invitations for Self-Referral to Individual or Group Counseling Services

Outside Counseling & Treatment:

I __________ (do/do not) give my written consent for any referral of my child(ren) to any outside counselor for care or treatment of a chemical dependency or an emotional or psychological condition. If I have given my consent, you must have satisfied all the following or my consent will not be effective or enforceable: (1) I have first been contacted
orally and/or in writing and I give my written, affirmative consent at that time; (2) you disclose to me any relationship you have with the particular counselor; (3) you inform me of any alternative public or private source of care or treatment reasonably available in my area; (4) you have obtained the approval of appropriate school district personnel before the referral or suggestion of referral; and (5) you prohibit the release or disclosure of my child (ren)’s records that would violate state or federal law. (Texas Education Code §38.010).

School-Community Guidance Center:
If the School District has established a school-community guidance center, I recognize that the placement of my child(ren) into such a center must be preceded with, and is conditioned upon, written notification from the administrator of the school-community guidance center that satisfies all the requirements of TEC §37.054. (Texas Education Code §37.054).

I recognize and assert my right to inspect all instructional or guidance materials to be used in any such guidance center. I also recognize and assert my right to inspect the results of any treatment, testing or guidance method involving my child(ren) if I have so consented to said treatment or testing. You may not perform any psychological testing or treatment on my child(ren) without first obtaining my written, affirmative consent.
If I refuse to so consent to either testing or treatment of my child(ren), absolutely no further psychological treatment or testing may occur. (§37.054[c]).

Disciplinary Actions/Corporal Punishment:
I hereby ___________ (do/do not) consent to reasonable corporal punishment if it is the policy of this Educational Institute or School District to allow me as the parent, guardian or managing conservator of my child(ren) to allow or forbid the use of corporal punishment (include, but not limited to "spanking" or "paddling"). Subject to my consent or non-consent above, I understand that you have the authority to use force, but not deadly force, against my child(ren) because you are entrusted with the care and supervision of my child(ren) (during the school day or at school events) for the special purpose of educating my child(ren), and that you have this authority "when and to the degree [you] reasonably believe[s] the force is necessary to further the special purpose [education] or to maintain discipline in a group." (Texas Penal Code §9.62).

However, I also recognize that my child(ren) has/have the right to be free of state occasioned damage to his/her bodily integrity! Doe v. Taylor ISD, 15 F.3d 443 (5th Cir. 1994).

I also recognize, and place you on notice, that the infliction of corporal punishment (spanking) is a deprivation of substantive due process when it is arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning. Woodard v. Los Fresnos ISD, 732 F.2d 1243,1246 (5th Cir. 1984). Because the infliction of any punishment (not just corporal) may transgress constitutionally protected liberty interests (Woodard, at 1245), the Texas Legislature has (1) given me the authority to sue for damages under common law tort remedies (Barr v. Bernhard, 562 S.W.2d 844 [Tex. 1978]); and (2) outlawed excessive punishment of children 14 years of age or younger with the criminal code (Texas Penal Code §22.04 [injury to a child is a felony]).

Corporal punishment, and any punishment for that matter, must be reasonable and moderate, not administered maliciously, in bad faith, in the heat of the moment, or for the purpose of retaliation or revenge. (See, Fee v. Hemdon, 900 F.2d 804, 806 [5th Cir.], cert. denied, 498 U.S. 908, 111 S. Ct. 279 [1990]; Burton v. Kirby, 775 S.W.2d 834, 836 [Tex. App. - Austin 1989, no writ]). A professional employee's (superintendent, principal, teacher, supervisor, social worker, counselor, nurse, teacher's aide, student in an education preparation program participating in a field experience or internship, school bus driver) qualified immunity is waived and he/she is personally liable to me and my child(ren) if he/she uses excessive force in the discipline of my
child(ren) or negligence resulting in bodily injury to my child(ren). (Texas Education Code 22.051[a]).

Safe Schools / Freedom From Violence:
You have the duty, and the authority, to remove disruptive and violent students from the classroom and school, in order to maintain a safe environment for my child(ren), an environment that is conducive to learning and education. (Chapter 37, Texas Education Code). "The primary duty of school officials and teachers … is the education and training of young people. … Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. … [T]he school has the obligation to protect pupils from mistreatment by other children....". New Jersey v. T.L.O., 469 U.S. 325, 350 (1985) (Powell, J., joined by O'Connor, J., concurring).

You are required by law to adopt and enforce a student code of conduct that must (1) specify the circumstances under which a student may be removed from a classroom, campus, or alternative education program; (2) specify conditions that authorize or require a principal or other appropriate administrator to transfer a student to an alternative education program; and (3) outlines conditions under which a student may be suspended as provided by §37.005 or expelled as provided by §37.007 of the Education Code. (Texas Education Code §37.001[a]).

The Texas Legislature created this Zero Tolerance Act to protect my child(ren). Therefore if my child(ren) is/are attacked, assaulted, or otherwise harmed by another student, I want and expect that student to be removed from my child(ren)'s classroom and/or campus. My child(ren)'s teacher has the duty and authority to remove a disruptive, dangerous or violent child from the classroom, and then it becomes the school principal's responsibility to place the removed student into another appropriate classroom, into in-school suspension, or into an alternative education program. (Texas Education Code §37.002).

My child(ren)'s teacher also has the mandatory, nondiscretionary duty and authority to remove from my child(ren)'s classroom, to be placed in an alternative education program or for expulsion, any child that engages in conduct including, but not limited to: [for AEP Placement] assault (Texas Penal Code §22.01[a]), terrorist threat (Penal Code §22.07), public lewdness (Penal Code §21.07) or indecent exposure (Penal Code 21.08); [for Expulsion] using, exhibiting or possessing a firearm, knife or other weapon, aggravated assault (Penal Code §22.02), sexual assault (Penal Code §22.011), aggravated sexual assault (Penal Code §22.021), indecency with a child (Penal Code §21.11) and selling, giving, delivering or possession of or using a controlled substance, a dangerous drug, or alcoholic beverage. (Texas Education Code §37.006 and §37.007).

Specifically, "assault" is defined as an activity or act that occurs when a person (student) (1) intentionally, knowingly, or recklessly causes bodily injury to another; or (2) intentionally or knowingly threatens another with imminent bodily injury; or (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative. (Texas Penal Code §22.01[a]).

You will note that there is no element of, or consideration given for, any alleged or suspected provocation, premeditation, or mutual participation. In addition, "terroristic threat" is committed when a person (student) threatens to commit any offense involving violence to any person or property with intent to place any person in fear of imminent serious bodily injury. (Texas Penal Code §22.07[a][2]). Further, the removed child may not re-enter my child(ren)'s classroom or school campus until you have scheduled a conference among the principal (or other
appropriate administrator), a parent or guardian of the student, the teacher that removed the student, and the student himself/herself. (Texas Education Code §37.009[a]). Finally, the board of trustees of this district has the mandatory obligation to deliver a copy of the order placing a student in an alternative education program or expelling a student to the authorized officer of the juvenile court in the county in which the student resides. (Texas Education Code §37.010[a]).

This matter is of grave concern to me as my child(ren) is/are under your care and control during the school day. I therefore must rely on you to protect and secure my child(ren)'s well-being and bodily integrity while he/she is under your care.

Classroom Transfer:
I hereby request a transfer of my child _________________ from the __________ grade class taught by ______________________(teacher's name) to the following class: _______________________. (Texas Education Code §26.003[a][2]). This request to the school principal of this Educational Institution is made prior to my petitioning the board of trustees of the School District.

Should you, the school principal, not grant this transfer, I may exercise my right to petition the board of trustees, in writing, for the transfer and demand a hearing (Texas Education Code §25.034), and will point out the fact that this request was first presented to you, the school principal, and was denied.

Class Attendance for Credit Above Child’s Grade Level:
I hereby request that my child _________________ who is in the ________ grade be permitted to attend the following class: ________________________, for credit above the child’s grade level, whether in the child’s school or another school, unless the School Board or its designated representative reasonably expects that the child cannot perform satisfactorily in the class. (Texas Education Code §26.003[a][3][B]).

Addition of Academic Class:
I hereby request, with the expectation that this request will not be unreasonably denied, that the following academic class(es): ________________________ be added in the course of study of my child(ren) in keeping with the required curriculum, if sufficient interest is shown in the addition of the class to make it economically practical to offer the class. (Texas Education Code §26.003[a][3][A]).

Removal of Child for Observing Religious Holy Days:
Prior written notice is not required for my child(ren) to be excused for the purpose of observing a religious holy day. My child(ren) shall not be penalized for any such absence (s) and shall be counted as if my child(ren) attended school. My child(ren) shall also be allowed a reasonable time to make up school work missed on this/these day(s), and if my child(ren) satisfactorily complete(s) the school work, the day(s) of absence(s) shall be counted as a day(s) of compulsory attendance. (Texas Education Code §25.087[b]).

Notice of Truancy and Attendance/Truancy Officer:
If my child(ren) has/have been, in a six-month period, absent without an excuse five (5) times for any part of the school day, you are required to give me mandatory written notice of that fact. Said written notice shall specifically state that if my child(ren) is/are absent without an excuse for ten
Further, the School Attendance Officer/Truancy Officer, in performing his/her duties, may not enter my home or any part of my home without my affirmative permission, except to serve lawful process on me the parent/guardian/managing conservator (or other person standing in parental relation) to my child(ren). The School Attendance Officer also may not forcibly take corporal, physical custody of my child(ren) without first receiving affirmative permission from me (or other person standing in parental relation to my child[ren]), except in obedience to a valid process issued by a court of competent jurisdiction. (Texas Education Code §25.091[b] and [c]).

Removal of Child From Classroom or Activity:

I hereby exercise my right to remove my child(ren) temporarily from any and every class or other school activity that presents, covers or discusses the following topics or activities because they conflict with my religious and/or moral beliefs. (Texas Education Code §26.010) (Texas Family Code §151.003[a][1]). I request that my child(ren) be placed instead in an academic program in accordance with his intellectual abilities. I request that the classroom materials on these subjects be provided to me and I will then determine how they will be covered with my child(ren): (circle all that apply)

- Affective Development/Instruction (including, but not limited to, Non-Academic Decision Making, Non-Academic Problem Solving, Self-esteem, Interpersonal Effectiveness and Cross-cultural effectiveness).
- Death Education (including, but not limited to, Suicide Education and Euthanasia).
- Dream Interpretations, Evaluations, Meanings, or Discussions.
- Drug Education.
- Evolution (other than as a THEORY ONLY).
- Family Planning and/or Parenting Skills.
- Globalism Curriculum, One-World Government, Anti-American or Anti-Nationalism Teaching, Advocacy, or Promotion.
- Guidance Counseling, whether group or individually.
- Human Sexuality (including, but not limited to, Abortion, AIDS, Alternative Lifestyles, Birth Control, Contraceptives and/or Their Use, Divorce, Extra-Marital Sex, Homosexuality, Incest, Premarital Sex, Prostitution, Roles and Society Norms of Males and Females, Sex Behavior or Activity).
- Internet Access without Direct Adult Supervision.
- Journaling (including Log Books, Diaries, Personal Journals) on Topics that are Personally Intrusive and/or Invasive to My Child(ren)'s, My or Our Family's Right to Privacy and Other Personal Matters.
- Life Skills Instruction – Social and Personal Training (including, but not limited to,
  Gender Equity Training, Interpersonal Relationships; Non-Academic Personality
  Tests or Evaluations; Sensitivity Training; Exercises in, or Strategies that Call For or
  Elicit, Self-Disclosure; Attitudes Towards or About Parents, or the Relationship
  Between my Child(ren) and His/Her Parent(s).
• Meditation, Visualization, Holistic Healing or Teaching.
• Origin of the Universe (other than as a THEORY ONLY).
• Population Growth, Control, or Reduction.
• Psychology or Psychoanalysis (including, but not limited to, Group Encounter Sessions, Sociograms, Self-Evaluations and/or Auto-Criticism, Sociodrama and/or Psychodrama Exercises, Sandplay Therapy.
• Religiously Offensive Literature or Reading Material.
• Relaxation Techniques or Exercises (including, but not limited to, Hypnotic Exercises or Techniques, Imagery, Suggestology or other Yoga Techniques).
• Tolerance Training or Instruction on Controversial Topics (including, but not limited to, Homosexuality, Same-Sex Marriage or Partnerships, Family Relations, and Gender Issues or Roles).
• Values Clarification (including, but not limited to Moral Dilemma Exercises, Life/Death Decision Exercises or Survival Games, Role-Playing Involving Moral Issues).
• Vocational/Career Awareness.
• Witchcraft, Magic ("Black" or "White"), Mysticism, Mother Earth, Gaia, New Age, Occultism, the Supernatural, Wicca - Including the Teaching or Discussion of Said Topics.
• ___________________________________ (other subjects).
• ___________________________________ (other subjects).

Right to Religious Freedom, Expression and Exercise:
My child(ren) has/have an absolute right to individually, voluntarily, and silently pray or meditate in school in a manner that does not disrupt the instructional or other activities of the school. You may not require, encourage, or coerce my child(ren) to engage in or refrain from such prayer or meditation during any school activity. (Texas Education Code §25.901).

My child(ren) do/does not shed his/her constitutional rights to freedom of speech or expression at the schoolhouse gate. Tinker v. Des Moines ISD, 393 U.S. 503 (1969). "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences…. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion….". (Texas Constitution Article I, §6).

My child(ren) have the right to (1) bring to campus, and read, a Bible or other religious book; (2) to evangelize; (3) to hand out or distribute religious literature; (4) participate in before or after school events with religious content; and (5) express their religious beliefs in their homework, artwork and other written or oral assignments. Westside Community Schools v. Mergens, 496 U.S. 248 (1990); Tinker, 393 U.S. 503; Clark v. Dallas ISD, 806 F.Supp. 116 (N.D. Tex. 1992); Good News/Good Sports Club v. School District of the City of Ladue, 28 F.3d 1501 (8th Cir. 1994), cert. denied, 115 S.Ct. 2640 (1995); Religious Expression in Public Schools, U.S. Dept. of Education Guidelines, Secretary Richard W. Riley, August 1995, Revised and Reissued, May 1998.

You may not substantially burden my, my child(ren)'s, or our family's free exercise of religion. (Texas Religious Freedom Reformation Act, Texas Civil Practice and Remedies Code §110.003). If you do so, I have the right to sue you in court (not later than one year after the date I knew or should have known of the substantial burden on the exercise of religion) and recover against you declaratory and injunctive relief, compensatory damages.
not to exceed $10,000 for each distinct controversy, and reasonable attorney's fees and court costs. (Tex. Civ. Prac. & Rem. Code §§110.005, 110.007). **(NOTE TO PARENT:** If you believe a sincere religious belief has been substantially burdened by the district or one of its agents or employees, immediately contact an attorney to assist you in protecting your rights and obligations [including exhaustion of administrative remedies] under this new statute.)

**Duty to Care for and Control Child’s Medical Care:**

As the Parent/Guardian/Managing Conservator of the above-mentioned child(ren) I have the right and duty to care, control and protect my child(ren); and provide for their medical and dental care and psychiatric, psychological and surgical treatment. (Texas Family Code §151.003).

Therefore, before any physician, nurse, or other health care provider that is provided by you to my child(ren) (as an employee, agent, contractor or affiliate) or is allowed to care for or treat my child(ren), other than reasonably necessary emergency care, they must disclose to me, as the person authorized to consent for my child(ren), the risks and hazards involved in the care or procedure, and must receive my written, signed consent to the medical care, including therapy and guidance counseling, before any such care or procedures are administered. (Tex. Rev. Civ. Stat. Ann. art 4590i, §6.05 and §6.06).

I have the right to access my child(ren)'s medical records maintained by the district. On request, you shall provide a copy of my child(ren)'s medical records to me, and you may not impose a charge for that production that exceeds the charge authorized by §552.261 (providing a copy of public information) of the Texas Government Code. (Texas Education Code §38.0095).

**Delegation of Authority to Consent to Medical Treatment:**

You _______ (do/do not) have the authority to consent, as provided and governed by § 32.001 of the Texas Family Code, to medical, dental, psychological and surgical treatment of my child(ren) if I cannot be contacted, other than reasonably necessary emergency care. (Texas Family Code § 32.001). If I wrote "do not" above, then the child(ren)’s grandparent (telephone no. __________________), adult brother or sister (telephone no. __________________),adult aunt or uncle (telephone no. __________________) (in that order of priority) may give such consent if I cannot be contacted.

**Scoliosis Screening:** IF YOUR CHILD(REN) IS/ARE IN THE 6TH OR 9TH GRADE, ANSWER THE FOLLOWING: I __________ (do/do not) hereby give my written consent for my child(ren) to receive screening for the detection of abnormal spinal curvature, or scoliosis. ). If I wrote "do not" above, I will substitute a professional examination by an appropriately licensed or certified health practitioner for the School District’s screening. (Texas Health and Safety Code §37.002[a]). If the screening performed by the School District indicates abnormal spinal curvature, the preparation of a report is required and shall be mailed to me by the chief administrator of my child(ren)’s school. (Texas Health and Safety Code §37.003). A person who provides screening services for or on behalf of the School District or Educational Institution must be appropriately licensed or certified as a health practitioner or certified as having completed an approved training program in screening for abnormal spinal curvature. (Texas Health and Safety Code §37.004[b]).

**IF APPLICABLE, ANSWER THE FOLLOWING:**

My child(ren) are exempt from vision, hearing, speech, language, and scoliosis screening because they conflict with the tenets and practices of a recognized church or religious
denomination, _______________________________________, of which my child(ren)
is/are an adherent or a member. I understand that to be so exempt I must submit to the
chief administrator of the my child(ren)'s school(s), on or before the screening procedure,
an affidavit stating the objections to said screening. (Texas Health and Safety Code
§36.005[b] and §37.002[b]).

School-Based Health Clinics:
I __________ (do/do not) hereby give my written consent for my child(ren) to be provided and/or
receive ongoing services at a school-based health center at his/her campus. (Texas Education Code
§38.011[c]).

IF YOU ANSWERED "DO NOT" ABOVE, THEN ANSWER THE FOLLOWING
PARAGRAPH:
My child(ren) _________________ (may/may not) be provided and/or receive limited services
on a single occasion basis at a school-based health center on his/her campus, but before each
occasion you must first obtain my informed, written consent! The following are the only permissible
categories of services you may provide to any child at such a center:

(1) family and home support;
(2) health care, including immunizations;
(3) dental health care;
(4) health education; and
(5) preventive health strategies.

Reproductive services, counseling, or referrals may not be provided through a school-based health
center using grant funds awarded under this section. (Texas Education Code §38.011[d]).

The staff of a school-based health center and I as the consenting parent shall jointly identify any health-
related concerns of my child(ren) that may be interfering with my child (ren)'s well-being or ability to
succeed in school. (Texas Education Code §38.011[e]).

If it is determined that my child(ren) is/are in need of a referral for mental health services, the staff of the
school-based health center shall notify me verbally and in writing of the basis for the referral, AND the
referral may not be provided unless I provide written consent for the type of service to be provided and
provide specific written consent for each treatment occasion. (Texas Education Code §38.011[f]).

I have the right to access my child(ren)'s medical records maintained by the district. On
request, you shall provide a copy of my child(ren)'s medical records to me, and you may
not impose a charge for that production that exceeds the charge authorized by §552.261
(providing a copy of public information) of the Texas Government Code. (Texas Education
Code §38.0095).

School-to-Work:
I __________ (do/do not) hereby give my written consent for my child(ren) to participate in any
school-to-work, or related, program which includes, but is not limited to, vocational/career awareness,
workplace competencies as a stand-alone course, or as instruction which is integrated with other
curriculum. Student participation in a school-to-work program is optional depending on the desire and
instruction of myself, the Parent/Guardian/Managing Conservator. Mandatory, indiscriminate participation
of any student without authorization and consent of the parent is prohibited. (School-To-Work
et seq. [1998]; Letter from Governor George W.
Bilingual Education/Special Language Program:

I __________ (do/do not) hereby give my written consent for my child(ren)'s entry into or placement in any Bilingual Education or Special Language Program. I must approve my child(ren)'s entry into any Bilingual Education or Special Language Program, exit from said Programs, or placement in said Programs. (Texas Education Code §29.056(a)) (19 Texas Administrative Code §89.1240).

Withholding of Information:
I place you on notice that any attempt by any Educational Institution or School District employee to encourage or coerce my child(ren) to withhold information from me is grounds for discipline, since I have the right to full information regarding the school activities of my child(ren). (Texas Education Code §26.008).

Retaliation and Harassment for Exercise of Constitutionally Protected Rights:
Both my child(ren) and I have the right to be free from any and all acts of retaliation, harassment, intimidation, interrogation, or other acts of retribution by any employee or agent of the School District or Educational Institution for the exercise of any of my constitutionally protected rights, including, but not limited to, the right to direct the moral upbringing and education of my child(ren). Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925). Section 1983 remedies are available to me against you and/or your employees or agents for any such wrongful acts. (42 U.S.C. §1983).

4. This document shall not be interpreted, as it is not intended, to be exclusive of any other rights, authority, duties or entitlements possessed by me, although not mentioned herein, in my relationship as Parent/Guardian/Managing Conservator of my child(ren) identified above. Neither shall this document act or be interpreted as an affidavit designating another person or agency to act as managing conservator of my child(ren). (Texas Family Code §151.003(d)).

5. By my signature below, I hereby revoke any other documents previously signed by me concerning or otherwise expressing my consent and directive as to my child(ren) listed above. This Notice shall control all issues concerning my child(ren) and how you are to educate and deal with my child(ren). Any future changes to my expressed consent and rights contained herein shall only be effective if it is made in writing and expressly contradicts a specific term of this Notice.

6. If any part, clause, provision or condition of this Notice is held to be void, invalid or inoperative, such voidness, invalidity or inoperativeness shall not affect any other clause provision or condition hereof; but the remainder of this Notice shall be effective as though such clause, provision or condition had not been contained herein.

7. Please make sure this Notice and Declaration of Parental Rights is placed in my child (ren)'s permanent file(s).

8. I have read this Notice and understand in full the contents thereof, I have signed the same as my own free act, and I completed all blanks before signing.
Signed this ________ day of ___________________, 20____.

______________________________
Name (printed): Mother/Father/Guardian/Managing Conservator

This Notice and Declaration of Parental Rights has been prepared by Texas Justice Foundation http://www.txjf.org, a non-profit, legal advocacy group that litigates, at no charge to its clients, cases of limited government, free markets, property rights, and parental rights. The Texas Justice Foundation does not represent this/these parent(s) and this Notice does not constitute legal advice or legal representation given. The Texas Justice Foundation created this Notice to assist parents in recognizing and exercising their fundamental rights and duties, under state and federal law, as the parent of their child. Net/tom/.../Notice and Declaration of Parental Rights/ 03/27/2000

PARENT: BE SURE THAT FOR EACH OF YOUR CHILDREN, YOU GIVE THEIR RESPECTIVE SCHOOL CAMPUSES AN ORIGINAL, SIGNED NOTICE FOR PLACEMENT IN EACH OF YOUR CHILDREN’S PERMANENT FILE! THE NAMES AND INFORMATION BELOW ARE FOR YOUR COPY OF THE SIGNED NOTICE THAT YOU ARE KEEPING FOR YOUR FILES (YOU’RE KEEPING A COPY AND THE ORIGINAL STAYS WITH SCHOOL): Signed Receipt by School Official to Whom You, the Parent, Hand Delivered the Original of This Notice, and Date of Receipt. (Hand Delivery of Original is Preferred and Recommended, but if You Choose to Send by mail, it is Recommended That You Address it to the School Principal and Send it Certified Mail, Return Receipt Requested).

Signature of Recipient: _______________________________
Printed Name:_____________________________________
Date of Receipt:____________________________________

*** If School Official, or School Employee in the Principal's Office, Refuses to Sign Your Copy of This Notice, You Should ask for Their Name and Write it, and the Date and Time You Delivered This Notice to the School, below. Just be Sure You Leave the Original, Signed Notice With the School. They Are Then on Notice of Your Rights.

Name:____________________________________________
Date and Time of Delivery:__________________________
APPENDIX E

CURRICULUM OPT-OUTS: GENERAL INFORMATION AND STATUTES
## Curriculum opt-outs: General Information and Statutes

<table>
<thead>
<tr>
<th>STATE</th>
<th>Classification</th>
<th>If Allowed, type of objection</th>
<th>Opt-out Method Specified</th>
<th>General Information</th>
<th>Statutes or Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Restrictive</td>
<td>X</td>
<td>P/N</td>
<td>&quot;conflicts w/ religious teaching of church&quot;</td>
<td>Ala Code § 16-41-6</td>
</tr>
<tr>
<td>Alaska</td>
<td>Non-existent</td>
<td></td>
<td></td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Arizona</td>
<td>Permissive</td>
<td>X X X</td>
<td>P/N</td>
<td>&quot;object to any learning material or activity on basis it is harmful may withdraw their children... because it questions beliefs or practices in sex, morality, or religion&quot;</td>
<td>AZ Statute §15-102 R7-2-303 Sex education</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Restrictive</td>
<td>X</td>
<td>P/N</td>
<td>&quot;parent must show P.E. will violate student’s religious beliefs&quot; and &quot;must be members of recognized religious faith&quot;</td>
<td>Arkansas Code, Title 6, § 6-16-32 Physical Ed.</td>
</tr>
<tr>
<td>California</td>
<td>Permissive</td>
<td>X</td>
<td>P/N</td>
<td>Opt-out any or all; &quot;parents have ultimate responsibility for imparting values regarding sexuality to their children&quot;</td>
<td>Cal. Edc. Code § 51240, §51937, § 32255</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Permissive</td>
<td>X</td>
<td>P/N</td>
<td>&quot;written note shall be sufficient to exempt student from program in its entirety or form portion&quot;</td>
<td>Connecticut Code §10-166, §10-19</td>
</tr>
<tr>
<td>Delaware</td>
<td>Non-existent</td>
<td></td>
<td></td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>District of Columbia</td>
<td>Restrictive</td>
<td>X</td>
<td>P/N</td>
<td>No specific reason required</td>
<td>Title 5 DCMR, Chapter 23 - 2305</td>
</tr>
<tr>
<td>Florida</td>
<td>Permissive</td>
<td>X</td>
<td>P/N</td>
<td>No specific reason required</td>
<td>Florida Statute, Title XLVIII, K-20 Education Code §1003.42, § 1003 (c) (d), § 1003.47</td>
</tr>
<tr>
<td>Georgia</td>
<td>Permissive</td>
<td>X</td>
<td>P/N</td>
<td>&quot;Each local board shall&quot;</td>
<td>Georgia Code § 20-2-143</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Non-existent</td>
<td></td>
<td></td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>Restrictive</td>
<td>X</td>
<td>P/N</td>
<td>&quot;family life and sex education ... rests upon home and church&quot;; schools supplement</td>
<td>Idaho Statute, Title 33, Chapter 16, § 33-1611</td>
</tr>
<tr>
<td>Illinois</td>
<td>Permissive</td>
<td>X</td>
<td>P/N</td>
<td>No specific reason required</td>
<td>105 ILCS 110/3; 105 ILCS 112/15; 105 ILCS 5/27-13.1</td>
</tr>
<tr>
<td>Indiana</td>
<td>Restrictive</td>
<td>X</td>
<td>P/N</td>
<td>May also opt-out of hygiene instruction</td>
<td>Indiana Code § 20-30-5 9(d)</td>
</tr>
<tr>
<td>Iowa</td>
<td>Restrictive</td>
<td>X</td>
<td>P/N</td>
<td>&quot;not required to enroll in P.E. or health if course conflicts with religious belief&quot;</td>
<td>Iowa Code § 256.11, 6.</td>
</tr>
<tr>
<td>STATE</td>
<td>Classification</td>
<td>If Allowed, type of objection</td>
<td>Opt-out Method Specified</td>
<td>General Information</td>
<td>Statutes or Regulations</td>
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<tr>
<td>Kansas</td>
<td>Restrictive</td>
<td>X</td>
<td></td>
<td>“Each board of education shall… include procedures whereby pupil shall be excused from any or all portions”</td>
<td>Kansas Administrative Regulation (KAR) 91-31-20 (b)(2)(D)</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Non-existent</td>
<td></td>
<td></td>
<td>Kentucky Dept of Ed believes many districts provide local opt-outs</td>
<td>None</td>
</tr>
<tr>
<td>Louisiana</td>
<td>Restrictive</td>
<td>X</td>
<td></td>
<td>“any child excused at option and discretion of parent… local or parish school board shall provide procedures;” no specific reason required</td>
<td>Louisiana Code, Subpart D-1, RS 17 §281 (4) (d);</td>
</tr>
<tr>
<td>Maine</td>
<td>Permissive</td>
<td>X</td>
<td></td>
<td>No specific reason required</td>
<td>Maine Revised Statutes Title 22, Chapter 406 §1911; Title 7 M.R.S. A. § 3971</td>
</tr>
<tr>
<td>Maryland</td>
<td>Permissive</td>
<td>X</td>
<td></td>
<td>Opt-in required for sex education; no specific reason required</td>
<td>Code of Maryland Regulations COMAR 13A.04.18.03 &amp; 13A.04.18.04; Maine Dept. of Education Dissection policy</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>Restrictive</td>
<td>X</td>
<td>P/N</td>
<td>“[P]olicy shall afford parents flexibility to exempt their child from sex education…”</td>
<td>General Law of Mass., Title XII, Chapter 71, Section 32A; District and School Policies and Resources for Dissection and Dissection Alternatives in Science provided by Mass. Dept. of Education</td>
</tr>
<tr>
<td>Minnesota</td>
<td>Permissive</td>
<td>X</td>
<td>P/N</td>
<td>“Have procedure … if parent objects to the content, to make reasonable arrangements with school personnel for alternative instruction”</td>
<td>Minnesota Statute § 120B.20</td>
</tr>
<tr>
<td>Mississippi</td>
<td>Permissive</td>
<td>X</td>
<td>P/N</td>
<td>Opt-in for sex education required</td>
<td>Mississippi Education Code § 37-13-173</td>
</tr>
<tr>
<td>Missouri</td>
<td>Restrictive</td>
<td>X</td>
<td></td>
<td>Sex Education &amp; HIV/AIDS only</td>
<td>Missouri Revised RSMo Statutes § 170.015.1 (5)</td>
</tr>
<tr>
<td>Montana</td>
<td>Restrictive</td>
<td>X</td>
<td></td>
<td>“Any parents who believes their child is not developmentally ready for particular curricular content may ask to take child out of class”</td>
<td>Montana’s Office of Public Instruction – Guidelines for HIV/AIDS Education</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Non-existent</td>
<td></td>
<td></td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>STATE</td>
<td>Classification</td>
<td>If Allowed, type of objection</td>
<td>Opt-out Method Specified</td>
<td>General Information</td>
<td>Statutes or Regulations</td>
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</tr>
<tr>
<td>Nevada</td>
<td>Permissive</td>
<td>X</td>
<td>P/N</td>
<td>Opt-in for sex education &amp; AIDS</td>
<td>Nevada Revised Statutes NRS Title 34, § 389.065</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Permissive</td>
<td>X</td>
<td></td>
<td>Sex education, Health, HIV/AIDS</td>
<td>New Hampshire Code, Ch.186, § 186:11 IX b</td>
</tr>
<tr>
<td>New Mexico</td>
<td>Restrictive</td>
<td></td>
<td>X</td>
<td>X</td>
<td>New Mexico Administrative Code NMAC 6.29.6.11 NMAC 6.30.2 (8)</td>
</tr>
<tr>
<td>New York</td>
<td>Restrictive</td>
<td></td>
<td>X</td>
<td>X</td>
<td>NY Commissioner's Regulations 135.3 (2) (i); NY CLS Education § 809</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Non-existent</td>
<td></td>
<td></td>
<td></td>
<td>None</td>
</tr>
<tr>
<td>Ohio</td>
<td>Permissive</td>
<td>X</td>
<td>P/N</td>
<td>Opt-outs permitted in venereal disease education, personal safety and assault prevention in grades K-6; and CPR</td>
<td>Ohio Revised Code § 3313.60 (A) (5) (c), (d) § 3313.60 (A) (8)</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Restrictive</td>
<td></td>
<td>X</td>
<td>Sex education &amp; AIDS prevention</td>
<td>Oklahoma Statutes § 70-11-103.3 and § 70-11-105.1</td>
</tr>
<tr>
<td>Oregon</td>
<td>Permissive</td>
<td>X</td>
<td>P/N</td>
<td>“no pupil shall be required to take or participate in any instruction in sex education, ... after parent has reviewed materials”</td>
<td>Oregon Revised Statutes OR. REV. STAT. § 336.465 § 337.300</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>Restrictive</td>
<td></td>
<td>X</td>
<td>HIV/AIDS instruction &amp; animal dissection</td>
<td>Pennsylvania Code, Title 22, § 4.29; 24 P.S. § 15-1523</td>
</tr>
<tr>
<td>Rhode Island</td>
<td>Permissive</td>
<td></td>
<td>X</td>
<td>“Exemptions” given for sex education, health, AIDS instruction, &amp; animal dissection</td>
<td>Rhode Island General Laws RIGL, Title 16, § 16-22-17 § 16-22-18 § 16-22-20</td>
</tr>
<tr>
<td>South Carolina</td>
<td>Permissive</td>
<td></td>
<td>X</td>
<td>Opt-out of health education for “conflicts with family’s beliefs” &amp; opt-out of P.E. if “violates religious beliefs”</td>
<td>South Carolina Code of Laws, Title 59 § 59-32-50 § 59-32-80</td>
</tr>
<tr>
<td>STATE</td>
<td>Classification</td>
<td>Opt-out Method Specified</td>
<td>General Information</td>
<td>Statutes or Regulations</td>
<td></td>
</tr>
<tr>
<td>--------------</td>
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<td>--------------------------</td>
<td>---------------------</td>
<td>-------------------------</td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td>Non-existent</td>
<td>P/N</td>
<td>South Dakota Dept. of Ed believes local opt-outs are provided</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Tennessee</td>
<td>Permissive</td>
<td>X</td>
<td>Opt-in for family life courses</td>
<td>Tennessee Code Annotated TCA § 49-6-1303 being amended by Tennessee HB 0812 &amp; SB 1234</td>
<td></td>
</tr>
<tr>
<td>Texas</td>
<td>Permissive</td>
<td>X</td>
<td>Broad opt-out provision but &quot;parent is not entitled to remove child to avoid a test or prevent child from taking subject for entire semester&quot;</td>
<td>Texas Education Code TEC § 26.010</td>
<td></td>
</tr>
<tr>
<td>Utah</td>
<td>Permissive</td>
<td>X</td>
<td>Opt-in required for sex education</td>
<td>Utah Administrative Rule R277-474-1</td>
<td></td>
</tr>
<tr>
<td>Vermont</td>
<td>Restrictive</td>
<td>X</td>
<td>Opt-outs for sex education &amp; animal dissection</td>
<td>Vermont Statutes 16 V.S.A. § 134 16 V.S.A. § 912</td>
<td></td>
</tr>
<tr>
<td>West Virginia</td>
<td>Restrictive</td>
<td>X</td>
<td>Opt-out for AIDS only</td>
<td>West Virginia Code WV Code § 18-2-9</td>
<td></td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Permissive</td>
<td>X</td>
<td>Opt-outs in human growth and development – sex education, health, AIDS</td>
<td>Wisconsin Statute § 118.019 (4)</td>
<td></td>
</tr>
</tbody>
</table>
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Ark. Code § 6-16-132 (4) B (ii) (a) (b).


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Conn. Rev. Stat. § 10-16d e

Conn. Rev. Stat. § 10-19b

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Ind. Code § 20-30-5-9 (d).

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Or. Rev. Stat. § 337.300


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Tex. Ed. Code § 26.001 (a) (b) (c).


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