

Can parents opt out of public-school curriculum requirements?

Recently, a school in Utah made national headlines when it allowed parents to opt their children out of Black History Month curriculum. The school eventually reversed its decision, but not before a significant backlash emerged. Closer to home, the Illinois legislature enacted Public Law 101-0227 requiring that as of July 1, 2020, Illinois public schools must include a study of the role and contributions of LGBTQ+ individuals in the history of this country and this State and this has raised questions about whether parents can opt out of this, as well as other curriculum mandates. Generally, the answer is no, with some limited exceptions. This newsletter attempts to break down this complex topic and assist you in addressing opt-out requests and curriculum complaints.

1 Can parents opt out of curriculum content?

Generally, no. There are several reasons parents/guardians can't opt their children out of curriculum mandates. First, the Illinois General Assembly states that the "primary purpose of schooling is the transmission of knowledge and culture through which children learn in areas necessary to their continuing development and entry into the world of work." 105 ILCS 5/27-1. This means that public schools have the responsibility to provide an inclusive education that provides students with the knowledge and skills to be successful adults and meaningfully contribute to our society. This starts with a diverse education that stimulates educational curiosity, an understanding of multiple perspectives, and knowledge to make informed decisions.





To assist with this, State law mandates certain curriculum content. For instance, Illinois districts must provide instruction across a variety of areas such as physical education, civics education, character education, internet safety, and consumer education. Specific to history, schools must include a study on the holocaust and genocide, black history, and the history of women. While these are only a few of the areas districts are required to address, this list of curriculum mandates continues to expand and is based on areas that have been determined to be necessary to meet the primary school purpose defined by the General Assembly.

Case law also supports that students cannot opt out of required curriculum. In *Brown v. Hot, Sexy and Safer Prods. Inc.* parents of two high school students filed suit claiming that their required attendance at a school assembly about AIDS and sex education violated their privacy rights and rights to an environment free from sexual harassment. 68 F.3d 525, 529 (1st Cir. 1995). The First Circuit upheld a dismissal of all claims. *Id.* at 541. The court reasoned that while parents have a right to choose a specific educational program for their child, such as religious instruction at a private school or learning a specific foreign language, this does not extend to the “right to dictate the curriculum at the

public school to which they have chosen to send their children.” *Id.* at 533. The court clarified that in the first example, the state is “proscribing parents from educating their children” while the second example involves “parents proscribing what the state shall teach their children.” *Id.* at 534. If all parents were allowed to make this decision, schools would be required to create an individualized curriculum for each child every time a parent had a moral disagreement with the curriculum being taught, which would unfairly burden school districts. *Id.*

Not only would it be unduly burdensome for schools to create an individualized curriculum for each student based on a parent’s moral disagreement with the curriculum, but it would also conflict with the school’s primary purpose of transmitting knowledge and culture necessary to assist in a student’s development and entry into the world of work. For these reasons, parents/guardians may generally not opt out of the required curriculum.



2 Are there any areas in which a parent can opt out?

Yes. Under Illinois law, parents can opt their children out of the following curriculum mandates:

- Comprehensive sex education;
- Family life class;
- HIV/AIDS and sexually transmitted diseases;
- Avoiding sexual abuse;
- Instruction on organ/tissue and blood donor and transplantation programs;
- Animal dissection.

While schools may not require students to participate in instruction on these topics, School Code is silent about how parents/guardians may request their child's attendance be waived. It is recommended that districts have a procedure in place to notify parents/guardians when these topics will be discussed and the process for opting out of this instruction.

3 Can a parent challenge the use of certain curricular materials?

Generally, each district should have a policy for addressing suggestions or complaints about materials, and a parent/guardian may request their child be exempt from using

specific materials, although a district is not automatically required to accommodate this request. A student would only be entitled to an accommodation if the use of the material would burden the student's free exercise of religion and the requirement did not have a compelling state interest. Merely being exposed to ideas will likely not burden a student's free exercise right; however, requiring a student to do something that conflicts with the student's religious belief would be a burden and would require a compelling state interest to enforce the requirement. For example, a student may have a religious objection to participating in animal dissection, and if there wasn't already a state law allowing parents/guardians to opt out, this would likely be an area where a reasonable accommodation of allowing an alternative method of participation would be necessary.



4 What factors should districts consider when reviewing a complaint about curricular materials?

While each decision must be made on a case-by-case basis, some of the factors districts might consider when responding to a complaint about curricular materials include:

- Alignment to standards;
- Alignment to district philosophy and objectives;
- The process to adopt the materials (are they part of the core program or supplemental, were they reviewed by a committee, etc.);
- Whether the materials are required or optional for student use;
- Whether there are reasonable alternatives that can be provided to the student.

As the court in *Brown v. Hot, Sexy and Safer Prods. Inc.* reasoned, districts can't be expected to create an individualized curriculum for each child every time a parent had a moral disagreement with the curriculum being taught and the material used to do so, however, sometimes these complaints may provide a district with an opportunity to review materials to make sure they align with the areas above. If not, it may be a chance to make changes to continue to improve the effectiveness of instruction for all students.

Addressing curricular complaints can be complex. However, parents generally do not have the right to opt their children out of curriculum mandates. Additionally, while school districts are not required to create an individualized curriculum for each child, there may be instances in which accommodations may be necessary.

Please feel free to reach out to a kb attorney if you have any questions or would like to discuss how to navigate these requests.

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