



Constitution vs. Curriculum

More parents are playing politics with what's taught in schools

BY MARK PAIGE

Recently, parents have been asserting certain claims of a constitutional right to shape their child's education or place demands upon school leaders. These efforts include requests to review the curriculum, visit classrooms, or opt out of lessons.

What are parental rights in these situations? From a legal and a practical perspective, does a parent's constitutional right trump your obligation to provide the specific curriculum determined by your school board or

state? What are the legal implications of these issues, and how should principals and schools address them?

An Age-Old Debate

The battle over school curricula is nothing new. In 1886—yes, 1886—one Indiana father even objected to the mandatory teaching of music as a violation of his parental rights. The Indiana Supreme Court rejected his claim.

More recently—in the 1980s and today—parents have objected to courses involving sex education or the frank discussion of AIDS, as well as courses that require a component of community service. But while scores of curriculum “wars” have been documented throughout history, something seems different today, with high levels of social unrest, threats to democratic government, and the viral spread of messages—sometimes false—via social media.

It might be helpful to think of these legal issues from several perspectives: The state (school boards, districts,

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Find ways to involve parents who have questions or concerns in a way that allows them to see the challenges and opportunities for their child.

and legislators) has a duty to safely educate future generations, parents have a constitutional right to bring up their children as they see fit, the child has constitutional rights, and teachers need academic freedoms. Let's look at each in turn.

State control. School boards and districts have been empowered to make curriculum decisions in order to prepare future citizens. State constitutions require the operation of systems of education, and we elect school boards to make important decisions for community schools, including those related to materials and instruction.

In some cases, parents object to these decisions, arguing that their constitutional rights have been violated. For example, in the federal appeals case of *Parker v. Hurley*, parents objected to their children being presented with books depicting diverse families, including families with parents of the

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same gender. The district refused to grant the children an exemption from the instruction.

The parents argued that the refusal of an exemption amounted to an infringement on their constitutional rights as parents and their free exercise of religion rights under the First Amendment. The court disagreed, citing a long line of cases establishing that while parents have a constitutional right to raise their children, there is no right to direct how a public school teaches those children.

To be sure, schools can cross constitutional lines if they embrace the tenets of a particular religious faith. For instance, a state legislature or school board cannot require “equal treatment” of evolution and creationism in state classrooms without violating the Establishment Clause of the U.S. Constitution.

In today’s charged political context, schools face accusations that they are indoctrinating students with certain belief systems. Numerous states have passed laws banning or mandating the instruction of specific topics. Schools must follow these laws, even though many are incredibly vague to the point that they might be unconstitutional.

In my opinion, showing that a school district is indoctrinating a student with a singular view would require strong factual evidence of a systematic effort on the part of the school or teacher. That is not to say that it can’t happen or won’t be litigated. As more cases are heard or as legislatures change their views, we will get more clarity.

Parental rights. As noted above, parents have the right to raise their children the way they see fit, as the *Parker* case illustrates. And in the school context, parents have other rights. To begin with, parents don’t have to send their children to public school, and alternatives such as charter schools and home-schooling are widely available. That might be the most powerful expression of a parental right in education: withdrawing their child from public education.

Likewise, parents have the right to discuss different perspectives at home that are not necessarily included in the school curriculum. For example, in *Parker*, nothing prohibited the parents from discussing their views on gay marriage with their children at home.

At a more granular level, some states—or boards—might require that parents be notified of plans to address certain topics and offer an “opt-out” provision; school leaders should know this landscape. Similarly, a school district might have policies that allow parental visitation to schools and classrooms, but parental rights are not unfettered.

In my view—and this is subject to variations in state law or policy—a school can restrict parental access to a classroom, especially if it would interfere with the operation of the school. But it is another matter whether schools should assert that restriction, assuming it is permissible, and it should be treated on a case-by-case basis.

Children’s rights. The strength of a child’s right varies with age, but one case is instructive for today’s debates over curricular control.

In *Board of Island Trees v. Pico*, the U.S. Supreme Court held that a school district’s removal of certain books from the library—without any legitimate educational reason—interfered with a student’s right to receive and access information. *Pico* says that local school boards cannot remove books from libraries to create a “pall of orthodoxy” on topics of opinion such as politics.

Teacher rights. Teachers have very limited rights in deviating from an adopted curriculum. Recent state laws prohibiting or mandating certain topics will impact teachers’ instruction. The boundaries of these limits and mandates will come in time as they are litigated. In the meantime, the materials and lessons used should follow whatever the acceptable process is for adoption in your building or district and any statewide laws or regulations.

Practical Advice

So, where does all of this leave you, the principal? My belief is that the increase in calls for parental rights is linked to the recent elevation of public education as a prime political wedge issue.

If this is true, can school leaders help detach politics from public education so we can focus on the health and

well-being of our children—an objective shared by parents and educators alike? Some of the ideas below might push us closer to that goal:

• **Be proactive and market the magic happening at your school.** I'm in schools frequently and hear kids laughing, teachers engaging with students, and students engaging with each other. I see wonderful work. Even the smells emanating from the cafeteria remind me fondly of my elementary school days.

Not everything is perfect, but I think school reminds most people of a comfortable, familiar place—something our kids need. While public education has become a political football lately, you can find ways to call attention to the wonderful things that are happening in schools.

• **Seize on parental involvement and engagement.** If parents want to get more involved in their child's education, seize the opportunity. Find ways to involve parents who have questions or concerns in a way that allows them to see the challenges and opportunities for their child. Would a tour of the class or school be appropriate? Are there groups or organizations in the district that might help address parents' concerns?

• **Be sympathetic, but professional.** Parents might come to you with a high level of emotion. It is important to sympathize in these moments, while also being able to professionally address the concern or problem when possible.

• **Productively engage with your school board and administrative governance.** As the legal discussion above notes, school boards (and increasingly, state legislatures) exercise considerable discretion in curriculum choices or charting the direction of day-to-day instruction. They (legislators and school board members) need to hear from you. Your expertise and experience are valuable; bring your perspective to the table as appropriate.

Given today's political context, assertions of parental rights and control over curriculum likely won't subside. Indeed, they might continue or grow in the near term. But school boards have great discretion to implement curricular choices—even in the face of parental objections. The law has generally been clear on this point, tilting the scales in favor of school districts and leaders. ●

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