

No. \_\_\_\_\_

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**In the Supreme Court of the United States**

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TAMER MAHMOUD AND ENAS BARAKAT; JEFF AND SVITLANA  
ROMAN; CHRIS AND MELISSA PERSAK, IN THEIR INDIVIDUAL  
CAPACITIES AND EX REL. THEIR MINOR CHILDREN; AND KIDS FIRST,  
AN UNINCORPORATED ASSOCIATION,

*Petitioners,*

v.

THOMAS W. TAYLOR, IN HIS OFFICIAL CAPACITY AS  
SUPERINTENDENT OF THE MONTGOMERY COUNTY BOARD OF  
EDUCATION; THE MONTGOMERY COUNTY BOARD OF EDUCATION;  
AND SHEBRA EVANS, LYNNE HARRIS, GRACE RIVERA-OVEN, KARLA  
SILVESTRE, REBECCA SMONDROWSKI, BRENDA WOLFF, AND JULIE  
YANG, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE BOARD  
OF EDUCATION,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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**PETITIONERS' APPENDIX**

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**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 23-1890**

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TAMER MAHMOUD; ENAS BARAKAT; JEFF ROMAN; SVITLANA ROMAN; CHRIS PERSAK; MELISSA PERSAK, in their individual capacities and ex rel. their minor children; KIDS FIRST, an unincorporated association,

Plaintiffs – Appellants,

v.

MONIFA B. MCKNIGHT; SHEBRA EVANS; LYNNE HARRIS; GRACE RIVERA-OVEN; KARLA SILVESTRE; REBECCA SMONDROWSKI; BRENDA WOLFF; JULIE YANG; MONTGOMERY COUNTY BOARD OF EDUCATION,

Defendants – Appellees.

-----  
DOUGLAS LAYCOCK, Professor; RICHARD W. GARNETT, Professor; HELEN M. ALVARE, Professor; THOMAS C. BERG, Professor; MICHAEL W. MCCONNELL, Professor; NICHOLAS BROWN; ZEINA EL DEBS; TIMOTHY JANSSE; DAGMAR JANSSE; STEPHANIE PATE; JEWISH COALITION FOR RELIGIOUS LIBERTY; COALITION OF VIRTUE; ISLAM AND RELIGIOUS FREEDOM

ACTION TEAM; COALITION FOR JEWISH VALUES; COMMONWEALTH OF VIRGINIA AND 17 OTHER STATES; ETHICS AND PUBLIC POLICY CENTER; ERIC DEGROFF, Professor; COMMONWEALTH OF VIRGINIA AND 22 OTHER STATES; ADVANCING AMERICAN FREEDOM, INC.; PAUL TELLER; ALASKA FAMILY COUNCIL; AMERICAN FAMILY ASSOCIATION ACTION; AMERICAN VALUES; CATHOLIC VOTE; CENTER FOR POLITICAL RENEWAL; CHRISTIAN LAW ASSOCIATION; CHRISTIANS ENGAGED; EAGLE FORUM; FRONTLINE POLICY COUNCIL; IDAHO FAMILY POLICY CENTER; INTERNATIONAL CONFERENCE OF EVANGELICAL CHAPLAIN ENDORSERS; MISSOURI CENTER-RIGHT COALITION; MINNESOTA FAMILY COUNCIL; MOMS FOR LIBERTY; NATIONAL ASSOCIATION OF PARENTS d/b/a PARENTSUSA; NEW JERSEY FAMILY FOUNDATION; NEW MEXICO FAMILY ACTION MOVEMENT; SETTING THINGS RIGHT; THE FAMILY FOUNDATION; THE JUSTICE FOUNDATION,

*Amici Supporting Appellants.*

NATIONAL EDUCATION ASSOCIATION; MARYLAND STATE EDUCATION ASSOCIATION; MONTGOMERY COUNTY EDUCATION ASSOCIATION; PROFESSOR LAWRENCE G. SAGER; PROFESSOR NELSON TEBBE; PROFESSOR JUSTIN DRIVER; AMERICAN CIVIL LIBERTIES UNION; AMERICAN CIVIL LIBERTIES UNION OF MARYLAND; LAMBDA LEGAL DEFENSE AND EDUCATION FUND, INC.; GLBTQ LEGAL ADVOCATES & DEFENDERS; NATIONAL

CENTER FOR LESBIAN RIGHTS; HUMAN RIGHTS; CAMPAIGN FOUNDATION; THE TREVOR PROJECT, INC; GLSEN, INC.; PFLAG, INC.; PFLAG REGIONAL CHAPTERS; EQUALITY NORTH CAROLINA; SOUTH CAROLINA EQUALITY, INC.; MOCO PRIDE CENTER; FCPS PRIDE; RAINBOW YOUTH ALLIANCE; SUPPORTING AND MENTORING YOUTH ADVOCATES AND LEADERS; WHITMAN-WALKER HEALTH; WHITMAN-WALKER INSTITUTE; MARYLAND; MASSACHUSETTS, CALIFORNIA, CONNECTICUT; DELAWARE; THE DISTRICT OF COLUMBIA; HAWAII; ILLINOIS; MAINE; MICHIGAN; MINNESOTA; NEVADA; NEW YORK; NEW JERSEY; OREGON; PENNSYLVANIA; RHODE ISLAND; VERMONT; WASHINGTON,

Amici Supporting Appellees.

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Appeal from the United States District Court for the District of Maryland, at Greenbelt. Deborah Lynn Boardman, District Judge. (8:23-cv-01380-DLB)

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Argued: December 5, 2023      Decided: May 15, 2024

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Before AGEE, QUATTLEBAUM and BENJAMIN,  
Circuit Judges.

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Affirmed by published opinion. Judge Agee wrote the opinion in which Judge Benjamin joined. Judge Quattlebaum wrote a dissenting opinion.

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**ARGUED:** Eric S. Baxter, THE BECKET FUND FOR RELIGIOUS LIBERTY, Washington, D.C., for Appellants. Alan E. Schoenfeld, WILMERHALE LLP, New York, New York, for Appellees. **ON BRIEF:** William J. Haun, Michael J. O'Brien, Colten L. Stanberry, THE BECKET FUND FOR RELIGIOUS LIBERTY, Washington, D.C., for Appellants. Bruce M. Berman, Joseph M. Meyer, Jeremy W. Brinster, Washington, D.C., Emily Barnet, WILMERHALE LLP, New York, New York, for Appellees. Christopher Mills, SPERO LAW LLC, Charleston, South Carolina, for Amici Professors Douglas Laycock, Richard W. Garnett, Helen M. Alvaré, Thomas C. Berg, Michael W. McConnell, and Eric DeGroff. Paul R. Rivera, Rockville, Maryland; Steven W. Fitschen, James A. Davids, NATIONAL LEGAL FOUNDATION, Chesapeake, Virginia; Frederick W. Claybrook, Jr., CLAYBROOK LLC, Washington, D.C., for Amici for Parents Nicholas Brown, Zeina El Debs, Timothy Janss, Dagmar Janss, and Stephanie Pate. Howard Slugh, Washington, D.C., for Amici Jewish Coalition for Religious Liberty, Coalition of Virtue, Islam and Religious Freedom Action Team, and Coalition for Jewish Values. Jason S. Miyares, Attorney General, Andrew N. Ferguson, Solicitor General, Kevin M. Gallagher, Deputy Solicitor General, Annie Chiang, Assistant Solicitor General, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Amicus Commonwealth of Virginia. Steve Marshall, Attorney General, OFFICE OF THE

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GENERAL OF PENNSYLVANIA, Harrisburg, Pennsylvania, for Amicus Commonwealth of Pennsylvania. Charity R. Clark, Attorney General, OFFICE OF THE ATTORNEY GENERAL OF VERMONT, Montpelier, Vermont, for Amicus State of Vermont.

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AGEE, Circuit Judge:

Parents whose children attend Montgomery County Public Schools in Maryland contend that the Montgomery County Board of Education's ("the Board's") refusal to provide notice and an opportunity to opt out from their children's exposure to certain books and related discussions violates federal and state law. At the outset of the litigation, the Parents moved for a preliminary injunction to require the Board to provide such notice and an opt-out option. After the district court denied their motion, the Parents filed this interlocutory appeal. We take no view on whether the Parents will be able to present evidence sufficient to support any of their various theories once they have the opportunity to develop a record as to the circumstances surrounding the Board's decision and how the challenged texts are actually being used in schools. At this early stage, however, given the Parents' broad claims, the very high burden required to obtain a preliminary injunction, and the scant record before us, we are constrained to affirm the district court's order denying a preliminary injunction.

**I.****A. The Storybooks & Board Policy**

In October 2022, the Board announced that, through its regular curriculum adoption process, it had approved a group of “LGBTQ-Inclusive Books as part of the English Language Arts Curriculum” for use in Montgomery County Public Schools. J.A. 540. These texts, which we will refer to as “the Storybooks,” are ostensibly “used to assist students with mastering reading concepts like answering questions about characters, retelling key events about characters in a story, and drawing inferences about story characters based on their actions.” J.A. 541. While their individual contents vary, the Storybooks as a whole express their authors’ views on sexual orientation and gender identity by portraying homosexual, transgender, and non-binary characters in various situations. For example, the alphabet primer *Pride Puppy!*, which is the sole text expressly approved for use in pre-Kindergarten and Head Start classrooms, depicts a family whose puppy gets lost amidst a LGBTQ-pride parade, with each page focused on a letter of the alphabet. The three-and four-year-old audience is invited to look for items such as “[drag]king,” “leather,” “lip ring,” “[drag]queen,” and “underwear.” J.A. 98 (brackets in original); see J.A. 82–99 (reproducing Robin Stevenson, *Pride Puppy!* (2021)).<sup>1</sup>

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<sup>1</sup> In another book, *Born Ready: The True Story of a Boy Named Penelope*, approved for use in Kindergarten through Grade 5 and targeted for use in Grade 5, the main character is a biological girl who becomes upset when others say, “you look like your sister,” J.A. 244, because “[i]nside I’m a boy. When I close my eyes and

The record provides little explanation of how the Storybooks have been, or will be, integrated into the larger array of books offered as part of the Language Arts curriculum. But when opposing the motion for a preliminary injunction, the Board submitted a declaration from the Associate Superintendent of Curriculum and Instructional Programs for Montgomery County Public Schools that addressed the school system’s purpose in adopting and its intended use of the Storybooks. Her declaration states that to “prepare[]principals and teachers for the introduction of” the Storybooks into the curriculum, the school system provided guidance and training opportunities, including statements that the Storybooks were not “planned” to be part of “explicit instruction on gender identity and sexual orientation in elementary school, and that no student or adult is asked to change how they feel about these issues.” J.A. 540–41. Teachers were instead expected to “incorporate the [Storybooks] into the curriculum in the same way that other books are used, namely, to put them on a shelf for students to find on their own; to recommend a book to a student who would enjoy it; to offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud” for all students in the class. J.A. 540–41. Although the adoption of the Storybooks came with the expectation that teachers would incorporate them into the classroom environment in some way, the

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dream, I’m a boy,” J.A. 248. Penelope’s family is supportive, and “make[s] a plan to tell everyone” that Penelope is a boy even if it “doesn’t make sense” to them because “[n]ot everything *needs* to make sense. *This is about love.*” J.A. 255, 259; see J.A. 242–76 (reproducing Jodie Patterson, *Born Ready: The True Story of a Boy Named Penelope*(2021)).

Associate Superintendent represented that the decision about which books to use and how they'd be used in an individual classroom is left to each teacher's discretion. J.A. 541 ("Teachers have a choice regarding which [of the Storybooks] to use and when to use them throughout each unit. . . . Teachers cannot, however, elect not to use the [Storybooks] at all.").

As part of the Storybooks' rollout, Montgomery County teachers and administrators were provided access to additional materials "to support" them in responding to inquiries about the Storybooks' contents. J.A. 600. These materials, which are not part of the student-facing texts, include a number of potential questions that the Storybooks may generate from students and their caregivers, along with sample answers and conversation points to justify the Storybooks. For example, if a student says "Being \_\_\_\_\_ (gay, lesbian, queer, etc) is wrong and not allowed in my religion," teachers "can respond," "I understand that is what you believe, but not everyone believes that. We don't have to understand or support a person's identity to treat them with respect and kindness." J.A. 595. The guidance also counsels that if a student says that "a girl . . . can only like boys because she's a girl," the teacher can "[d]isrupt the either/or thinking by saying something like: actually, people of any gender can like whoever they like. . . . How do you think it would make (character's name)to hear you say that? Do you think it's fair for people to decide for us who we can and can't like?" J.A. 595 (emphasis added). If a student asks what it means to be transgender, the teacher could explain, "When we're born, people make a guess about our gender and label us 'boy' or 'girl' based on our body parts. Sometimes they're right and sometimes they're wrong

. . . Our body parts do not decide our gender. Our gender comes from our inside[.]” J.A. 596.

In terms of responding to queries from parents or caregivers, the additional materials include such recommendations as disagreeing with concerns that elementary-age children are “too young to be learning about gender and sexual[] identity.” J.A. 600. It prompts that teachers could respond to such concerns by observing that “[c]hildren are already learning about it” because “[m]essages about gender are everywhere,” and that “[b]eginning these conversations in elementary school will help young people develop empathy for a diverse group of people and learn about identities that might relate to their families or even themselves.” J.A. 600. In response to a caregiver’s concern that values in the books “go against the values we are instilling . . . at home,” the guidance suggests reiterating that “[t]he purpose of learning about gender and sexual[] identity diversity is to demonstrate that children are unique and that there is no single way to be a boy, girl, or any other gender. If a child does not agree with or understand another student’s . . . identity . . . , they do not have to change how they feel about it.” J.A. 601.

Almost as soon as the Storybooks were first adopted and integrated into Montgomery County schools during the 2022–2023 academic year, numerous teachers, administrators, and parents began voicing concerns about their efficacy and age appropriateness. Some complaints were based on religious grounds, but many were not. For instance, several elementary school principals signed onto a document that identified numerous instances in the Storybooks of age-inappropriate content such as words

being used without definitions; inherent problems with depicting young children “falling in love” with another individual regardless of orientation; and the overall difficulty of some of the concepts presented. J.A. 574. Many parents, including the eventual plaintiffs in this case, expressed concerns about having their children exposed to content at odds with their religious faith or that they deemed to be inappropriate for their children’s age and development. In short, the Storybooks’ rollout was contentious and many caregivers sought—for religious and secular reasons—to have their children exempted from the Storybooks.

During the first year of the Storybooks’ inclusion in the Language Arts curriculum, parents were provided notice and the opportunity to opt out of their use through agreements with individual principals and teachers. This accommodation appeared to be in line with the County’s 2022-2023 Guidelines for Respecting Religious Diversity, which encouraged schools “to make reasonable and feasible adjustments to the instructional program to accommodate requests . . . to be excused from specific classroom discussions or activities that [parents or students] believe would impose a substantial burden on their religious beliefs,” subject to alternative assignments. J.A. 67. As alleged in the amended complaint, on March 22, 2023, the Board publicly reiterated that when a teacher chose to use one of the Storybooks in their classrooms, “a notification goes out to parents about the book,” and, if a caregiver chooses to opt their child out, the teacher would “find a substitute text for that student that supports” the same language arts standards and objectives. J.A. 31.

The following day, without explanation, the Board announced in a complete about-face that a notice and opt-out option would no longer be permitted. Although the revised policy became effective immediately, old requests for accommodations were grandfathered in through the end of the 2022–2023 academic year, making the current 2023–2024 academic year the first year for which no students or their parents are provided notice or the opportunity to opt out from the Storybooks.<sup>2</sup>

What motivated the policy change is largely unknown, but the Associate Superintendent’s declaration asserts several after-the-fact explanations. First, it claims that the original notice-and-opt-out policy had led to “high student absenteeism,” J.A. 543, and it cited concerns from

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<sup>2</sup> Although not directly cited in the amended complaint or filings to date, we note that according to the Board’s website, its 2023-2024 Guidelines have since been amended considerably, permitting students to be “excused from noncurricular activities . . . that involve materials or practices in conflict with a family’s religious, and/or other, practices,” but prohibiting *all* “requests for exemptions from required curricular instruction or the use of curricular instructional materials based on religious, and/or other, objections” and eliminating the language encouraging accommodations when the instruction substantially burdens a parent or child’s free-exercise rights. *2023-2024 Guidelines for Respecting Religious Diversity*, 3–4, <https://perma.cc/SB9Z-SJSC>.

Because we conclude that the Parents have not yet come forward with evidence that would establish a burden for purposes of obtaining a preliminary injunction on their claim as it’s been formulated thus far, we do not delve into the constitutionality of the Guidelines in their current form. Any impact this revised written language has on the Parents’ claims or arguments would need to be fleshed out in the first instance in the district court if raised by the Parents.



principals and teachers regarding the feasibility of “accommodat[ing] the growing number of opt out requests without causing significant disruptions to the classroom environment and undermining [the school system’s] educational mission,” J.A. 542. It also represented that allowing notice and an opt-out option placed too great a burden on school staff charged with (1) remembering which students could be present during lessons involving the Storybooks or otherwise be permitted access to those books, and (2) developing alternative plans for those students who could not be present across a range of language-arts activities. Lastly, the declaration recounts the Board’s concern about stigmatizing and isolating individuals whose circumstances were reflected in the Storybooks.

#### B. The Litigation

Two months after the Board changed its policy and prohibited notice and an opt-out option, the Parents filed a complaint in the United States District Court for the District of Maryland.<sup>3</sup> They subsequently amended the complaint to add a plaintiff.<sup>4</sup> The

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<sup>3</sup> The named individual plaintiffs are Tamer Mahmoud and Enas Barakat, who are Muslim; Jeff and Svitlana Roman, who are Roman Catholic and Ukrainian Orthodox, respectively; and Chris and Melissa Persak, who are Catholic. Each of these families have one or more elementary-school-age children attending Montgomery County Public Schools. They’ve sued in their individual capacities and *ex relatione* their children.

The named defendants are the Board and its individual members, sued in their official capacities.

<sup>4</sup> The added plaintiff is Kids First, “an unincorporated association of parents and teachers” advocating “for the return of parental notice and opt-out rights” in Montgomery County Public

amended complaint alleges six claims, which can be grouped into four bases for asserting the Board's decision violates the Parents' and their children's rights: (1) free exercise; (2) free speech; (3) due process; and (4) Maryland state law.

The Parents do not challenge the Board's adoption of the Storybooks or seek to ban their use in Montgomery County Public Schools. Instead, the Parents contend that the cited legal bases require that they have notice and the opportunity to opt out "of classroom instruction on such sensitive religious and ideological issues." J.A. 13. Their overarching assertion is broad, contending that it violates the Free Exercise Clause not to allow individualized opt-outs from all potential uses of the Storybooks within the Language Arts curriculum as well as all discussions that may arise related to their use. Consistent with those arguments, the amended complaint seeks a declaratory judgment that the revised policy violates the cited federal and state constitutional provisions; requests injunctive relief prohibiting forced exposure to the Storybooks and requiring notice and an

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Schools. J.A. 13–14. Kids First did not join in the Parents' motion for a preliminary injunction. Although the district court expressed concern about the Parents' arguments in support of the motion that relied on one member of Kids First's declaration, it nonetheless considered those arguments in denying a preliminary injunction.

Because Kids First did not join the motion for a preliminary injunction and given the strict standards by which such a motion is considered, we will not consider these arguments in this appeal. We express no view on arguments Kids First may raise in the district court and that court is free to consider and assess the merits or barriers to reaching the merits of any of those claims as the litigation proceeds.

opportunity for opt-outs; and asks for nominal and actual damages.

While the specifics vary, the Parents all cite their religious views as spurring their desire to opt their children out of the Storybooks. Broadly speaking, they believe they have a religious duty to train their children in accord with their faiths on what it means to be male and female; the institution of marriage; human sexuality; and related themes. Their respective religious faiths direct and inform their views about these issues, and they want to maintain control over what, how, and when these matters are introduced to their children. Because the Parents believe that the “ideological view[s] of family life and sexuality” portrayed in the Storybooks conflict with their views on these and related topics, they object to their children being exposed to them. J.A. 18. Accordingly, they assert that the Board’s refusal to permit notice and an opportunity to opt out from use or discussions relating to the Storybooks violates the free exercise of their religion and their due process right to direct their children’s education.<sup>5</sup>

Shortly after filing their complaint, the Parents moved for a preliminary injunction based only on the alleged violations of the Free Exercise and Due

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<sup>5</sup> The Parents’ challenge stretches beyond their children reading (or being read) the Storybooks to *any* classroom conversations about the themes and issues presented in the Storybooks. Opening Br. 34 (“[T]he Parents object to their children’s *presence* in situations that prematurely expose them to ideas about sexuality and gender in conflict with their religious beliefs.”).

Process Clauses of the federal Constitution.<sup>6</sup> They argued that they had shown a likelihood of succeeding on the merits of their free exercise and due process claims because the Board's refusal to provide notice and an opt-out opportunity was subject to strict scrutiny and could not withstand that review.

The Parents relied on four lines of Supreme Court cases in advocating why strict scrutiny should apply to their free exercise claims: (1) *Wisconsin v. Yoder*, 406 U.S. 205 (1972), demands strict scrutiny of any policy that interferes with a parent's right to direct the religious upbringing of his or her children; (2) *Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021), provides for strict scrutiny of any policy that permits discretionary, individualized exemptions; (3) *Tandon v. Newsom*, 141 S. Ct. 1294 (2021) (per curiam), states that any policy treating religious exemptions worse than secular exemptions triggers strict scrutiny; and (4) *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993), and *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018), call for strict scrutiny when official action occurs under circumstances demonstrating governmental hostility toward religion.

The Parents argued that strict scrutiny also applied to their due process claim because it was being asserted in conjunction with a free exercise claim, and

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<sup>6</sup> The Parents' motion did not rely on the First Amendment free speech or Maryland state law claims. As such, arguments related to them are not before us and it remains for the district court to consider them in the first instance.

thus presented a so-called “hybrid rights” claim.<sup>7</sup> But the crux of their claim is that they have a fundamental right to direct the religious and educational upbringing of their children, which the Board has violated by denying them a right to notice and an opt-out opportunity. From this view that strict scrutiny applied to their claims, the Parents argued that the Board’s refusal to allow notice and an opportunity to opt out of the Storybooks could not withstand that review given that the Board lacked a compelling interest for its policy and the policy was not the least restrictive means for achieving any asserted interest.<sup>8</sup>

After briefing and a hearing, the district court declined to issue a preliminary injunction. In the court’s view, the Parents had failed to demonstrate a cognizable burden to the free exercise of their religion. And without that showing, there was no reason to consider the Parents’ arguments as to the other

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<sup>7</sup> Under a hybrid-rights theory, a claim alleging a violation of the U.S. Constitution that would ordinarily be subject to rational basis review should instead be subjected to strict (Continued) scrutiny because it is intertwined with an alleged violation of another provision of the U.S. Constitution. *See, e.g., Combs v. Homer-Ctr. Sch. Dist.*, 540 F.3d 231, 243–47 (3d Cir. 2008) (explaining the hybrid-rights theory). Applied here, the Parents maintained that their due process claim alleging a right to direct the education of their children, which is normally subject to rational basis review, should be subjected to strict scrutiny because it relates to their free exercise claim and thus asserts a violation of their right to direct the *religious education* of their children.

<sup>8</sup> The parties also briefed the other requirements to obtaining a preliminary injunction, but the focus has been on the likelihood of success on the merits. Because we agree that this issue resolves our review of the district court’s denial of relief, we similarly focus our discussion.

aspects of a free exercise claim because they could not show a likelihood of success on the merits. The district court also denied a preliminary injunction based on the Parents' due process claim. It expressed some skepticism as to whether this Court would recognize the hybrid-rights theory that the Parents advanced given that we have not yet done so and other circuit courts of appeals are divided on the issue. Regardless, the district court observed that, even in jurisdictions that have accepted a hybrid-rights argument, the plaintiff's free exercise claim must be colorable for strict scrutiny to apply, and the Parents' claim was not. Accordingly, the court applied rational basis review to this claim, observed the Parents did not contest that the revised policy would survive such review, and agreed with that conclusion.

The Parents noted a timely interlocutory appeal, and we have jurisdiction under 28 U.S.C. § 1292(a)(1). In conjunction with filing their notice of appeal, the Parents filed an emergency motion for preliminary injunctive relief pending resolution of the appeal. We denied that request, but accelerated briefing and expedited oral argument. In the interim, the district court granted the parties' joint motion to stay further proceedings in that court pending this appeal.

## II.

A party seeking a preliminary injunction faces an exceedingly high burden. As the Supreme Court has recognized, “[a] preliminary injunction is an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Each request requires courts to “balance the competing claims of injury,” “consider the effect on each party,” and “pay particular regard for the public

consequences” of issuing a preliminary injunction. *Id.* (citations omitted).

To be eligible for a preliminary injunction, plaintiffs must show that (1) they are “likely to succeed on the merits”; (2) they are “likely to suffer irreparable harm in the absence of preliminary relief”; (3) “the balance of the equities tips in [their] favor”; and (4) “an injunction is in the public interest.” *Vitkus v. Blinken*, 79 F.4th 352, 361 (4th Cir. 2023) (citation omitted). A failure on any factor is a basis for denying a preliminary injunction, regardless of the remaining factors. *Id.*

“A party . . . is not required to prove his case in full at a preliminary-injunction hearing,” and the process ordinarily entails procedures “that are less formal and [considered upon] evidence that is less complete than in a trial on the merits.” *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). Despite considering the case at the early stages of the proceedings, to make the requisite showings, a plaintiff seeking a preliminary injunction generally cannot rely on mere allegations in the complaint but must come forward with some evidence showing a likelihood of success on the merits. *See Winter*, 555 U.S. at 20–21.

Plaintiffs appealing the denial of a preliminary injunction face an even higher burden as they must show that the district court abused its discretion in denying relief. *Id.* Under that familiar standard, however, the Court reviews de novo the district court’s legal conclusions, as a district court abuses its discretion “when it misapprehends the law with respect to the underlying issues in litigation.” *Id.* at 362 (cleaned up). But “[o]ur mere disagreement with the district court does not make its finding clearly

erroneous” and we are not concerned with “whether we would have granted or denied the” Parents’ request. *Pierce v. N.C. State Bd. of Elections*, 97 F.4th 194, 210 (4th Cir. 2024) (cleaned up).

### III.

#### A.

Religious liberty is indelibly embedded in American history and the U.S. Constitution. *Sch. Dist. v. Schempp*, 374 U.S. 203, 212–14 (1963). The Free Exercise Clause of the First Amendment to the Constitution, which is made applicable to States under the Fourteenth Amendment, *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2421 (2022), provides that governments “shall make no law . . . prohibiting the free exercise” of religion, U.S. Const. amend. I. This protection “requires government respect for, and noninterference with, the religious beliefs and practices of our Nation’s people.” *Cutter v. Wilkinson*, 544 U.S. 709, 719 (2005). And in considering the claims of religious adherents, the Supreme Court has reiterated that “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Rev. Bd.*, 450 U.S. 707, 714 (1981).<sup>9</sup>

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<sup>9</sup> With limited exceptions not at issue here, courts do not question the sincerity of a plaintiff’s religious beliefs when assessing a free-exercise claim. *See Thomas*, 450 U.S. at 715–16 (“One can, of course, imagine an asserted claim so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause; but . . . the guarantee of free exercise is not limited to beliefs which are shared by all of



Many matters fall under the ambit of the Free Exercise Clause, encompassing both direct and indirect coercion of religion. Perhaps most obviously, the Clause applies to government action compelling “religious beliefs as such.” *Emp. Div. v. Smith*, 494 U.S. 872, 877 (1990) (emphasis omitted). As the Supreme Court has explained, “[t]he government may not compel affirmation of religious belief, punish the expression of religious doctrines it believes to be false, impose special disabilities on the basis of religious views or religious status, or lend its power to one or the other side in controversies over religious authority or dogma.” *Id.* (internal citations omitted).

But the Clause does more than protect “the right to harbor religious beliefs inwardly and secretly.” *Kennedy*, 142 S. Ct. at 2421. It also safeguards “the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life through ‘the performance of (or abstention from) physical acts.’” *Id.* (quoting *Smith*, 494 U.S. at 877). Such “physical acts” include “assembling with others for a worship service, participating in sacramental use of bread and wine, proselytizing, [and] abstaining from certain foods or certain modes of transportation.” *Smith*, 494 U.S. at 877.

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the members of a religious sect. . . . [And] [c]ourts are not arbiters of scriptural interpretation.”).

And we do not question the sincerity of the Parents’ religious views. The question presented here is distinct—whether they have come forward with sufficient evidence at this stage to suggest a likelihood of success on the merits of their claim that their and their children’s free-exercise rights have been infringed by the Board’s policy not providing notice and an opt-out option when the Storybooks are used.

In addition to safeguarding against such types of direct coercion, the Clause also protects against “indirect coercion or penalties on the free exercise of religion.” *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 450 (1988). Thus, for example, the Free Exercise Clause is implicated when government action treats religious adherents “unequal[ly]” or “impose[s] special disabilities on the basis of religious status.” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019, 2021 (2017) (cleaned up). Indirect coercion can also occur when the government “disqualif[ies] otherwise eligible recipients from a public benefit solely because of their religious character.” *Espinoza v. Mont. Dep’t of Revenue*, 140 S. Ct. 2246, 2255 (2020) (cleaned up).

While the Free Exercise Clause casts a wide net of protection, it does so in a particular direction, being “written in terms of what the government cannot do to the individual, not in terms of what the individual can extract from the government.” *Bowen v. Roy*, 476 U.S. 693, 700 (1986) (quoting *Sherbert v. Verner*, 374 U.S. 398, 412 (1963) (Douglas, J., concurring)). This dividing line “between unconstitutional prohibitions on the free exercise of religion,” on the one hand, “and the legitimate conduct by government of its own affairs,” on the other, can be imprecise. *Lyng*, 485 U.S. at 451. But the Supreme Court has consistently reaffirmed the line’s existence: “Never to our knowledge has the Court interpreted the First Amendment to require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family.” *Bowen*, 476 U.S. at 699; *accord Lyng*, 485 U.S. at 450–51. Thus, as the Supreme Court has said in another context, “the Free Exercise Clause

does not require an exemption from a governmental program unless, at a minimum, inclusion in the program actually burdens the claimant's freedom to exercise religious rights." *Tony & Susan Alamo Found. v. Sec'y of Labor*, 471 U.S. 290, 303 (1985).

These principles mean that regardless of the specific nature of the government action at issue, a plaintiff alleging a free exercise claim bears the burden of "demonstrat[ing] an infringement of his rights under the Free Exercise . . . Clause[]." *Kennedy*, 142 S. Ct. at 2421. "If the plaintiff carries [that] burden[], the focus then shifts to the defendant to show that its actions were nonetheless justified and tailored consistent with the demands of [governing] case law." *Id.* Put another way, *if* the plaintiff has established that a government action has burdened his religious exercise, *then* the analysis shifts to whether the government can justify the limitation or intrusion under the applicable level of scrutiny. See *Christ Coll., Inc. v. Bd. of Supervisors*, No. 90-2406, 1991 WL 179102, \*4 (4th Cir. Sept. 13, 1991) (declining to resolve which level of scrutiny applied to appellants' claim because they "failed to establish the first element in any free exercise claim[:] they have not proved that the [challenged laws] burden their exercise of religion").

Many times, the burden that a particular government action places on a plaintiff's exercise of religion will be obvious and require little comment. When a school district disciplines a public school football coach for personally praying after a game, there is no dispute that the government action "burdened" the coach's religious practice of praying. *Kennedy*, 142 S. Ct. at 2422. Similarly, when a

government excludes certain entities from participating in a public benefit based on those entities' religious beliefs, it impermissibly, even if indirectly, penalizes them for their religious views. *Trinity Lutheran*, 137 S. Ct. at 2022. Regardless, the self-evident nature of proving the existence of a burden to religious practice in some cases does not excuse a plaintiff from satisfying that obligation in each case.

The Court's free exercise analysis does not end with proving the existence of a burden on religious exercise, however, because "[n]ot all burdens on religion are unconstitutional." *United States v. Lee*, 455 U.S. 252, 257 (1982). Governments may infringe on an individual's religious practice under certain circumstances. *Id.*

Over time, the Supreme Court has changed its articulation of what level of scrutiny applies to various types of laws. Under the currently applicable standard set out in *Employment Division v. Smith*, the Supreme Court held that "laws incidentally burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable."<sup>10</sup> *Fulton*, 141 S. Ct. at 1876 (citing *Smith*, 494 U.S. at 878–82); see *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 694 (2014) (reiterating that, under *Smith*'s articulation of the free exercise standard, "neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling

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<sup>10</sup> In 2021, despite being given the opportunity to revisit *Smith*'s approach to free exercise claims, the Supreme Court declined to do so. *Fulton*, 141 S. Ct. at 1876–77.

governmental interest” (quoting *City of Boerne v. Flores*, 521 U.S. 507, 514 (1997)); *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 424 (2006) (“In [*Smith*], this Court held that the Free Exercise Clause . . . does not prohibit governments from burdening religious practices through generally applicable laws.”).<sup>11</sup>

Laws that fall under *Smith*’s rubric are “subject only to rational basis review,” which “requires merely that the law at issue be rationally related to a legitimate governmental interest.” *Canaan Christian Church v. Montgomery Cnty.*, 29 F.4th 182, 198–99 (4th Cir. 2022) (cleaned up).

But, as *Smith* recognized, strict scrutiny *does* apply to laws that are not neutral or generally applicable, leaving any number of circumstances in which a particular government action would still be subject to this heightened level of review. 494 U.S. at 877–90. For example, government action might not be “neutral” because it intentionally discriminates or targets religious practice, *Church of Lukumi Babalu*

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<sup>11</sup> In *Smith*, two individuals “were fired from their jobs . . . because they ingested peyote for sacramental purposes at a ceremony of the Native American Church, of which both [were] members.” 494 U.S. at 874. They applied for unemployment compensation from the State of Oregon, but “were determined to be ineligible for benefits because they had been discharged for work-related ‘misconduct,’” *i.e.*, consuming peyote in violation of Oregon criminal law. *Id.* at 874–75. The upshot of the Supreme Court’s holding was that Oregon’s criminal law did not violate the Free Exercise Clause because it was a neutral, generally applicable prohibition of the ingestion of substances (including peyote) for *any* purpose, *id.* at 878–79, so the State could deny individuals “unemployment compensation when their dismissal results from use of the drug,” *id.* at 890.

*Aye, Inc.*, 508 U.S. at 532, or proceeds in a manner intolerant of religious beliefs or restricts practices because of their religious nature,” *Fulton*, 141 S. Ct. at 1877; see *Masterpiece Cakeshop*, 138 S. Ct. at 1730–32. Or it might not be “generally applicable” because it “invites the government to consider the particular reasons for a person’s conduct by providing a mechanism for individualized exemptions” or “prohibits religious conduct while permitting secular conduct that undermines the government’s asserted interests in a similar way.” *Fulton*, 141 S. Ct. at 1877 (cleaned up); see *Smith*, 494 U.S. at 884 (distinguishing from its holding instances involving “individualized governmental assessment of the reasons for the relevant conduct”). When strict scrutiny applies, the challenged government action will be upheld “only if it advances interests of the highest order and is narrowly tailored to achieve those interests.” *Fulton*, 141 S. Ct. at 1881 (cleaned up).

#### B.

Although the Parents’ briefing correctly recognizes that they must establish the existence of a burden, their analysis largely fuses that showing with their arguments about why the Board’s change in policy should be subject to (and fails) strict scrutiny.<sup>12</sup> That

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<sup>12</sup> The Parents took a somewhat different position in the district court, suggesting during the motions hearing that, under recent free-exercise case law, they did not need to show that the Board’s decision burdened their rights as part of a free exercise claim. *Mahmoud v. McKnight*, Civ. No. DLB-23-1380, 2023 WL 5487218, at \*15 n.8 (D. Md. Aug. 24, 2023). The Parents have not taken that position on appeal, though they do assert (Continued)

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that some recent Supreme Court cases state that some laws impose an “inherent burden” on religious exercise. Reply Br. 16.

We have not seen any indication that the Supreme Court has reversed course on requiring a showing of a burden, so we continue to look for this threshold showing in a free exercise claim. What *has* changed over time is how the Supreme Court has articulated its free exercise analysis. Before *Smith*, courts required plaintiffs to show that a challenged government action “substantial[ly] burden[ed]” religious exercise, at which point the analysis shifted to whether the government showed a compelling interest. *Burwell*, 573 U.S. at 693. The Supreme Court applied this earlier framework in cases such as *Yoder*. 406 U.S. at 219–21. *Smith*, however, “largely repudiated the method of analyzing free-exercise claims that had been used in cases like . . . *Yoder*” by reformulating the relevant inquiry. *Id.* at 693–94; *see also Firewalker-Fields v. Lee*, 58 F.4th 104, 114 n.2 (4th Cir. 2023) (recognizing that free exercise cases (like *Yoder*) relying on a “substantial burden” analysis were “overruled 30 years ago” by the Supreme Court and yet this language continues to be carried forward in contexts such as prisoner-rights cases where it “appears to be out-of-date,” but declining to resolve the open question because “the threshold standard [did] not matter” for purposes of deciding the case).

As noted earlier, under *Smith*’s articulation of the free exercise standard, “laws *incidentally* burdening religion are ordinarily not subject to strict scrutiny under the Free Exercise Clause so long as they are neutral and generally applicable.” *Fulton*, 141 S. Ct. at 1876 (emphasis added) (citing *Smith*, 494 U.S. at 878–82). Thus, it is sufficient for our purposes to recognize that even after *Smith*, a plaintiff’s failure to show that a challenged government action constitutes *any* burden on his religious conduct makes it unnecessary to proceed further in the analysis by determining or applying the appropriate level of scrutiny. *See Kennedy*, 142 S. Ct. at 2421–22; *cf. Navajo Nation v. U.S. Forest Serv.*, 535 F.3d 1058, 1076 (9th Cir. 2008) (recognizing “the Supreme Court’s repeated practice of concluding a government action ‘prohibits’ the free exercise of religion by determining whether the action places a ‘burden’ on the exercise of religion”).

said, they generally assert that the Board's failure to provide notice and an opportunity to opt out of the Storybooks coerces, directly or indirectly, their own and their children's religious beliefs and practices by exposing them to viewpoints at odds with their religious beliefs. To demonstrate this coercion, the Parents principally rely on *Yoder*, equating their objections to their children being "compel[led] . . . to participate in instruction prohibited by their faith," Opening Br. 24, to the Amish parents' successful objections to Wisconsin's compulsory secondary education laws in that case. They also maintain that the Board's decision has coerced them by requiring them to contradict their faith in order to access a public benefit or avoid exposing their children to objectionable views by incurring the costs of alternatives to public school.

To recap briefly, to show a cognizable burden, the Parents must show that the absence of an opt-out opportunity coerces them or their children to *believe* or *act* contrary to their religious views. This coercion can be both direct or indirect, meaning that a burden exists whenever government conduct either "compel[s] a violation of conscience" or "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs." *Thomas*, 450 U.S. at 717–18 (emphasis omitted).

1.

At the outset, we stress that our review is based on a very limited record developed as attachments to the amended complaint or filed in support and opposition to the motion for a preliminary injunction. That record includes declarations from the Parents outlining their religious views and objecting to their



children being exposed to ideas and being present during discussions involving viewpoints that contradict their religious views. *E.g.*, J.A. 404–05 (“Intentionally exposing our . . . son to activities and curriculum on sex, sexuality, and gender that undermine Islamic teaching on these subjects would . . . conflict with our religious duty to raise our children in accordance with our faith. . . . [F]orcing our son to participate in reading these books . . . would confuse his religious upbringing.”); J.A. 411–12 (“Having [teachers] teach principles about sexuality or gender identity that conflict with our religious beliefs significantly interferes with our ability to form his religious faith and religious outlook on life and is spiritually and emotionally harmful to his well-being.”); J.A. 414 (“We believe that exposing our elementary-aged daughters to viewpoints on sex, sexuality, and gender that contradict Catholic teaching on these subjects is inappropriate and conflicts with our religious duty to raise our children in accordance with Catholic teaching.”).<sup>13</sup>

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<sup>13</sup> The Parents also submitted a declaration from a non-party parent who is a member of plaintiff Kids First. But, as noted, Kids First did not join the motion for a preliminary injunction.

In addition, the Parents submitted a declaration from one of their attorneys to which they attached a Montgomery County elementary school newsletter from June 2023 announcing that as part of Pride Month, “each day in June, classrooms will read an inclusive, LGBTQ+ friendly book’ followed by a ‘community circle discussion.” J.A. 416. It’s not clear from the record, however, whether any of the Parents’ children attend the specific elementary school that published this newsletter. Nor is there information about whether the readings actually took place or the nature of any discussions that followed them.

In opposition to the motion, the Board submitted a declaration from the Associate Superintendent addressing the adoption of the Storybooks and the evolution of the opt-out policy, which we recounted in part earlier.

Critically, however, *none* of these declarations provides any information about how any teacher or school employee has actually used any of the Storybooks in the Parents' children's classrooms, how often the Storybooks are actually being used, what any child has been taught in conjunction with their use, or what conversations have ensued about their themes.

None of the documentary evidence submitted to the district court does so either. For example, the record contains emails between individual parents and school administrators regarding requests for opt-outs before the Board formally rejected that opportunity. It contains copies of the Storybooks and various Montgomery County Public School guidelines and curriculum goals. And it contains copies of at least some of the additional materials we discussed earlier that provided teachers and administrators with suggested answers for how to respond to caregiver and student questions that might arise related to the Storybooks.

In short, the record is threadbare.

2.

The Parents contend that the lack of an across-the-board notice and an opt-out opportunity relating to the Storybooks, in and of itself, coerces them and their children in the free exercise of their religion.

Considering that broad claim joined with the extremely limited record, we conclude the Parents have not shown a cognizable burden to support their free exercise claim. As such, they have not shown a likelihood of succeeding on the merits. Accordingly, the district court did not err in denying them a preliminary injunction as to the free exercise claim.

a.

As an initial matter, there's no evidence at present that the Board's decision not to permit opt-outs compels the Parents or their children to *change* their religious beliefs or conduct, either at school or elsewhere. *See Hobbie v. Unemp. Appeals Comm'n*, 480 U.S. 136, 140–41 (1987) (recognizing that coercion occurs when the government prescribes or proscribes religiously motivated conduct). Although the Parents allege that the Board's decision not to provide notice and an opt-out option "burdens [their] right to form their children on a matter of core religious exercise and parenting: how to understand who they are," J.A. 35, they do not show anything at this point about the Board's decision that affects what they teach their own children. For example, the Parents' declarations do not suggest, nor does the existing record show, that the Parents or their children have in fact been asked to affirm views contrary to their own views on gender or sexuality, to disavow views on these matters that their religion espouses, or otherwise affirmatively act in violation of their religious beliefs. We have no basis in the current record for concluding that schools have acted inconsistent with the Assistant Superintendent's declaration that "no student or adult is asked to change how they feel about these issues." J.A. 541. Instead, as the district court

observed, “[t]he [P]arents still may instruct their children on their religious beliefs regarding sexuality, marriage, and gender, and each family may place contrary views in its religious context.” *Mahmoud*, 2023 WL 5487218, at \*22. And “[n]o government action prevents the parents from freely discussing the topics raised in the [S]torybooks with their children or teaching their children as they wish.” *Id.*

b.

The Parents do not really take issue with the foregoing conclusion; instead, they argue that the Board’s decision nonetheless coerces religious exercise by compelling them to expose their children to views that are at odds with their religious faith. *E.g.*, Opening Br. 3 (asserting that they are being coerced into “exposing their children to the . . . Storybooks and related instruction”). Thus, it’s the *effect* of the Board’s failure to grant an opt-out opportunity—that children must be present when teachers use the Storybooks in their classrooms or have conversations related to their themes—that the Parents oppose.

But as previously discussed, Supreme Court precedent requires some sort of direct or indirect pressure to abandon religious beliefs or affirmatively act contrary to those beliefs. *E.g.*, *Lyng*, 485 U.S. at 450. And simply hearing about other views does not necessarily exert pressure to believe or act differently than one’s religious faith requires. *E.g.*, *Cal. Parents for the Equalization of Educ. Materials v. Torlakson*, 973 F.3d 1010, 1020 (9th Cir. 2020) (finding no cognizable burden to religious exercise because the curriculum the plaintiffs claimed to be “offensive to their religious beliefs” “d[id] not penalize, interfere with, or otherwise burden religious exercise”); *Parker*

*v. Hurley*, 514 F.3d 87, 90, 106 (1st Cir. 2008) (finding no cognizable burden from the lack of notice or the opportunity to opt out from children’s “*exposure* to books” that espouse views contrary to their religious faith when there was no evidence the school required “student[s] [to] agree with or affirm those ideas, or even participate in discussions about them” (emphasis added)); *Mozert v. Hawkins Cnty. Bd. of Educ.*, 827 F.2d 1058, 1065 (6th Cir. 1987) (finding no cognizable burden from assignments involving reading materials that contradicted the plaintiff-parents and their children’s religious views because those assignments did not compel the students to “engage in conduct that violated [their] religious convictions” such as “affirmation or denial or a religious belief, or performance or non-performance of a religious exercise or practice”). In the absence of that coercive effect, a government action does not burden religious exercise.<sup>14</sup>

To contend otherwise the Parents rely extensively on *Yoder*, asserting that their religious rights have been burdened for the same reasons the Supreme Court identified a free exercise violation in that case:

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<sup>14</sup> The dissenting opinion distinguishes these cases and others like them by asserting that this case involves “use . . . far beyond mere exposure to objectionable viewpoints,” *post*, at 58 & n.2, but the threadbare record developed to date does not support that (Continued) conclusion. As discussed, the contents of the books vary considerably as does their potential method of use within classrooms and the nature of any subsequent conversations. Until those dots can be shorn up, there’s no reasonable likelihood that the Parents can prevail on their assertion that the inability to opt out of the Storybooks violates their free exercise rights.

their children are being compelled to attend classroom instruction that violates their religious views. This argument that compelled presence or exposure necessarily establishes the existence of a burden relies on too expansive a reading of *Yoder*, a case which has been markedly circumscribed within free exercise precedent in the decades since it was decided.

In *Yoder*, “the Court held that Amish children could not be required to comply with a state law demanding that they remain in school until the age of 16 even though their religion required them to focus on uniquely Amish values and beliefs during their formative adolescent years.” *Burwell*, 573 U.S. at 694 (citing *Yoder*, 406 U.S. at 210–11, 234–36). Building on a record that the Supreme Court recognized “probably few other religious groups or sects could” develop, 406 U.S. at 236, the Court concluded that the Amish parents had demonstrated why requiring their children to attend formal secondary education compelled both the parents and their children “to perform acts undeniably at odds with fundamental tenets of their religious beliefs.” *Id.* at 218. Against that record, the Court observed that the state had not come forward with evidence that would justify overriding the burden imposed on the Amish parents and their children by requiring them to attend formal secondary education. *Id.* at 236; *accord Lyng*, 485 U.S. at 456–57 (discussing the state’s failure of proof in *Yoder* and reiterating that the compulsory attendance law was impermissibly “coercive in nature” because formal secondary education was “contrary to the Amish religion and way of life” (citation omitted)).

As the Supreme Court itself recognized in *Yoder*, its holding was tailored to the specific evidence in that

record regarding how Wisconsin’s compulsory secondary education law would have “inescapabl[y]” coerced the Amish to act or believe in violation of their religious views. 406 U.S. at 218. In the decades since *Yoder* was decided, other circuit courts of appeals have expressed a similar understanding of its limited holding, connecting its discussion to the unique record established concerning the Amish faith’s rejection of formal secondary education as a whole. *Cf. Combs v. Homer-Ctr. Sch. Dist.*, 540 F.3d 231, 250 (3d Cir. 2008) (“Parents favor a broad reading of *Yoder* and insist that it applies to all citizens. But *Yoder*’s reach is restricted by the Court’s limiting language and the facts suggesting an exceptional burden imposed on the plaintiffs.”); *Parker*, 514 F.3d at 100 (“Tellingly, *Yoder* emphasized that its holding was essentially sui generis, as few sects could make a similar showing of a unique and demanding religious way of life that is fundamentally incompatible with *any* schooling system.”); *Mozert*, 827 F.2d at 1067 (“*Yoder* rested on such a singular set of facts that we do not believe it can be held to announce a general rule that exposure without compulsion to act, believe, affirm or deny creates an unconstitutional burden.”).<sup>15</sup>

Based on the Supreme Court’s limiting language and confirmed by the views of our sister circuits, we

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<sup>15</sup> We have previously recognized how dependent *Yoder*’s analysis was on the unique record established in that case, including the unusual degree of separation from modern life that the Amish religious faith compels, though we applied the pre-*Smith* balancing test and decided the case based on the state’s overriding interests in enforcing the law. *Duro v. Dist. Att’y*, 712 F.2d 96, 97–99 (4th Cir. 1983) (rejecting a Pentecostal parent’s challenge to North Carolina’s compulsory attendance law).

conclude that *Yoder* does not support the Parents' argument that potential use of the Storybooks resulting in exposure to views contrary to one's own religious beliefs necessarily constitutes a cognizable burden on their free exercise of religion. Instead, in *Yoder*, the Supreme Court applied a narrower principle to a singular set of facts. That narrower principle is whether the challenged government action "affirmatively compel[led] them, under threat of criminal sanction, to *perform acts* undeniably at odds with fundamental tenets of their religious beliefs." *Yoder*, 406 U.S. at 218 (emphasis added); accord *United States v. Ali*, 682 F.3d 705, 711 (8th Cir. 2012) ("[A]n order requiring someone either to act affirmatively in violation of a sincerely held religious belief or face criminal penalties substantially burdens the free exercise of religion." (citing *Yoder*, 406 U.S. at 234–36)). And, as already set out, the existing record does not show that mere exposure to the Storybooks is "affirmatively compel[ling]" the Parents or their children "to perform acts undeniably at odds with" their religious views. *Yoder*, 406 U.S. at 218.

Our understanding of *Yoder* and what constitutes a cognizable burden is also consistent with the Supreme Court's recognition that the Free Exercise Clause does not force "the Government *itself* to behave in ways that [an] individual believes will further his or her spiritual development or that of his or her family." *Bowen*, 476 U.S. at 699. Drawing on this principle, courts of appeals have rejected free exercise challenges to public school curriculum and requests to opt out of materials based on complaints limited to the contention that the materials express views and expose students to content deemed to be religiously objectionable. *E.g.*, *Parker*, 514 F.3d at 105–06



(rejecting parents’ request for notice and an opt-out opportunity from occasional readings that offended their religious views); *Leebaert v. Harrington*, 332 F.3d 134, 141 (2d Cir. 2003) (rejecting parent’s request to opt out child from portions of a public school’s health curriculum that he asserted contradicted his religious values and those he wanted to impart to his child because there’s no “fundamental right . . . to tell a public school what his or her child will and will not be taught” “at the public school to which [he] ha[s] chosen to send [his] child” (citation omitted)). All this is to say that exposure to objectionable material alone will not ordinarily pose a burden on an individual’s free exercise of religion because it lacks the requisite compulsion or pressure on an individual’s religious beliefs or conduct. Instead, claims based on exposure tend to fall outside the scope of the Free Exercise Clause because they seek to “require the Government to conduct its own internal affairs”—here, public school curriculum choices—“in ways that comport with the religious beliefs of particular citizens.” *Bowen*, 476 U.S. at 699.

Resisting this conclusion, the Parents point to their children’s young ages and impressionability in contending that mere exposure *necessarily* amounts to coercion. In considering that argument, we are mindful that the Storybooks are intended for use with elementary-age children—including children in pre-Kindergarten and Head Start (younger than five years’ old).<sup>16</sup> The Supreme Court has recognized that

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<sup>16</sup> We also acknowledge the declaration of one non-party parent (but member of non-movant party Kids First) residing in Montgomery County whose child has been diagnosed with Down

elementary-age students are more likely to be impressionable than teenagers and adults when analyzing Establishment Clause claims in the school context. See *Lee v. Weisman*, 505 U.S. 577, 592 (1992) (“[T]here are heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools.”). It would likewise be a “heightened concern[]” when considering a free exercise claim. *Id.*; see *Parker*, 514 F.3d at 101 (“We see no principled reason why the age of students should be irrelevant in Free Exercise Clause cases.”). Upon a proper showing in the district court, it may be that the Parents can come forward with sufficient evidence that an elementary-age child’s exposure to the Storybooks and related conversations amounts to coercion.

It is not our station to determine the pedagogical or childhood-development value of the Storybooks or the related topics. Our charge as judges is to ascertain whether the Parents have shown a likelihood of success on their free exercise claim, which would require them to show direct or indirect coercion arising out of the exposure.

At present, however, no evidence in the record connects the requisite dots between the Parents’ children’s ages or mental capacity and their unknown exposure to the Storybooks to conclude that the Parents have already shown that a cognizable burden exists. Given that such a conclusion would cut against the weight of legal authority and in the absence of a

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Syndrome and Attention Deficit Disorder and thus has vulnerabilities from mere exposure that may be akin to those that could be shown to exist with the particularly young.

record supporting the Parents' assertions that their children's religious training would be compromised from every exposure to the Storybooks and related discussions, we cannot reach such a conclusion now.

In like manner, the Parents' remaining arguments related to coercion in the classroom all suffer from a lack of proof in the record. They advance several ways in which educators *could* use the Storybooks to indoctrinate their children into espousing views at odds with their religious training at home and elsewhere. For example, one of the Parents' declarations explained that it would burden their children's religious views to "pry[] into others' private lives and [en]courage[] public disclosure of sexual behavior" by "discuss[ing] romantic relationships or sexuality with schoolteachers or classmates." J.A. 404. Another declaration objects to teaching that would "dismiss parental and religious guidance on these issues." J.A. 415. And the Parents' briefs to this Court express their objections to teachers "invit[ing] children to question their gender identity, or to encourage young children to embrace gender transitioning." Opening Br. 12.

We understand the Parents' contention that the Storybooks *could* be used in ways that would confuse or mislead children and, in particular, that discussions relating to their contents could be used to indoctrinate their children into espousing views that are contrary to their religious faith. But none of that is verified by the limited record that is before us. The record does not show how the Storybooks are actually being used in classrooms (and more specifically the Parents' children's classrooms). It does not provide examples of any *required* discussion points or actual

conversations that have occurred related to their use. Nor does it reflect whether any of the answers from the additional materials have ever been used.

A more developed record or tailored argument might shift the analysis, as is true in many free exercise cases. Much will depend on how the record develops. Proof that discussions are pressuring students to recast their own religious views—as opposed to merely being exposed to the differing viewpoints of others—could serve as evidence that the Storybooks are being used in a coercive manner. The Parents are concerned that some of the additional materials provided to the schools *could* lead to conversations of this kind. Many teachers and principals had similar objections based on pedagogical concerns about age appropriateness and dismissiveness to religious beliefs. Those materials, for example, suggested that teachers “[d]isrupt [a student’s] either/or thinking” when responding to their questions or comments about what relationships are proper or how individuals of a particular sex should dress or groom. J.A. 595, 597 (emphasis added). Those sorts of conversations, if occurring, may veer into the sort of pressures that could constitute coercion, particularly to young children.

That said, we cannot simply assume the contents of any conversations that have already or will in the future cross the line and pressure students to change their views or act contrary to their faith. Given the sparse record, we do not know whether these conversations stick to Language Arts purposes, if conversations about the Storybooks’ characters and themes simply expose students to viewpoints the Parents find objectionable, or if discussions have

diverted into subtle or not-so-subtle indoctrination that pressures students to act or believe contrary to their religious upbringing. These gaps in the record leave considerable room for development between what's been alleged to date and what the Parents may be able to prove after discovery.

Should the Parents in this case or other plaintiffs in other challenges to the Storybooks' use come forward with proof that a teacher or school administrator is using the Storybooks in a manner that directly or indirectly coerces children into changing their religious views or practices, then the analysis would shift in light of that record. *Accord Zorach v. Clauson*, 343 U.S. 306, 311 (1952) (recognizing that although there was no evidence of coercion "in the record before us," "a wholly different case would be presented" upon such a showing). But at this stage in the litigation, we have a very limited record to assess an extremely broad claim. It does not show the existence of a cognizable burden on the Parents' or their children's free exercise rights.

### 3.

To the extent the Parents rely on cases recognizing the existence of a burden based on the denial of access to public benefits as the basis for showing a cognizable burden, their argument fails. *See, e.g.*, Opening Br. 20 (asserting the lack of notice and an opt-out option "pressure[s] the Parents to violate their religious beliefs as a condition of using the public schools").

The Free Exercise Clause has long been understood to "protect[] religious observers against unequal treatment," meaning that religious adherents cannot be "disqualif[ied] . . . from a public

benefit ‘solely because of their religious character.’” *Espinoza*, 140 S. Ct. at 2254–55 (quoting *Trinity Lutheran*, 137 S. Ct. at 2021); *Carson ex rel. O.C. v. Makin*, 142 S. Ct. 1987, 1996 (2022) (“[W]e have repeatedly held that a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.”). Consistent with that understanding, the Supreme Court has repeatedly rejected claims by the government that exclusion from public benefits does not constitute a burden on free exercise. *E.g.*, *Trinity Lutheran*, 137 S. Ct. at 2022 (observing that placing a condition that requires a religious entity “to disavow its religious character” “to participate in a government benefit program” constitutes a burden because it indirectly coerces or impermissibly penalizes “the free exercise of religion”).

While public schools are undeniably a “public benefit,” the foregoing line of cases involved barriers to access to a public benefit that have not been shown at present in this case. Specifically, the government actors in each of those cases overtly barred religious adherents from eligibility to participate in the benefit *because of* the plaintiff’s religious beliefs or *unless* the plaintiff agreed to act in contradiction to his religious beliefs. *See, e.g.*, *Fulton*, 141 S. Ct. at 1875–76 (recognizing that the city’s refusal to enter into a full foster care contract with a Catholic agency that would not place children with unmarried couples of any sexual orientation or same-sex married couples “burdened [the agency’s] religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs”).

In contrast, the Montgomery County Public Schools are open to all students who meet the requirements for enrollment, none of which relate to the religious affiliation or beliefs of students or their parents. The Board is not directly or indirectly penalizing the Parents by requiring them to disavow their religious views before they can send their children to public school. Consequently, any burden on the Parents' or their children's free exercise rights would only occur once the students are enrolled, based on what happens while at school. In sum, this line of cases does not provide a basis for concluding, at this point, that the Board has burdened the Parents' religious exercise rights, and the analysis of whether they are being coerced *once there* falls under the ordinary coercion analysis already undertaken.

The Parents raise the related argument that the Board's conduct is coercive because to avoid exposing their children to the Storybooks and related discussion, they would be forced to incur the additional (and in some cases prohibitive) cost of pursuing an alternative to public schooling. Without question, the Constitution protects the Parents' ability to avoid exposing their children to any religiously objectionable materials by protecting their right to choose alternatives such as a private school. *Runyon v. McCrary*, 427 U.S. 160, 178 (1976) (reiterating that parents and guardians "have a constitutional right to send their children to private schools and a constitutional right to select private schools that offer specialized instruction").<sup>17</sup> And,

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<sup>17</sup> The Supreme Court has recognized that the Constitution protects a parent or guardian's fundamental right not only "to

understandably, the Parents lament that they would have to incur additional costs, which may make these alternatives prohibitive. As Justice Alito has put it, “[m]ost parents, realistically, have no choice but to send their children to a public school and little ability to influence what occurs in the school.” *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring). But the Supreme Court and this Court have previously recognized that government coercion does not exist merely because an individual may incur increased costs as a consequence of deciding to exercise their religious faith in a particular way. *See, e.g., Braunfeld v. Brown*, 366 U.S. 599, 605–06 (1961) (rejecting a free exercise challenge to a state’s Sunday-closure law because it did not “make a religious

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direct the upbringing and education of children under their care,” *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534–35 (1925), but also to “give them *religious* training and to encourage them in the practice of religious belief,” *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944) (emphasis added).

This principle expressly includes the right to choose private, religious education. *Parents for Priv. v. Barr*, 949 F.3d 1210, 1229 (9th Cir. 2020) (tracing the Supreme Court’s cases discussing parents’ rights “to make decisions concerning the care, custody, and control of their children,” including the right to choose “a specific educational program— whether it be religious instruction at a private school” or something else (citations omitted)). In addition, although the Supreme Court has never expressly so held, these cases also implicitly protect the Parents’ constitutional right to homeschool as well. (And, in any (Continued) event, Maryland law specifically protects that right. *See* Md. Code, Educ. § 7-301(a)(3); Md. Code Regs. 13A.10.01.01.)



practice itself unlawful” or otherwise force the plaintiffs to “forsak[e] their religious practices” even though the law “may well result in some financial sacrifice in order to observe their religious beliefs”); *D.L. ex rel. K.L. v. Balt. City Bd. of Sch. Comm’rs*, 706 F.3d 256, 263 (4th Cir. 2013) (rejecting a free exercise challenge where the plaintiffs “retain[ed] full discretion over which school [their child] attends” even if exercising that right increased the “overall cost” of education because “[t]he Supreme Court has explained that a statute does not violate the Free Exercise Clause merely because it causes economic disadvantage on individuals who choose to practice their religion in a specific manner”); *Goodall ex rel. Goodall v. Stafford Cnty. Sch. Bd.*, 60 F.3d 168, 171 (4th Cir. 1995) (same). Accordingly, such potential additional costs do not create a cognizable burden even if the choice places the Parents in an undesired—but not unconstitutionally coercive—position.

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For the reasons stated, we conclude that the Parents have not come forward at this stage with sufficient evidence of a cognizable burden on their free exercise rights to satisfy the requirements of a free exercise claim. This absence of proof means that they have not shown a likelihood of success on the merits and their free exercise claim cannot serve as a basis for obtaining a preliminary injunction. The Parents, like any litigant, may choose their particular litigation strategy. And here they chose to bring their motion for a preliminary injunction without developing a robust record in pursuit of a broadly articulated free exercise challenge. The Parents are stuck with the consequences of that choice and its

effect on their appeal from the denial of a preliminary injunction.

The dissenting opinion raises many good points as it mirrors the Parents' concerns that using the Storybooks will transgress the line between mere exposure, on the one hand, and indirect coercion, on the other hand. But facts and circumstances that *could* lead to a constitutional violation if assembled a particular way are not the same as facts and circumstances that show a *likelihood* of violating the Constitution. And what is missing here is the evidentiary link showing that the Storybooks are being implemented in a way that directly or indirectly coerces the Parents or their children to believe or act contrary to their religious faith. Without such evidence, this case presents only an objection to their children's public school curriculum. Granting a preliminary injunction here would reset the standard, permitting plaintiffs to obtain a preliminary injunction upon a mere showing that they have a religious objection to their children's curriculum. The case law does not support that outcome.

Put simply, we cannot conclude that a policy requiring the presence of an individual in the classroom when these materials may be read *ipso facto* creates an impermissibly coercive environment. More specific information about the implementation of the Storybooks would be required to establish a cognizable burden that would shift the analysis to what level of scrutiny applies and whether the Board's decision can withstand that review. We're simply not there now. As such, the Parents have not shown that the Board's failure to provide notice and an opt-out

opportunity creates a likelihood of violating their free-exercise rights.<sup>18</sup>

#### IV.

Lastly, we note that the Parents have not asserted that their due process claim would entitle them to a preliminary injunction independent of their free exercise claim. That's so because their argument is predicated on the assumption that their due process claim should be reviewed under strict scrutiny. But most due process challenges to public school policies are subject only to rational basis review. *See Herndon ex rel. Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174, 177–79 (4th Cir. 1996). Their argument that strict scrutiny applies to their due process claim rests on a hybrid-rights theory where heightened scrutiny may be appropriate when a due process claim involving parents' rights related to the education of their children is “coupled with” a religious-exercise claim. Opening Br. 44; *see Combs*,

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<sup>18</sup> Further factual development would also be necessary as to the factual predicates for some of the Parents' arguments about why strict scrutiny should apply. For example, we cannot ascertain on the record before us whether the Board acted with impermissible hostility to religious views in deciding to no longer permit notice and an opt-out opportunity relating to the Storybooks, so as to fall under the *Church of the Lukumi Babalu Aye* and *Masterpiece Cakeshop* line of analysis. As already discussed, very little is known about that process but as alleged in the amended complaint, it appears to have been a quick about-face with little consideration. In addition, the Parents have bundled together a handful of statements made during and outside of Board meetings, both before and after the decision to disallow opt-outs. Therefore, discovery may also shed more light on those comments and whether religious animus fueled the Board's decision to disallow notice and an opt-out opportunity.

540 F.3d at 243–47 (discussing the hybrid-rights theory first discussed in *Smith*, which “has divided our sister circuits” ever since). To date, the validity of the hybrid-rights approach remains an open question in this Court, but we need not provide an answer today. Regardless of the underlying merits of a hybrid-rights due process claim, it could only be the basis for a preliminary injunction if the Parents’ free exercise claims were *also* likely to succeed on the merits. *E.g.*, *Parents for Priv.*, 949 F.3d at 1237 (“[A]lleging multiple failing constitutional claims that do not have a likelihood of success on the merits cannot be enough to invoke a hybrid rights exception and require strict scrutiny.”). Inasmuch as we have concluded that at this time the Parents have not satisfied their burden of showing a likelihood of success as to their free exercise claims, they could not show that their due process claim sets out a hybrid-rights due process claim that would be subject to strict scrutiny. They do not contend that they would be likely to succeed on the merits of a due process claim subject to rational basis review. Accordingly, the district court did not abuse its discretion in denying a preliminary injunction as to the Parents’ due process claim.

## V.

For the reasons set out above, we agree with the district court that the Parents have not satisfied the extraordinary showing necessary to obtain a preliminary injunction. Therefore, we affirm the district court’s order denying the Parents’ motion.

*AFFIRMED*

QUATTLEBAUM, Circuit Judge, dissenting:

This case involves the intersection of a school board’s decision to deny religious opt outs for instruction involving certain books selected for K-5 children to promote diversity and inclusion—here, as to the LGBTQ+ community—and parents’ claims that forcing these books on their children infringes on their religious rights under the Constitution to direct their children’s upbringing with respect to sexuality and gender. At this intersection, emotions run high. And make no mistake about it, both sides of the issue advance passionate arguments. Some insist diversity and inclusion should be prioritized over the religious rights of parents and children. Others argue the opposite.

To judges, whether it is a good or bad idea for a board to use these texts in teaching K-5 children is irrelevant. We deal with law, not policy. And the legal question we face is whether the board’s actions violate parents’ First Amendment free exercise rights. As to that question, generally, courts have recognized a local school board’s broad discretion in the management of affairs and curriculum. *Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 863 (1982). But that deference is not absolute. School decisions—even as to curriculum—must comply with the “transcendent imperatives of the First Amendment.” *Id.* at 864. The First Amendment’s Free Exercise Clause prohibits a government entity from burdening “sincere religious practice[s] pursuant to a policy that is not ‘neutral’ or ‘generally applicable.’” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 525 (2022).

Here, the parents of certain K-5 children in Montgomery County public schools moved for a preliminary injunction enjoining the Montgomery County Board of Education's decision to deny religious opt-out requests for instruction to K-5 children involving the texts designed to promote diversity and inclusivity as to the LGBTQ+ community. The district court denied the motion, finding the parents failed to establish that the board burdened their First Amendment rights.

I disagree. The parents have shown the board's decision to deny religious opt-outs burdened these parents' right to exercise their religion and direct the religious upbringing of their children by putting them to the choice of either compromising their religious beliefs or foregoing a public education for their children. I also find that the board's actions, at least under this record, were neither neutral nor generally applicable. Finally, I find the parents have established the other requirements for a preliminary injunction. So, I would reverse the district court and enjoin the Montgomery County School Board of Education from denying religious opt-outs for instruction to K-5 children involving the texts.

### **I. Background**

In the Fall of 2022, in an effort to make its curriculum more representative of and inclusive to students and families in its county, the Montgomery County School Board of Education approved several books it described as "LGBTQ-inclusive texts" for use in preKindergarten through middle school classrooms as part of the English Language Arts Curriculum. For example, one of these books is *Pride Puppy!*, a story about a Pride Day parade. *Pride Puppy!* invites

readers to search for depictions of terms like “[drag] queen,” “[drag] king” and “intersex” among other vocabulary words. J.A. 98. The school district approved this book for pre-Kindergarten and Head Start classrooms—in other words, for three- and four-year-olds. Other books include stories about a planned same-sex marriage, a transgender child’s rainbow-colored wig and elementary school students deciding to replace girl/boy bathroom signs with non-binary signs.

The school board provided more than these books; it also provided materials for teachers and administrators to use in responding to questions from students. These materials indicate that if a student says “Being \_\_\_\_ (gay, lesbian, queer, etc) is wrong and not allowed in my religion,” school officials “can respond” by saying, “I understand that is what you believe, but not everyone believes that. We don’t have to understand or support a person’s identity to treat them with respect and kindness.” J.A. 595. The materials also indicate that if a student says that “a girl . . . can only like boys because she’s a girl,” the school employee can “[d]isrupt the either/or thinking by saying something like: actually, people of any gender can like whoever they like. . . . How do you think it would make\_(character’s name)\_to hear you say that? Do you think it’s fair for people to decide for us who we can and can’t like?” J.A. 595. And if a student asks what it means to be transgender, the school board proposed this response: “When we’re born, people make a guess about our gender and label us ‘boy’ or ‘girl’ based on our body parts. Sometimes they’re right and sometimes they’re wrong. . . . Our body parts do not decide our gender. Our gender comes from our inside....” J.A. 596.

The school board also provided suggested responses to concerns raised by parents. If parents question whether the texts are age-appropriate, materials provided by the school board suggest that teachers could respond that “[c]hildren are already learning about” gender and sexuality identity because “[m]essages about gender are everywhere” and that “[b]eginning these conversations in elementary school will help young people develop empathy for a diverse group of people and learn about identities that might relate to their families or even themselves.” J.A. 600. And if a parent complains that values in the books “go against the values we are instilling . . . at home,” the materials indicate that teachers could respond that “[t]he purpose of learning about gender and sexual[] identity diversity is to demonstrate that children are unique and that there is no single way to be a boy, girl, or any other gender. If a child does not agree with or understand another student’s . . . identity . . . , they do not have to change how they feel about it.” J.A. 601.

Parents of certain K-5 Montgomery County school children object to their children being instructed with these books. These parents claim their faiths—Islam, Roman Catholicism and Ukrainian Orthodox—dictate that they, and not the Montgomery County schools, teach their children about sex, human sexuality, gender and family life. They also claim the messages from the books conflict with and undermine the sincerely held religious beliefs they seek to convey to their children. So, they sought to opt their children out of reading and discussing the books consistent with Maryland regulations requiring parental notice and opt-outs for family life and human sexuality, and the board’s “Guidelines for Respecting Religious Diversity.” J.A. 60.



The Guidelines state that “schools should try to make reasonable and feasible adjustments to the instructional program to accommodate requests [] to be excused from specific classroom discussions or activities that [students or parents] believe would impose a substantial burden on their religious beliefs.” J.A. 67. Under those Guidelines, throughout the 2022/2023 school year, the board granted the parents’ opt-out requests. Then it all changed. For the 2023/2024 school year, the board decided that, despite its Guidelines, optouts would no longer be granted for the books the board required be used to promote diversity and inclusivity to the LGBTQ+ community. The board even advised that “teachers will not send home letters to inform families when inclusive books are read in the future.” J.A. 32.

In response, the parents sued the board, alleging violations of their right to free exercise under the First Amendment.<sup>1</sup> They do not claim the use of the books is itself unconstitutional. And they do not seek to ban them. Instead, they only want to opt their children out of the instruction involving such texts. More specifically, they challenge the board’s decision to cease providing advance notice of the use of such texts and to prohibit religious opt-outs for instruction involving them. The parents also moved for a

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<sup>1</sup> They also asserted claims for violations of their substantive due process rights to direct and control their children’s upbringing under the Fourteenth Amendment, for viewpoint discrimination under the First Amendment and for violations of Maryland state law. Because I would conclude that the parents are entitled to a preliminary injunction on their free exercise claim, I do not address these other claims.

preliminary injunction to maintain religious opt-outs under the Guidelines.

The district court denied the motion. With respect to the free exercise claims, the court held that the parents had not established a likelihood of success on the merits based on their assertion that the board's refusal to grant their requests to opt their children out of the instruction involving the texts burdened the parents' free exercise rights.

The parents timely appealed, asking us to reverse the district court's denial of their motion and to grant injunctive relief. They insist that they have shown a likelihood of success on the merits. They claim the board's denial of their opt-out requests burdened their First Amendment free exercise rights in a way that was neither neutral nor generally applicable, and thus, the board's actions were subject to strict scrutiny. And because, according to the parents, such action cannot withstand that level of scrutiny, the board violated their First Amendment right to freely exercise their religion and direct the religious upbringing of their children.

## II. Analysis

As the majority notes, “[a] preliminary injunction shall be granted only if the moving party clearly establishes entitlement to the relief sought.” *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017). To obtain a preliminary injunction, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *WV Ass’n of Club Owners &*

*Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7 (2008)). We review a district court’s denial of a motion for preliminary injunction for abuse of discretion. Under that standard, we review factual findings for clear error and legal conclusions de novo. See *Di Biase*, 872 F.3d at 229. But legal error, by definition, is an abuse of discretion. *United States v. Ebersole*, 411 F.3d 517, 526–27 (4th Cir. 2005).

### **A. Likelihood of Success**

#### **1. Burden**

Applicable to the states through the Fourteenth Amendment, the First Amendment’s Free Exercise Clause prohibits the enactment of laws or policies that prohibit the free exercise of religion. *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The free exercise of religion means “first and foremost, the right to believe and profess whatever religious doctrine one desires.” *Emp. Div., Dep’t of Hum. Res. of Oregon v. Smith*, 494 U.S. 872, 877 (1990). But that is not all. The Free Exercise Clause “protects not only the right to harbor religious beliefs inwardly and secretly.” *Kennedy*, 142 S. Ct. at 2421. “It does perhaps its most important work by protecting the ability of those who hold religious beliefs of all kinds to live out their faiths in daily life though ‘the performance of (or abstention from) physical acts.’” *Id.* (quoting *Emp. Div., Dep’t of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877).

A free exercise claim first requires asking whether the government action “interferes” or burdens the plaintiff’s free exercise of religion. See *United States v. Lee*, 455 U.S. 252, 256–57 (1982). Importantly,

interfering or burdening the exercise of religion is not limited to direct coercion. *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 450 (1988) (recognizing that the Supreme Court has repeatedly held that indirect coercion, not just outright prohibitions, is subject to strict scrutiny under the First Amendment). When a state “conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs, a burden upon religion exists.” *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 717–18 (1981); see also *Sherbert v. Verner*, 374 U.S. 398, 404 (1963) (“The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.”).

When identifying whether a burden is imposed on the exercise of religious beliefs, courts must not question the sincerity or judge the significance of the particular belief. *Carter v. Fleming*, 879 F.3d 132, 139 (4th Cir. 2018); see also *Wilcox v. Brown*, 877 F.3d 161, 168 (4th Cir. 2017) (“But Defendants point to no case in which the court held that a plaintiff is required to plead the theological underpinnings of his religion’s requirements.”). We must accept the belief as honestly held and significant. That is because it “is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of

particular litigants' interpretations of those creeds." *Hernandez v. Comm'r of Internal Revenue*, 490 U.S. 680, 699 (1989).

Here, the district court held that the parents had not established that the board's denial of the parents' opt-out requests burdened their free exercise of religion. The court concluded the board's actions did not force any children to agree with the books. Thus, it rejected the parents' "indoctrination" claim. And with respect to indirect coercion, the court reasoned that the board's refusal to grant opt-out requests related to instruction involving the books did not force the parents to forego exercising their religion. The parents could still, the district court explained, teach their children the tenants of their religion outside of school.

I disagree. For decades, the Supreme Court has made clear that "the liberties of religion and expression may be infringed by the denial of or placing of conditions upon a benefit or privilege." *Sherbert*, 374 U.S. at 404. Roughly 60 years ago, in *Sherbert*, the Supreme Court held that denying unemployment benefits to a claimant who refused, for religious reasons, to work on Sundays, violated the Free Exercise Clause. The Court explained that such a refusal forced the claimant "to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand." *Id.* at 404. The Court reiterated this principle about 20 years later in *Thomas*. Then, recently, in *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021), it re-stated it again. There, the Court held a city's refusal to grant a full foster care contract to a

Catholic agency that would not place children with same-sex couples violated the Free Exercise Clause because it “burdened [the agency’s] religious exercise by putting it to the choice of curtailing its mission or approving relationships inconsistent with its beliefs.” *Fulton*, 593 U.S. at 532. To the Court, that was enough. And it ruled any judicial inquiry into the merits of the religious belief out of bounds. “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Id.* (quoting *Thomas*, 450 U.S. at 714).

While perhaps not on all fours with the facts here, these decisions provide important guidance to the parents’ claim. The parents claim their faith compels that they teach their children about sex, human sexuality, gender and family life. They also claim the messages from the books conflict with and undermine the sincerely held religious beliefs they hold and seek to convey to their children. And while the concerns include the content of the texts, they also include the responses the school board provided to teachers to use when children or parents questioned the texts. According to the parents, the suggested responses make clear that, in addition to using the books, schools will advocate for the themes and values in the texts and against any opposition to them. As a result, they claim that if they cannot opt their children out of the instruction involving the books, they must either forego a public education or violate their deeply held religious beliefs.

In my view, the board’s actions put the parents in a very similar position to the unemployment benefits claimant in *Sherbert* and the foster care agency in

*Fulton*. The board’s refusal to grant the parents’ requests for religious opt-outs to instruction with the books the board required be used to promote diversity and inclusivity to the LGBTQ+ community forces the parents to make a choice—either adhere to their faith or receive a free public education for their children. They cannot do both. *Sherbert* and *Fulton* tell us that forcing that type of choice burdens the free exercise of religion.

And I disagree with the majority’s conclusion that the parents have not produced enough evidence to establish that their free exercised rights have been burdened. The parents have met their burden. They have produced the books that no one disputes will be used to instruct their K-5 children. They produced declarations explaining in detail why the books conflict with their religious beliefs. They have produced the board’s own internal documents that show how it suggests teachers respond to students and parents who question the contents of the books. Recall those documents advise teachers that they can “[d]isrupt the either/or thinking by saying something like: actually, people of any gender can like whoever they like. . . . How do you think it would make\_(character’s name)\_\_to hear you say that? Do you think it’s fair for people to decide for us who we can and can’t like?” J.A. 595. And they instruct teachers on how to discuss being transgender to the K-5 children. “When we’re born, people make a guess about our gender and label us ‘boy’ or ‘girl’ based on our body parts. Sometimes they’re right and sometimes they’re wrong. . . . Our body parts do not decide our gender. Our gender comes from our inside...” J.A. 596. Based on Supreme Court precedent, the record here tells all we need to know.

The standard for a preliminary injunction is not ultimate success, but likelihood of success. *Winter*, 555 U.S. at 32. The parents have established they are likely to succeed in proving the board's decisions burdened their First Amendment rights.

The board makes three primary counter-arguments. None are persuasive.

First, the board argues over and over that the use of the books in instructing K-5 children does not coerce or require the parents or their children to change their religious views. Fair enough. But the First Amendment protects less direct religious burdens. As already discussed, *Sherbert* and *Fulton* make this point. When considering the Free Exercise Clause's protection against indirect coercion, we ask whether the state policy forces citizens to choose between obtaining a public benefit and exercising their religious beliefs. These parents' faith dictates that they—not others—teach their children about sex, human sexuality, gender and family life. Their faiths dictate that they shield their children from teachings that contradict and undermine their religious views on those topics. And no matter how you slice it, the board's decision to deny religious opt-outs prevents the parents from exercising these aspects of their faith if they want their children to obtain a public education.

Second, the board contends the parents did not face a choice between exercising their faith on the one hand and their children receiving a public education on the other because they could still teach their religious beliefs at home. Of course, they can teach their beliefs at home. But free exercise law is not nearly as cramped as this argument suggests. In



*Kennedy*, the high school football coach could have prayed at home. But that did not matter to the Supreme Court. What mattered was that the school restricted the coach from exercising his religion after games on the football field. In *Fulton*, the Catholic foster care agency could have, even without the contract with the city, exercised its religious beliefs about marriage. But again, that did not matter to the Supreme Court. What mattered was that the agency had to either compromise its religious beliefs or forego such a contract unless it agreed to certify same-sex couples. *Fulton*, 593 U.S. at 532. Here, the parents face a similar choice. If the ability to exercise one's faith at home shields the impeding of the exercise of one's faith at school from the Free Exercise Clause, we will have indeed eliminated much of the clause's protections.

Third, the board argues that mere exposure to ideas contrary to one's faith is not enough of a burden to implicate the First Amendment. In advancing this position, the board contends that exposure to issues that one disagrees with, even for religious reasons, is part of the compromise parents make when choosing to send their children to public schools. While it is generally true that the First Amendment provides no guarantee that students will not be exposed to views they (or their parents) disagree with in public schools, there are several problems with the use of that principle here.

To begin, as already discussed, the board's use of the texts goes far beyond mere exposure to

objectionable viewpoints.<sup>2</sup> And consider the implication of the board's argument. In referencing the compromise parents make when choosing to send their children to public schools, the board seems to be suggesting that to avoid exposure to materials like the inclusive texts, the parents could forego a public education for their children. But that means they would need to either send their children to private schools or homeschool them. Those may be options for some. But what if a parent cannot afford private school or is unable to homeschool due to work? Surely, the reach of the First Amendment extends beyond the bank accounts of those wealthy enough to pay for education alternatives to public schools with policies infringing on the exercise of religion. *See Morse v. Frederick*, 551 U.S. 393, 424 (2007) ("Most parents, realistically, have no choice but to send their children to a public school and little ability to influence what occurs in the school.") (Alito, J., concurring).

Last, when the onion layers of the board's argument are peeled back, the board seems to question the relative importance of the parents' religious beliefs that their children should not be taught with the books the board required be used to promote diversity and inclusivity to the LGBTQ+ community. To explain, the board only denied opt-outs

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<sup>2</sup> This distinguishes this case from *Mozert v. Hawkins County Board of Education*, 827 F.2d 1058 (6th Cir. 1987), and *Fleischfresser v. Directors of Sch. Dist. 200*, 15 F.3d 680 (7th Cir. 1994), two of the out-of-circuit cases on which the board relies. The other case the board relies on is *Parker v. Hurley*, 514 F.3d 87 (1st Cir. 2008). Factually, it is the closest case to the one before us. But it focuses more on indoctrination than indirect coercion.

for instruction involving those books. So, despite disclaiming that it is doing so, the board's arguments, which the district court adopted, really view the parents' religious objections to the texts as less important than the board's goals to improve inclusivity for the LGBTQ+ community. But this is the precisely the sort of value judgment about parents' religious claims that courts must not make. To repeat, it "is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants' interpretations of those creeds." *Hernandez*, 490 U.S. at 699.

For these reasons, the parents have shown they are likely to succeed on proving board's refusal to grant their opt-out requests burdened their free exercise rights.<sup>3</sup>

## **2. Neutrality and General Applicability**

Once a party claiming a violation of the First Amendment's free exercise clause establishes a burden—or, in the case of a preliminary injunction, establishes a likelihood of success on burden—the

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<sup>3</sup> The majority raises an additional issue. It concludes that that the parents were not actually excluded from the benefit of public schools. In other words, it points out that the board did not require the parents or their children to disavow their beliefs to attend public school. Any burden on their religion results after the students are enrolled. Maj. Op. at 3940. From a factual standpoint, that is true. But the Supreme Court has never drawn such a fine line. Neither *Thomas*, *Sherbert*, *Fulton* nor any Supreme Court indirect coercion decision holds that a total barrier to the public benefit is required to show a burden on one's right to free exercise. To the contrary, the Court asks a broader question— whether the state policy forces the individual to make a choice to either live out their faith or forego the public benefit. The parents face that choice here.

next step is to examine whether the state action that imposed the burden is neutral and generally applicable. If it is, we review it only for a rational relationship to a legitimate government interest. *Fulton*, 593 U.S. at 533. But if it is not, the state action must survive strict scrutiny review. *Id.*

On this issue, as with burden, *Fulton* looms large. *Fulton* provides that state action is “not generally applicable if it ‘invite[s]’ the government to consider the particular reasons for a person’s conduct by providing ‘a mechanism for individualized exemptions.’” *Id.* at 533 (quoting *Smith*, 494 U.S. at 884). It then held that city’s policy precluding an agency from rejecting adoptive or foster parents based on their sexual orientation unless the city commissioner granted an exception in his or her sole discretion rendered the policy not neutral nor generally applicable. *Id.* In explaining that holding, *Fulton* pointed out that the creation of a system of exemptions available at the city’s sole discretion triggered strict scrutiny. *Id.* at 535; *see also Sherbert*, 374 U.S. at 401 (denial of unemployment benefits absent a showing of “good cause” triggered strict scrutiny); *Church of the Lukumi Babalu Aye, v. City of Hialeah*, 508 U.S. 537 (1993) (strict scrutiny applied to the state’s determination about whether the killing of certain animals as part of a religious ceremony was necessary). “By allowing room for discretionary exceptions, we no longer have a rule of general application and the First Amendment bristles.” *Canaan Christian Church v. Montgomery Cnty.*, 29 F.4th 182, 203 (4th Cir. 2022) (Richardson, J., concurring).

Applying those principles to the parent's claims, the parents have established they are likely to succeed in proving that the board's actions are neither neutral nor generally applicable. Start with the school board's Guidelines, which set forth provisions for excusing students from instructional programs for religious reasons. The Guidelines state that "schools should try to make reasonable and feasible adjustments to the instructional program to accommodate requests [] to be excused from specific classroom discussions or activities that [students or parents] believe would impose a substantial burden on their religious beliefs." J.A. 67. Thus, Montgomery County schools have discretion to grant religious opt-out requests. A school decides on an individual basis if the requested religious accommodation is "reasonable" and "feasible." That discretion triggers strict scrutiny under *Fulton*, *Sherbert* and *Church of the Lukumi Babalu Aye*.

Illustrating that discretion, throughout much of the 2022/2023 school year, the board granted the parents' opt-out requests with respect to the inclusive texts. But then it changed its position. The board decided that, despite the Guidelines, opt-outs would no longer be granted concerning the texts. In fact, it flip-flopped on its policy overnight. On March 22, 2023, the board stated that "[i]f a parent chooses to opt out, a teacher can find a substitute text for that student." J.A. 31. The very next day, however, the board announced a "revised message," in which it made clear that families would no longer be able to "opt out of engaging with any instruction materials," other than the family life and human sexuality unit of instruction. J.A. 31–32. The board also told parents that teachers would not send home letters informing

them of when the books were scheduled to be read. Guidelines that permit a school board to decide one day that religious opt-outs are okay and the next day that they are not—because accommodating the request is not reasonable or feasible—is inherently discretionary.

True, unlike *Fulton*, the board’s decision applied not to an individual request for an opt-out for the K-5 texts’ instruction; instead, it applied to all such requests. But the board was only able to deny the parents’ opt-out requests because the Guidelines gave it the discretion to do so. And it would seem odd that a single denial of a discretionary request to opt out of instruction that burdens the free exercise of one’s religious rights would not be neutral nor generally applicable, but one that applied pre-emptively to a wider swath would.

Resisting this conclusion, the board makes several arguments. First, it argues that its decision to no longer consider opt-outs for the books does not favor secular over religious conduct. *See Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (policies that expressly favor secular interests over religious interest trigger strict scrutiny). But favoring the secular over the religious is but one way to trigger strict scrutiny. Strict scrutiny is also triggered by a government policy that creates “a formal mechanism for granting exceptions.” *Fulton*, 593 U.S. at 537. And that is what we have here.

Second, the board argues *Fulton*’s mechanism-for-granting-exceptions principle only applies if the discretionary exception decisions entail a value judgment on the legitimacy of the religious views. Although such value judgments do offend the Free Exercise Clause, that is not the only state action that

does so. *Fulton* makes that clear that mechanisms for granting discretionary exceptions trigger strict scrutiny. 593 U.S. at 533. It did not matter in *Fulton* whether any exceptions were granted or denied based on value judgments about the religious views. The policy was neither neutral nor generally applicable because it invited the government “to decide which reasons for not complying with the policy are worthy of solicitude” in its sole discretion. *Id.* at 537.

Third, the board insists that whether or not the Guidelines for Respecting Religious Diversity previously permitted no discretion, it has now eliminated any discretion by deciding that the policy will not be applied to the texts for the Montgomery County K-5 students. But that flip-flop was itself a purely discretionary decision. Moreover, the board only eliminated religious opt-outs for the texts for K-5 children. In other words, it carved away only a sliver of those able to request opt-outs—those opposed for religious reasons to the instruction of their K-5 children with the texts. In other words, other religious optout requests are still allowed; just not for those opposed to the content of the texts. This slicing and dicing of religious opt-outs is neither neutral nor generally applicable.<sup>4</sup>

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<sup>4</sup> The board’s policy has another problem. Maryland state regulations requires instruction on family life and human sexuality. Md. Code Regs. 13A.04.18.01 And such “family life and human sexuality instruction shall represent all students regardless of ability, sexual orientation, gender identity, and gender expression.” Md. Code Regs. 13A.04.18.01(D)(2)(a). But Maryland also requires schools to establish procedures for notice and opt-out procedures for all “family life and human sexuality” instruction regardless of whether they are sought for a religious

To sum it up, the parents have established they are likely to succeed in proving that the board's refusal to consider the parents' religious opt outs requests is not neutral; nor is it generally applicable. And for that reason, it must survive strict scrutiny.<sup>5</sup>

### **3. Strict Scrutiny**

Under strict scrutiny, state action will be sustained only if it is narrowly tailored to serve a compelling state interest. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). "A government policy can survive strict scrutiny [] only if it advances interests of the highest order and is narrowly tailored to achieve those interests." *Fulton*, 593 U.S. at 541. The board contends it decided to use the books to reflect the diversity of its community and to foster inclusivity of students in the LGBTQ+ community. And it contends its decision to modify the opt-out policy was to address absenteeism and to reduce stigmatization of students who remained in the

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reason. Md. Code Regs. 13A.04.18.01(D)(2)(e). Even though not taught in a sex-ed class, the books the board required be used with K-5 children to promote diversity and inclusivity to the LGBTQ+ community involve issues of family life and human sexuality. I see nothing in the Maryland regulations that would permit the board to avoid the requirement to permit opt-outs for family life and human sexuality just by adding instruction in that area to other classes.

<sup>5</sup> The parents argue that strict scrutiny also applies because the record shows the board's hostility to religion. And they argue strict scrutiny is required under *Wisconsin v. Yoder*, 406 U.S. 205 (1972). The board responds to these arguments in its briefing, claiming that the policy was not enacted out of religious hostility and that *Yoder* does not support the parents' position. But since I find strict scrutiny applies due to the absence of a neutral and generally applicable policy, I do not address those arguments.



classroom for the study and discussion of the inclusive texts.

Regardless of one's views on those interests, they cannot withstand strict scrutiny. In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), the Supreme Court questioned how similar interests could be compelling if they cannot be subjected to meaningful review. In finding race-based admissions programs unconstitutional, the Court explained that “Harvard identifies the following educational benefits that it is pursuing: (1) ‘training future leaders in the public and private sectors’; (2) preparing graduates to ‘adapt to an increasingly pluralistic society’; (3) ‘better educating its students through diversity’; and (4) ‘producing new knowledge stemming from diverse outlooks.’” *Id.* at 214. It then held that “although these are commendable goals, they are not sufficiently coherent for purposes of strict scrutiny.” *Id.*; see also *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 671–72 (9th Cir. 2023) (“While it cannot be overstated that anti-discrimination policies certainly serve worthy causes—particularly within the context of a school setting where students are often finding themselves—those policies may not themselves be utilized in a manner that transgresses or supersedes the government's constitutional commitment to be steadfastly neutral to religion.”). Likewise here, the board's goals, no matter how laudable, are unmeasurable, and thus fail to pass constitutional muster without a “meaningful connection to the means they employ and the goals [it] pursues.” *Id.* at 215.

What’s more, the board cannot show that the texts or its refusal to allow religious opt outs are narrowly tailored to those interests. The board granted religious opt outs for the texts during the 2022/2023 school year, when it advanced the same interest of making its schools safe and inclusive for those in the LGBTQ+ community. And still today, the board permits opt-outs for family life and human sexuality instruction. How can barring religious opt-outs be narrowly tailored to the board’s stated interests when it has permitted less restrictive measures in the past and currently?

The board advances neither a compelling government interest nor a policy narrowly tailored to that interest. Under strict scrutiny, therefore, it is likely to fail constitutional muster. As a result, the parents have shown a likelihood of success as to their First Amendment free exercise claims.

### **B. Other Preliminary Injunction Factors**

Showing a likelihood of success on the merits goes a long way toward the parents’ request for a preliminary injunction. *See Frazier v. Prince George’s Cnty.*, 86 F.4th 537, 544 (4th Cir. 2023). But they must still show irreparable harm without preliminary relief, that the balance of equities tips in their favor and that an injunction is in the public interest. *See Musgrave*, 553 F.3d at 298. Here, those remaining issues can be disposed of in short order.

Taking them in turn, “irreparable harm” “is inseparably linked to the likelihood of success on the merits” because a plaintiff not likely to succeed on the merits is not likely to suffer irreparable harm. *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 190 (4th

Cir. 2013) (cleaned up). Also, the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (finding irreparable harm if COVID-19 restrictions were imposed on houses of worship and concluding that, while some people shut out of services may be able to watch services on television, remote viewing is not the same as personal attendance and would shut out important traditions that require personal attendance); *Tandon*, 593 U.S. at 64 (“Applicants are likely to succeed on the merits of their free exercise claim; they are irreparably harmed by the loss of free exercise rights ‘for even minimal periods of time.’”). We have also held that “upholding constitutional rights serves the public interest.” *Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003). And last, based on my determination that the board’s actions would likely be found unconstitutional, the balance of the equities favors granting a preliminary injunction given the limited nature of the relief the parents seek. In my view, the record shows that the parents have established all the requirements of obtaining a preliminary injunction.

### III. Conclusion

Courts rightly defer to schools, as a general matter, for curriculum decisions. But not for decisions that burden the free exercise of religion in a way that is not both neutral and generally applicable. Those decisions are only constitutional if narrowly tailored to a compelling governmental interest. Here, the parents have shown they are likely to succeed in proving the board’s decision to deny religious opt-outs

for K-5 students with respect to the use of the texts burdens their rights to freely exercise their religion. And they are likely to succeed in showing that decision is neither neutral nor generally applicable. Last, the parents are likely to succeed in establishing that the board's decision cannot withstand strict scrutiny. In addition, the other preliminary injunction factors favor enjoining the board's decision. I would, therefore, reverse the district court and grant the injunctive relief. I respectfully dissent.<sup>6</sup>

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<sup>6</sup> The parents' appeal involves the board's decision to remove the religious opt-outs available under the Guidelines for K-5 children for instruction involving the LGBTQ+ inclusive texts. It does not present the question of whether opt-outs are required anytime a school's curriculum decisions burden religious freedom. As a result, my opinion should not be construed to address that question.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
*et al.*,

Plaintiffs,

v.

MONIFA B. MCKNIGHT,  
*et al.*,

Defendants.

Civ. No. DLB-23-1380

**MEMORANDUM OPINION**

In this lawsuit, parents whose elementary-aged children attend Montgomery County Public Schools (“MCPS”) seek the ability to opt their children out of reading and discussion of books with lesbian, gay, bisexual, transgender, and queer characters because the books’ messages contradict their sincerely held religious beliefs about marriage, human sexuality, and gender. Last school year, MCPS incorporated into its English language arts curriculum a collection of storybooks featuring LGBTQ characters (the “storybooks” or “books”) in an effort to reflect the diversity of the school community. Initially, parents could opt their children out of reading and instruction involving the books, as they could with other parts of the curriculum. In March of this year, the defendants—the Montgomery County Board of Education, the MCPS superintendent, and the elected board members (collectively, the “School Board”)—announced that parents no longer would receive advance notice of when the storybooks would be read

or be able opt their children out. Following the announcement, three families of diverse faiths filed suit against the School Board, claiming the no-opt-out policy violates their and their children's free exercise and free speech rights under the First Amendment, the parents' substantive due process rights under the Fourteenth Amendment, and Maryland law.

The parents have moved for a preliminary injunction that requires the School Board to give them advance notice and an opportunity to opt their children out of classroom instruction that involves the storybooks or relates to family life and human sexuality. ECF 23. The motion is fully briefed. ECF 42, 43, 47. The parties have filed supplements in support of their positions. ECF 48, 49, 51, 52, 54, 55, 57. The Court held a hearing on the motion on August 9, 2023. ECF 50. For the following reasons, the motion is denied.

### **I. Background**

Montgomery County Public Schools is the largest public school system in Maryland and one of the largest public school systems in the country. ECF 36, ¶ 39. As of fall 2021, it included 209 schools with approximately 160,000 students. *Id.* ¶ 38. Roughly 70,000 of those students attended an elementary school. *Id.* The Montgomery County Board of Education is the entity authorized by the State of Maryland to administer MCPS. *Id.* ¶ 36. It has authority to adopt educational policies, rules, and regulations consistent with state law. *Id.* ¶ 37.

The School Board believes that diversity in its community is an asset that makes it stronger and that building relationships with its diverse community

requires it to understand the perspectives and experiences of others. ECF 43, ¶ 5. These values are memorialized in the School Board’s Policy on Nondiscrimination, Equity, and Cultural Proficiency, which supports “proactive steps to identify and redress implicit biases and structural and institutional barriers that too often have resulted in” disproportionate exclusion and underrepresentation. *Id.* ¶ 6; *see* ECF 42-2. Accordingly, the School Board strives to “provide a culturally responsive . . . curriculum that promotes equity, respect, and civility” and prepares students to “[c]onfront and eliminate stereotypes related to individuals’ actual or perceived characteristics,” including gender identity and sexual orientation. ECF 43, ¶ 6. A critical part of the School Board’s approach is representation of diverse identities and communities in the curriculum. *Id.* ¶ 21. “Representation in the curriculum creates and normalizes a fully inclusive environment for all students” and “supports a student’s ability to empathize, connect, and collaborate with diverse peers and encourages respect for all.” *Id.* ¶ 22.

#### **A. The Storybooks**

In October 2022, the School Board announced the approval of “over 22 LGBTQ+-inclusive texts for use in the classroom.” ECF 36, ¶ 113. According to the associate superintendent for curriculum and instruction programs at MCPS, Niki T. Hazel, the School Board introduced the storybooks into the English language arts curriculum to further its system-wide goals of promoting diversity, equity, and nondiscrimination. ECF 43, ¶¶ 23–26, 31. In the spring of 2022, the School Board had determined that

the books in its English language arts curriculum were not sufficiently representative because they did not include LGBTQ characters. *Id.* ¶ 23. It initiated procedures to evaluate potential new instructional materials that would be more inclusive. *Id.* ¶ 24. A committee of four reading specialists and two instructional specialists engaged in two rounds of evaluation and eventually recommended the approval of the storybooks, finding they “supported MCPS content standards and performance indicators, contained narratives and illustrations that would be accessible and engaging to students, and featured characters of diverse backgrounds whose stories and families students could relate to.” *Id.* ¶ 26; see ECF 49-1.

The plaintiffs have attached seven of the storybooks to their complaint. ECF 1-4, 1-6 – 1-11. *Pride Puppy!* chronicles a family’s visit to a “Pride Day” parade and their search for a runaway puppy, using the letters of the alphabet to illustrate what a child might see at a pride parade. ECF 1-4. *Uncle Bobby’s Wedding* tells the story of a girl who is worried that her soon- to-be-married uncle will not spend time with her anymore, but her uncle’s boyfriend befriends her and wins her trust. ECF 1-6. *Intersection Allies: We Make Room for All* features nine characters who proudly describe themselves and their diverse backgrounds and connects each character’s story to the collective struggle for justice. ECF 1-7. *My Rainbow* tells the story of a mother who creates a rainbow-colored wig for her transgender child. ECF 1-8. *Prince & Knight* tells the story of a young prince who falls in love with and marries a male knight after they work together to battle a dragon. ECF 1-9. *Love, Violet*



chronicles a shy child's efforts to connect with her same-sex crush on a wintry Valentine's Day. ECF 1-10. *Born Ready: The True Story of a Boy Named Penelope* is about an elementary-aged child who experiences triumphs and frustrations in convincing others what the child knows to be true—that he's a boy, not a girl. ECF 1-11. *Pride Puppy!* is for pre-kindergarten and the Head Start program; the other books are for kindergarten through fifth grade. ECF 1-3; ECF 1-15, at 23.<sup>1</sup>

The plaintiffs contend state law requires MCPS to provide opt-outs from the storybooks because, in their view, the books concern family life and human sexuality. The School Board's position is that the storybooks are part of its English language arts curriculum and opt-outs are required only for the family life and human sexuality unit of instruction, a separate curriculum. *See* ECF 43, ¶ 43.

### **B. State and MCPS Opt-Out Policies**

Maryland law requires local school systems like MCPS to provide “a comprehensive health education” that includes “concepts and skills” related to “family life and human sexuality.” ECF 36, ¶¶ 84–87. This instruction must “represent all students regardless of

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<sup>1</sup> In their preliminary injunction motion, the plaintiffs identify two additional books they object to: *What are Your Words?* and *Jacob's Room to Choose*. ECF 23-5. The former tells the story of a child figuring out their pronouns. The latter depicts two gender-nonconforming children and their elementary-aged class deciding to replace male/female bathroom signs with different, non-binary signs. The School Board recommends these books as “Resources for Students, Staff, and Parents – Affirming LGBTQ+ Young Adults.” *See id.* at 1–2.

ability, sexual orientation, and gender expression.” *Id.* ¶ 89. Maryland law requires school systems to provide parents and guardians with an opportunity “to view instructional materials to be used in the teaching of family life and human sexuality objectives.” *Id.* ¶ 99 (citing COMAR § 13A.04.18.01(D)(2)(e)(iv)). Like most other states that require or permit instruction on human sexuality in public schools, Maryland allows for opt-outs from such instruction in certain circumstances and requires schools to adopt “policies, guidelines, and/or procedures for student opt-out” and to provide alternative learning activities. *Id.* ¶¶ 95, 100–01 (citing COMAR § 13A.04.18.01(D)(2)(e)(i) & (ii)).

Separately, the School Board has adopted an opt-out policy for parents and students who have religious objections to MCPS classroom instruction or activities. *Id.* ¶¶ 104–12. For the 2022–2023 school year, the MCPS School Board’s “Guidelines for Respecting Religious Diversity” (“Religious Diversity Guidelines”) stated, in part:

When possible, schools should try to make reasonable and feasible adjustments to the instructional program to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs. Students, or their parents/guardians on behalf of their students, also have the right to ask to be excused from the classroom activity if the students or their parents/guardians believe

the activity would invade student privacy by calling attention to the student's religion. When a student is excused from the classroom activity, the student will be provided with an alternative to the school activity or assignment.

Applying these principles, it may be feasible to accommodate objections from students or their parents/guardians to a particular reading assignment on religious grounds by providing an alternative selection that meets the same lesson objectives. However, if such requests become too frequent or too burdensome, the school may refuse to accommodate the requests. Schools are not required to alter fundamentally the educational program or create a separate educational program or a separate course to accommodate a student's religious practice or belief.

ECF 1-2, at 11–12.

### **C. The Plaintiffs' Objections to the Storybooks**

The individual plaintiffs are Montgomery County residents of diverse faiths with children enrolled in MCPS. ECF 36, ¶¶ 21–31. Tamer Mahmoud and Enas Barakat are Muslims with three school-aged children, including a second grader. *Id.* ¶¶ 24–25. Jeff and Svitlana Roman are members of the Roman Catholic and Ukrainian Orthodox faiths, respectively, who also have a second grader in MCPS. *Id.* ¶¶ 27–28. Chris and Melissa Persak are Catholics with two elementary-aged children enrolled in MCPS. *Id.* ¶¶ 29, 31. Each believes all persons should be respected regardless of sex, gender identity, sexual orientation,

or other characteristics. *Id.* ¶¶ 50, 59, 66, 76. Each also has religious objections to the storybooks.

The individual plaintiffs have submitted declarations in which they describe their religious beliefs and the grounds for their objections. Mahmoud and Barakat believe they have “a sacred duty” to teach their children their faith, “including religiously grounded sexual ethics.” ECF 23- 2, ¶¶ 4, 14. Their religion teaches that mankind was divinely created as male and female and that sex and sexuality are sacred gifts from God to be expressed through the forming of a spiritual, marital bond that “entails sexually distinct but mutual duties and affections.” *Id.* ¶¶ 5–7. “Inherent in these teachings” is the belief that “gender cannot be unwoven from biological sex . . . without rejecting the dignity and direction God bestowed on humanity from the start.” *Id.* ¶ 9. Accordingly, they believe “humans attain their fullest God-given potential by embracing their biological sex,” and their religion forbids medical procedures to alter the sex of a healthy person and condemns the imitation of the appearance of the opposite gender. *Id.* ¶¶ 10–12. With respect to instruction that uses the storybooks, they believe “there are detrimental spiritual consequences from letting authoritative figures such as schoolteachers teach” their children “principles concerning sexual and gender ethics that contravene” their faith. *Id.* ¶ 16. They view the books as undermining their efforts to raise their second grader because the books “encourage young children to question their sexuality and gender, to identify with labels that categorize them by their sexuality, to focus prematurely on romantic relationships, to disregard differences between men and women, to accept gender

transitioning, and to dismiss parental and religious guidance on these issues.” *Id.* ¶ 19. They state it would conflict with their religious duties to intentionally expose their son “to activities and curriculum on sex, sexuality, and gender that undermine Islamic teachings . . . .” *Id.* ¶ 18. And because Islam “prohibits prying into others’ private lives and discourages public disclosure of sexual behavior,” they state it would violate their beliefs and the beliefs of their children if the children “were asked to discuss romantic relationships or sexuality with schoolteachers or classmates.” *Id.* ¶ 17.

The Romans’ faiths teach that all humans are created in God’s image with inherent dignity. ECF 23-3, ¶ 4. Based on the teachings of their faiths, the Romans believe biological sex is a divine gift that “entails differences in men’s and women’s bodies and how they relate to each other and the world.” *Id.* ¶ 6. They believe “a person’s biological sex is both unchanging and integral to that person’s being,” that “gender and biological sex are intertwined and inseparable,” and that “humans attain their fullest God-given potential by embracing their biological sex.” *Id.* ¶¶ 10–11. They also view human sexuality as a divine gift that “calls for an authentic and healthy integration in the person” through the “virtue of chastity” and expression “only in marriage between a man and a woman for creating life and strengthening the marital union.” *Id.* ¶¶ 8–9. They have “a sacred obligation to teach these principles” to their son and “to encourage him at appropriate times to embrace” their religious way of life. *Id.* ¶ 12. Based on these beliefs, the Romans believe that “encouraging children to unwind” gender and biological sex will teach them that

their bodies are objects that may be disposed of at will rather than “a gift to be received, respected and cared for as something intrinsic to the person.” *Id.* ¶ 10. They view much of the content of the storybooks as “false religiously and scientifically,” and they would prefer children “enjoy a time of innocence, when it is not necessary for them to have detailed understanding of issues surrounding human sexuality,” rather than for them to be encouraged “to focus prematurely on romantic emotions and relationships.” *Id.* ¶¶ 13–14. Because their son “loves his teachers and implicitly trusts them,” they believe instruction on “sexuality or gender identity” that conflicts with their faiths “is spiritually and emotionally harmful to his well-being” and will significantly interfere with their “ability to form his religious faith and religious outlook on life.” *Id.* ¶ 20.

The Persaks, too, believe “all humans are created as male or female, and that a person’s biological sex is a gift bestowed by God that is both unchanging and integral to that person’s being.” ECF 23-4, ¶ 5. They view themselves as having “a God-given responsibility” to raise their children in accordance with the tenets of their faith, including “the Catholic Church’s teachings on the immutable sexual differences between males and females, the biblical way to properly express romantic and sexual desires, and the role of parents to love one another unconditionally and sacrificially within the confines of biblical marriage . . . .” *Id.* ¶ 7. They view the storybooks as going “far beyond teaching kindness and respect,” to the point of imposing “an ideological view of family life and sexuality that characterizes any divergent beliefs as ‘hurtful.’” *Id.* ¶ 15. They believe

the books encourage children “to question their sexuality and gender, ignore important differences between men and women, approve gender transitioning, focus prematurely on romantic relationships and sexuality, and dismiss parental and religious guidance on these issues.” *Id.* ¶ 16. Because they regard young children as “highly impressionable to ideological instruction presented in children’s books or by schoolteachers,” particularly “when ideological instruction is imposed to the exclusion of other viewpoints,” they believe the books undermine their efforts to raise their children in their faith. *Id.* ¶¶ 13–14, 16. Accordingly, they believe “exposing” their children to “viewpoints on sex, sexuality, and gender that contradict Catholic teaching on these subjects is inappropriate and conflicts with” their religious duty to raise their children in their faith. *Id.* ¶ 12.

The individual plaintiffs’ concerns are shared by Kids First, an unincorporated association of parents and teachers that formed “to advocate for the return of parental notice and opt-out rights with respect to any instruction related to family life and human sexuality” in MCPS. ECF 36, ¶¶ 32–33. Kids First includes members of diverse faiths and is open to individuals of all faiths. *Id.* ¶ 34. The association’s members believe in prioritizing the needs of children and “allowing elementary-age children to be kids first, without prematurely exposing them to issues regarding human sexuality, gender identity, and gender transitioning.” *Id.* ¶ 72. They believe parents have the primary responsibility to decide how and when to instruct their children on such matters. *Id.* ¶ 73. And they believe they have religious obligations to ensure their children are taught about family life and

human sexuality in a manner consistent with their faiths. *Id.* ¶ 74.

After the August 9 motion hearing, the plaintiffs submitted a declaration of Grace Morrison, a board member of Kids First. ECF 52, ¶ 2. Morrison and her husband are Roman Catholics and adhere to the Catholic Church’s teachings on marriage, family, sex, sexuality, and gender. *Id.* ¶ 4. They believe gender is “interwoven” with sex and that “marriage is the lifelong union of one man and one woman—distinct from each other, while complementary to each other—and that the nature and purpose of human sexuality is fulfilled in that union.” *Id.* ¶ 5. Their ten-year-old daughter has Down Syndrome and Attention Deficit Disorder. *Id.* ¶ 3. She is enrolled in MCPS’s Learning for Independence Program, has an Individualized Educational Plan (“IEP”), and is assisted by a full-time, one-on-one paraeducator. *Id.* The Morrisons believe they have a “sacred obligation . . . to form [their] daughter’s understanding of what it means to be a woman, to love another person, the nature and purpose of marriage, and how to embrace the vocation she is called to by God.” *Id.* ¶ 7. They believe their religious obligation is “pressured” by the storybooks, which conflict with their religious understandings of marriage, sexuality, and gender. *Id.* ¶ 8. Because of their daughter’s learning challenges, she does not “understand or differentiate instructions from her teachers and her parents” and “will not be able to understand how or why” the Morrisons disagree with the content of the storybooks. *Id.* ¶ 9. For these reasons, the Morrisons believe “it is practically impossible” for them to contradict instruction involving the books. *Id.* ¶ 8. At the same time,



because of their daughter's needs, they do not believe they have "a clear alternative" for their daughter's education "except to remain in the public schools" and use public school resources. *Id.* ¶ 10.

The plaintiffs articulate strong objections to the storybooks. As a general matter, they object to the introduction of concepts of gender identity, sexuality, and transgenderism to their elementary-aged children. *See* ECF 36, ¶ 119. They note, for example, that *Pride Puppy!* includes among a list of words to search for in its picture "[drag] king" and "[drag] queen," "leather," "underwear," and the name of a prominent sex worker and gay liberation activist. *Id.* ¶ 116. They read it to "encourage unqualified support for pride parades," without acknowledging pride parades "often contain material that many parents find inappropriate for young children." *Id.* ¶¶ 117, 131. Similarly, they object to *Intersection Allies* because it defines sex, gender, and transgender and asks readers what pronouns fit them best, and they object to *Love, Violet* because it depicts children experiencing romantic feelings. *Id.* ¶¶ 136, 140–41. The plaintiffs believe the books, and the School Board's guidance on their use, promote "an ideologically one-sided view of issues" that is contrary to their faiths and their understandings of scientific evidence. *Id.* ¶ 132.<sup>2</sup> They note the resource guide for *Pride Puppy!* comes from the Human Rights Campaign, which they describe as an "activist organization" that advocates for "sex positivity" and "ideological education on sexual orientation and gender identity starting in

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<sup>2</sup> The plaintiffs refer to scientific literature that is, in their view, consistent with their religious beliefs. ECF 36, ¶¶ 145–51.

kindergarten”; that the teacher’s guide for *My Rainbow* “eschews analysis of the various other ways parents might appropriately help their children experiencing gender dysphoria”; and that the resource guide for *Born Ready* encourages teachers to respond to questions and comments about the main character’s “body parts” by suggesting people only “make a guess” about gender at birth. *Id.* ¶¶ 120–32, 138, 141–44. In short, they believe the storybooks “promote one-sided transgender ideology, encourage gender transitioning, and focus excessively on romantic infatuation[.]” *Id.* ¶ 5.

#### **D. How Teachers Will Use the Storybooks**

The MCPS English Language Arts Framework and Core Learning Practices for English Language Arts state in broad terms the goals and strategies of the curriculum, but they do not provide specific guidance on the use of any particular texts, including the storybooks. *See* ECF 42-3; ECF 42-4. Hazel states MCPS teachers decide how they will use the storybooks in their classrooms. ECF 43, ¶¶ 29–31. The MCPS Office of Curriculum and Instructional Programs suggested teachers incorporate the books into the curriculum like any other book, “namely, to put them on a shelf for students to find on their own; to recommend a book to a student who would enjoy it; to offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud.” *Id.* ¶ 29. While the School Board expects “that teachers use the LGBTQ-Inclusive Books as part of instruction,” as with all curriculum resources, teachers have a choice “regarding which MCPS-approved materials to use and when to use

them through each unit” and may “choose among the texts” rather than being limited to a single book corresponding to grade level. *Id.* ¶¶ 30–31. The School Board has stated “there [was] no planned explicit instruction on gender identity and sexual orientation in elementary school, and that no student or adult is asked to change how they feel about these issues.” *Id.* ¶ 30; *see* ECF 1-5, at 3. Rather, the books will be “used to assist students with mastering reading concepts like answering questions about characters, retelling key events . . . , and drawing inferences about story characters based on their actions.” ECF 43, ¶ 31. In advance of the books’ introduction into the curriculum in the 2022–2023 school year, MCPS offered a professional development session on their use that drew more than 130 participants. *Id.* ¶ 28.

The plaintiffs take issue with some of the guidance the School Board has given to teachers on how to use the storybooks. They refer to official MCPS documents and instructional materials referenced in a November 15, 2022 *Fox News* article published on the *New York Post* website that discussed the books. *See* ECF 1-5. The School Board has not disputed the accuracy of any information in the article. The article discusses a PowerPoint presentation on the storybooks from a professional development workshop held in August 2022. *Id.* at 2–4. That presentation appears to have substantially overlapped with a document titled “Responding to Caregivers/Community Questions,” which the plaintiffs also provide. *See* ECF 55-4. The proposed responses in this document are comprehensive, and the Court shares only excerpts. If parents ask why children should learn about sexuality and gender in school, or whether elementary school is

too early for such learning, educators might respond:

The learning we're talking about will happen through exposure to diversified gender and sexuality representation, not explicit instruction. Students are already learning about gender and sexuality identity in myriad ways. For example, when we read a story with a mom and dad, a Prince kisses a Princess at the end of a fairytale Children are already learning about it and mostly see "straight" and "cisgender" representations around them. . . . By learning about the diversity of gender, children have an opportunity to explore a greater range of interests, ideas, and activities. . . . Beginning these conversations in elementary school will help young people develop empathy for a diverse group of people and learn about identities that might relate to their families or even themselves. It is never too early for schools to set up a foundation of understanding and respect.

*Id.* at 2. If parents express concerns that these ideas conflict with their values and ask whether the lessons are teaching children to reject those values, educators might say:

Absolutely not. . . . Teaching about LGBTQ+ is not about making students think a certain way; it is to show that there is no one "right" or "normal" way to be. . . . While one aim for learning about diversity is to become more accepting of those around us, not everyone will be best friends. . . . The purpose of learning about gender and sexuality identity diversity is

to demonstrate that children are unique and that there is no single way to be a boy, girl, or any other gender. If a child does not agree with or understand another student's gender identity or expression . . . , they do not have to change how they feel about it. However, they do not get to make fun of, harass, harm, or ignore the existence of other students . . . .

*Id.* at 3. If parents ask about opt-outs, teachers are encouraged to explain why the instruction is important and how the books are used:

While there are no planned explicit lessons related to gender and sexuality, students will see these identities embedded in our curriculum and learning environment. Explicit instruction involves teaching a specific concept or procedure in a highly structured and carefully sequenced manner where there is an opportunity to model, coach and apply the learning. The concepts or terms that relate to gender and sexual identity are not taught explicitly, but there may be a need to define words that are new and unfamiliar to students. . . . No child who does not agree with or understand another student's gender, expression, or their sexual identity is asked to change how they feel about it. Parents always have the choice to keep their student(s) home while using these texts; however, it will not be an excused absence.

*Id.* at 3–4.

The *Fox News* article also provides excerpts of proposed “think aloud” moments for some of the books.

After reading *Intersection Allies*, students “will recognize their own responsibility to stand up to exclusion, prejudice and injustice.” *Id.* at 4. For *Prince & Knight*, students might notice “that the prince doesn’t seem happy about all the princesses trying to get his attention” and wonder “how he might feel about the pressure his parents are putting on him to find a princess.” *Id.* at 5. For *Love, Violet*, students might acknowledge “how uncomfortable we might [be] in situations when we feel our heart beating ‘thumpity thump’ & how hard it can be [to] talk about our feelings with someone that we don’t just ‘like’ but ‘like like.’” *Id.* They “will develop language and knowledge to accurately and respectfully describe how people (including themselves) are both similar to and different from each other and others in their identity groups.” *Id.* at 6. And for *Born Ready*, students might notice “how happy [the main character] is when his mom hears him and commits to sharing with their loved ones that he is a boy”; teachers might then say “that we know ourselves best.” *Id.* The article states that another slide of the presentation encouraged teachers, “Use five of the books by the end of December.” ECF 1-5, at 2.

According to the article, educators who attended the workshop received a list of potential questions from students and a list of suggested responses. *Id.* at 6. The article appears to be referring to a document titled “Sample Student Call-Ins.” *See* ECF 55-3. The following excerpts are representative but not exhaustive. If a student says being “gay, lesbian, queer, etc.” is “wrong and not allowed” by his or her religion, teachers might respond,

I understand that is what you believe, but not everyone believes that. We don't have to understand or support a person's identity to treat them with respect and kindness. School is a place where we learn to work together regardless of our differences. In any community, we'll always find people with beliefs different from our own and that is okay—we can still show them respect.

*Id.* at 2. If a student says “she can only like boys because she’s a girl” or “boys can’t paint their nails,” teachers might try to “disrupt the either/or thinking” and provide examples like “Harry Styles wears dresses” or “my best friend is a woman and she is married to another woman.” *Id.* at 2–4. If a student says “that’s gay” or “that’s weird” about gay characters, teachers might explain that the word gay “describes people of the same gender who love each other. In our school we respect all people so we don’t talk about being ‘gay’ in a negative way, like saying it’s ‘weird.’” *Id.* at 2. Teachers might also say “using gay to describe something negative reflects a long history of prejudice against LGBTQ+ people” and “when I ask you to not use expressions like ‘that’s so gay,’ I’m just trying to make you aware that it is hurtful to a lot of people.” *Id.* at 4. If a student says, in reference to transgenderism and the main character in *Born Ready*, “That’s weird. He can’t be a boy if he was born a girl,” or asks about the character’s “body parts,” teachers are encouraged to respond,

That comment is hurtful; we shouldn’t use negative words to talk about peoples’ identities. Sometimes when we learn information that is

different from what we always thought, it can be confusing and hard to process.

When we're born, people make a guess about our gender and label us "boy" or "girl" based on our body parts. Sometimes they're right, and sometimes they're wrong. When someone's transgender, they guessed wrong; when someone's cisgender, they guessed right. Our body parts do not decide our gender. Our gender comes from inside – we might feel different than what people tell us we are. We know ourselves best. When someone tells us what their gender is, we believe them because they are the experts on themselves.

It's none of our business what body parts a person has, so we should never ask that question.

*Id.* at 2–3. Generally, the suggested responses focus on tolerance, empathy, and respect for different views.

#### **E. Rollout and Opt-Out Policy**

A November 2022 white paper prepared by the Montgomery County Association of Administrators and Principals expressed concerns about the content of some of the books, the suggested responses to student questions, and the proposed end to opt-outs. *See* ECF 47-1. The white paper noted "several of the books and supporting documents seemingly contradict [the] message" that the books were not supposed to be teaching about sexual orientation or gender identity as standalone concepts in elementary school. *Id.* at 8. It stated that teachers had "not been trained on the use of these materials and subsequent questions,



conversations, and class discussions that may occur,” and it worried about the “potentially polarizing position” educators would be put in if individual schools or teachers were left to decide whether to use the books. *Id.* at 9. It referred to “numerous concerns” from educators and community members that some of the books were not appropriate for the intended age group. Singling out *Love, Violet*, for example, the white paper stated, “It is problematic to portray elementary school age children falling in love with other children, regardless of sexual preferences.” *Id.* at 8. The white paper also critiqued excerpts from the list of anticipated questions and suggested answers. *Id.* at 10. Regarding the suggested answer “people make a guess about our gender,” it stated, “Concern: Stated as a fact. Some would not agree this is a fact.” *Id.*

According to Hazel, at the beginning of the 2022–2023 school year, some parents began requesting their children be excused from classroom instruction using the storybooks. ECF 43, ¶ 33. Some of the requests were religious in nature, but many others were rooted in opposition to what the parents perceived as efforts to teach students about sex and LGBTQ issues. *Id.* ¶ 34. In some instances, the teachers and principals who received these requests accommodated them by excusing students when the storybooks were read in class. *Id.* ¶ 35.

In communications with the individual plaintiffs in early 2023, school officials expressed uncertainty about whether parents would be allowed to opt their children out of classroom instruction on the storybooks. *See, e.g.*, ECF 1-12 – 1-14. The Romans corresponded with their school’s principal, seeking to

opt their son out and a guarantee that parents would continue to receive advance notice. ECF 36, ¶ 167. Eventually, the principal agreed their son did not have to be present when one of the books was read during class and that other parents could request the same treatment. *Id.* ¶ 168. Mahmoud and Barakat, meanwhile, were informed by their school’s acting principal that MCPS was not supporting opt-outs from the storybooks and that teachers were not required to provide alternative assignments, but the acting principal later agreed on March 20 to allow their son to sit outside his classroom while one of the books was being discussed. *Id.* ¶¶ 169–74. On March 22, an MCPS spokesperson responding to a media inquiry issued a statement confirming parents’ notification and opt-out rights:

When a teacher selects a curriculum, a notification goes out to parents about the book. If a parent chooses to opt out, a teacher can find a substitute text for that student that supports these standards and aligns with curriculum.

ECF 36, ¶ 159.

The following day, March 23, the School Board reversed course and issued a “Revised Message Regarding the Use of Inclusive Texts” that stated:

[T]here is an expectation that teachers utilize these inclusive lessons and texts with all students. . . . Students and families may not choose to opt out of engaging with any instructional materials, other than “Family Life and Human Sexuality Unit of Instruction” which is specifically permitted by Maryland law. As such, teachers will not send home

letters to inform families when inclusive books are read in the future.

*Id.* ¶ 160. Hazel states the new no-opt-out policy was the result of meetings with a small group of principals in March 2023, during which the School Board determined that principals and teachers “could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment and undermining MCPS’s educational mission.” ECF 43, ¶ 36. The School Board had three concerns. First, high student absenteeism. *Id.* ¶ 37. In one instance, for example, parents sought to excuse dozens of students in a single elementary school from instruction. *Id.* Second, the infeasibility of managing numerous opt-outs. *Id.* ¶ 38. Teachers would have to track and accommodate opt-out requests for their students, and other staff who spent time in multiple classrooms would have to do so across an entire school. *Id.* Finally, the School Board was concerned that permitting some students to leave the classroom whenever books featuring LGBTQ characters were used would expose students who believe the books represent them and their families to social stigma and isolation. *Id.* ¶ 39. The School Board believed that would defeat its “efforts to ensure a classroom environment that is safe and conducive to learning for all students” and would risk putting MCPS out of compliance with state and federal nondiscrimination laws. *Id.* Based on these concerns, the School Board decided to disallow opt-outs from the storybooks, regardless of the reason, after the 2022–

2023 school year. *Id.* ¶¶ 40–42.<sup>3</sup> If schools already had granted opt-out requests, those accommodations would continue through the end of the school year. *Id.* ¶ 41. New requests would not be granted. ECF 36, ¶ 160.

On March 24, teachers at the Persaks’ elementary school were instructed to introduce and read the books in their classrooms. *Id.* ¶ 163. Due to the Persaks’ prior request for an opt-out for their daughter, she was excused from the classroom when one of the storybooks was read, but the principal made it clear to the Persaks that no further notifications or opt-outs would be provided. *Id.* ¶¶ 164–65.

On May 31, Morrison asked her daughter’s teacher whether her class would be reading any of the storybooks and was told that some of the books would be used on June 2, 5, and 6. ECF 52, ¶¶ 11–12. Morrison asked whether she could opt her daughter out. The teacher said no, and the principal later confirmed to Morrison that the school would adhere to the School Board’s no-opt- out policy. *Id.* ¶ 12. Morrison kept her daughter home on the days the books were being read. *Id.*

## **F. MCPS Responses to Community**

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<sup>3</sup> Hisham Garti, the Outreach Director the Montgomery County Muslim Council, states in a declaration that Muslim community leaders met with School Board officials, including Hazel, on May 1, 2023. ECF 47-2. Garti recalls being told the “decision to rescind the opt-out was made after a few parents of the LGBTQ community complained [children] were offended and had their feelings hurt when students started leaving classrooms during instructions of these texts.” *Id.* ¶ 5. According to Garti, that was “the only explanation MCPS provided for why it rescinded the opt- out.” *Id.* ¶ 6.

### Opposition

Both before and after the School Board’s decision to end opt-outs, parents raised concerns about the books with the School Board at public meetings.<sup>4</sup> At the January 12, 2023 board meeting, one parent objected to *My Rainbow* by stating, “the transgender ideology is throughout the whole book” and “this is not instruction, it is indoctrination.” (27:10 – 29:10). She found “most appalling” the proposed teacher responses, such as saying people “guess” about gender at birth. *Id.* She believed such statements undermine “any teaching or viewpoint that many families . . . have used at home.” *Id.* She criticized the School Board for providing only its viewpoints, which implied that parents’ religions and family traditions are wrong. *Id.* She asserted the School Board was not allowing kids to “think for themselves” and was indoctrinating students. *Id.* Another community member later expressed support for her comments and added that “many if not more parents . . . believe in traditional Judeo-Christian values as taught in the Bible” and are “opposed to gender-fluid ideology.” (30:47 – 33:02). He expressed concern that introducing “highly sexualized concepts in elementary school” will “cause children to

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<sup>4</sup> The plaintiffs provide abbreviated quotations of selected statements made during several School Board meetings, which were recorded and posted online. The Court watched the recordings of the meetings referred to by the plaintiffs. The January 12, 2023 board meeting is found at <https://perma.cc/T234-559Q>; the March 28, 2023 board meeting is found at <https://shorturl.at/fAET6>; and the May 25, 2023 board meeting is available at <https://go.boarddocs.com/mabe/mcpsmd/Board.nsf/Public>. The Court cites general timestamps where appropriate.

question their identity when they otherwise don't." *Id.*

School officials responded to the parents' concerns in different ways. At the meeting, Board Member Lynne Harris responded to these comments by stating:

Some of the testimony today was disturbing to me personally. Transgender, LGBTQ individuals are not an ideology, they're a reality. And there are religions out there that teach that women should achieve only subservient roles in life, and MCPS would never think of not having a book in a classroom that showed a woman as being a superintendent of a very large school system, or a doctor, or vice president of the United States. So, our students, our staff, our part of the LGBTQ community, they are transgender. The very few books that we're intentionally including in our curriculum—which, by the way, the language being suggested to support teachers in answering questions is evidence- and science-based—that is what we have pledged to do, is to make sure every student sees themselves reflected in the curriculum, in the course, in the work they're doing in their classrooms. I am very proud that we're doing that work, and I continue to support it.

(38:35 – 39:40). An MCPS student who sits with the board expressed similar sentiments:

It is our responsibility as a school system to equitably provide a high-quality education to all of our students, and that is impossible if every single student cannot see themselves reflected in the classroom. Every student, regardless of

their sexual orientation or their gender identity, regardless of what they look like or where they come from, has the right to be reflected in what they learn. I know that I cannot speak for all of my peers, for all of the students in this county, but let me speak for many of them as I applaud the school system for their work in realizing this vision. To the students of MCPS, yes, ignorance and hate does exist within our community. Please know that every student, each of our 160,000 students in our large county, has a place in the school system, has a place in their school, and certainly has a place in their classroom.

(39:40 – 40:40). After Hazel and Deputy Superintendent Patrick Murphy spoke about the storybooks and how their implementation would be communicated to families, Board Vice President Shebra Evans expressed her “full support” for the student board member’s comments, stating “it was very important that that be stated out loud.” (44:05 – 44:36).

In a January 24 email, the Persaks’ elementary school principal reflected on a recent parent meeting about the storybooks and stated, “several people (both staff and parents) expressed to me that they felt less safe as a result of some of the comments made by” community members who opposed the storybooks and that “the county is considering an ‘opt out’ for parents” to accommodate certain parents’ “fears.” ECF 1-12. The principal expressed her unequivocal opposition to an opt-out from “books with LGBTQ+ characters in them,” likening it to a decision to opt out of “books with

characters from other marginalized groups” such as Jews, Muslims, and African Americans. *Id.*

At the March 28 board meeting, an individual representing various parent groups protested the decision to end opt-outs: “How is taking away parental rights to opt-out of teachings that go against religious rights, family values, and core beliefs helping us to trust you . . . ?” (1:08:50 – 1:10:45). Harris commented on the individual’s concerns:

I just want to address, what is it, Moms for Liberty? If we could talk about what this is really about. You say, “parents rights to pull their students out of lessons when they’re going to be reading a book that has an LGBTQ character in it,” because of your “religious rights, your family values, your core beliefs.” But Rogers and Hammerstein got it right seventy years ago, you have to be taught to hate. No child is born other-izing, marginalizing, thinking somebody else is not as good as they are, because of the way they look or the way they talk or the religion they practice or who they love. I am proud of the work that this system is doing and is committed to doing, to say we are going to ensure that every student in our school at every age can seek themselves reflected in the work of their classroom and in the people in the schools that do that work with them. And even if they don’t feel safe being who they are at home, or in their other community, we’re going to create a space that acknowledges the humanity of everybody. Because saying that a kindergartener can’t be present when you



read a book about a rainbow unicorn because it offends your religious rights or your family values or your core beliefs is just telling that kid, “here’s another reason to hate another person.” And we are not going to do that in the school system.

(1:46:41 – 1:48:19). The student board member also shared his thoughts:

We cannot opt out of diversity and inclusion. It’s the school system’s responsibility to deliver a meaningful education to all of our students, every student has the right to be reflected in what they learn. Which means that we cannot treat instruction that reflects some students any differently than as we treat instruction that reflects others. No aspect of a student’s identity should limit the quality of their education—not what they look like, not where they come from, not what language they speak, not their sexuality, not their gender identity, and not their religion. To be clear, diversity is a necessity to a comprehensive education, so inclusion must stay.

(1:48:23 – 1:49:13).

At the May 25 board meeting, many more community members spoke about the storybooks and the no-opt-out policy, both for and against the change. In response, the student board member sought clarification about when state law required opt-outs and whether the storybooks were part of the family life and human sexuality unit of the health curriculum. (1:11:14). Hazel explained that state law required opt-outs only from the human growth and sexuality course

and that the storybooks were part of the literacy curriculum. (1:11:54). The student board member stated in response:

We heard this from all parts of our community, but, fundamentally, diversity is a good thing. Inclusion is a good thing. And by providing these diverse and inclusive texts, by aligning ourselves and following state guidance on when opt-out is appropriate, we are doing a service to our students by creating an inclusive education. It is disheartening to hear about the cases of students being bullied about practicing their religious beliefs in schools, and we know of students facing discrimination based on sexuality or their gender identity. But across the board, by staying true to the value of diversity and inclusion, we are addressing these issues in our schools, and I think that is the greatest service we can do for all of our students. And this work around creating inclusive texts at the elementary school levels, the work around the anti-racist audit, the new pilot courses coming to our schools next fall . . . that are inclusive of so many communities in our school system are really starting to change the face of what it looks like to deliver an inclusive education. . . . [I want to make sure we continue] to send a clear message to all our students that regardless of their gender identity or sexuality, regardless of their religion, this is their MCPS and they have a right to see themselves in what they learn everyday.

(1:14:24 – 1:15:50). Superintendent Monifa B.

McKnight then discussed the value of diversity within the MCPS community:

When we think about the diversity that sits within our community, that's often referred to as a strength, and the school system absolutely has a responsibility to respect and support that. Every day, when our children go home, then they have the lessons that are taught in their home that is reflective of culture, religion, and all of those pieces. We would expect that to be the case and would continue in our community as it always has. We would expect that there are values that come out of every home, and those are the lessons that are taught in that home. And this is not an invasion of that.

(1:16:20 – 1:17:12).

A June 2, 2023 article on the *MoCo360* website purports to quote statements made by Harris at the May 25 meeting.<sup>5</sup> See ECF 23-1, at 30, (<https://perma.cc/5GD9-2YVQ>). Harris stated she felt “kind of sorry” for an MCPS student who had expressed personal discomfort with the curriculum. She wondered whether the student was “parroting dogma” learned from her parents. *Id.* She pushed back on the idea that the School Board was infringing parental rights, stating: “There is no right for a parent to micromanage their child’s public-school experience.

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<sup>5</sup> The Court could not locate the quoted statements during its review of the hours-long recording of the May 25 meeting or the recordings of the adjacent board meetings. The accuracy of these quotations, which the School Board has not disputed, does not bear on the Court’s analysis.

If they want their child to receive an education that strictly adheres to their religious dogma, they can send their kid to a private religious school.” *Id.* Harris said she considered it a “badge of honor” to have been quoted four times in the complaint in this lawsuit, which had been filed the previous day, and she expressed concern about the precedent that would be set if the plaintiffs prevailed: “Do [the plaintiffs] realize it would be an impossible disruption to the school system if teachers had to screen the content they plan to teach every day and send out notices so white supremacists could opt out of civil rights content and xenophobes could opt out of stories about immigrant families?” *Id.*<sup>6</sup>

### **G. Relevant Procedural History**

On May 24, 2023, the individual parents, on behalf of themselves and their children, filed this lawsuit against the Montgomery County Board of Education, Superintendent Monifa B. McKnight, and board members Karla Silvestre, Shebra Evans, Grace Rivera-Oven, Rebecca Smondrowski, Julie Yang, Brenda Wolff, and Lynne Harris. ECF 1. They asserted violations of the Free Exercise Clause of the First Amendment, a violation of the Free Speech Clause of the First Amendment, a violation of the Due

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<sup>6</sup> The plaintiffs also highlight comments by a Montgomery County Council member who stated it was unfortunate that the issue put “some Muslim families on the same side of an issue as White supremacists and outright bigots.” *See* ECF 23-1, at 30, <https://perma.cc/3AJE-RSBA>. She continued, “I would not put you in the same category as those folks, although, you know, it’s complicated because they’re falling on the same side of this particular issue.” *Id.*

Process Clause of the Fourteenth Amendment, and a violation of Maryland law. The federal constitutional claims are brought pursuant to 42 U.S.C. § 1983. On June 12, the individual parents moved for a preliminary injunction based on the likely success of their free exercise and due process claims. ECF 23. On July 6, the plaintiffs filed an amended complaint, which added Kids First as a plaintiff. ECF 36. Kids First has not joined the preliminary injunction motion.<sup>7</sup>

## II. Preliminary Injunction Standard

Before the entry of a final judgment, a court may enter a preliminary injunction. Fed. R. Civ. P. 65(a). “The traditional office of a preliminary injunction is to protect the status quo and to prevent irreparable harm during the pendency of a lawsuit ultimately to preserve the court’s ability to render a meaningful judgment on the merits.” *United States v. South Carolina*, 720 F.3d

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<sup>7</sup> Even though Kids First has not joined the parents’ motion, the parents rely on a declaration from one of the association’s members, Grace Morrison, to support their legal arguments, and they argue the requested injunctive relief also would protect Kids First and its members. ECF 52 & 57. The Court is not convinced that Kids First has standing to bring claims on behalf of its members, including Morrison. An association has standing to bring suit on behalf of its members when “neither the claim asserted nor the relief requested requires the participation of individual members in the suit.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977). Free exercise claims “ordinarily require[] individual participation.” *Harris v. McRae*, 448 U.S. 297, 320–21 (1980); *Cornerstone Christian Schs. v. Univ. Interscholastic League*, 563 F.3d 127, 133–34 (5th Cir. 2009). The parties have not presented arguments on this issue, which was thrown into sharp relief by Morrison’s post-hearing declaration about her family’s unique situation.

518, 524 (4th Cir. 2013) (quoting *In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 525 (4th Cir. 2003)). In other words, a preliminary injunction enables the court to ensure that, should the plaintiff prevail, the relief sought will be available to it to the same extent as when it filed suit. *See id.* “A preliminary injunction is ‘an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief’ and may never be awarded ‘as of right.’” *Mountain Valley Pipeline, LLC v. W. Pocahontas Props. Ltd. P’ship*, 918 F.3d 353, 366 (4th Cir. 2019) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22, 24 (2008)).

A plaintiff seeking preliminary injunctive relief bears the burden of proof and must meet “a high bar” by “[s]atisfying . . . four factors.” *SAS Inst., Inc. v. World Programming Ltd.*, 874 F.3d 370, 385 (4th Cir. 2017); *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991). The plaintiff must clearly show “[1] that [it] is likely to succeed on the merits, [2] that [it] is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in [its] favor, and [4] that an injunction is in the public interest.” *Winter*, 555 U.S. at 20; *Leaders of a Beautiful Struggle v. Balt. Police Dep’t*, 2 F.4th 330, 339 (4th Cir. 2021) (en banc) (citing *In re Search Warrant Issued June 13, 2019*, 942 F.3d 159, 170–71 (4th Cir. 2019)).

Several of the preliminary injunction factors merge when constitutional rights are at stake. *Leaders*, 2 F.4th at 346. To start, when “there is a likely constitutional violation, the irreparable harm factor is satisfied.” *Id.*; *see also W.V. Ass’n of Club Owners &*

*Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009) (“[I]n the context of an alleged violation of First Amendment rights, a plaintiff’s claimed irreparable harm is ‘inseparably linked’ to the likelihood of success on the merits of [the] plaintiff’s First Amendment claim.”). This is so because “the loss of constitutional freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Leaders*, 2 F.4th at 346 (quoting *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). Likewise, the final two factors—the balance of the equities and the public interest—are satisfied when there is a likely constitutional violation because “the public interest favors protecting constitutional rights” and “a state is in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional.” *Id.* (quoting *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 191 (4th Cir. 2013)); see also *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022) (noting the final two preliminary injunction factors “merge when the Government is the opposing party”) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

The School Board contends the plaintiffs seek a mandatory preliminary injunction. Mandatory preliminary injunctions “alter rather than preserve the status quo” and are particularly “disfavored.” *Mountain Valley Pipeline, LLC v. 6.56 Acres of Land, Owned by Sandra Townes Powell*, 915 F.3d 197, 216 n.8 (4th Cir. 2019). They are “warranted only in the most extraordinary circumstances.” *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994) (quoting

*Martinez v. Mathews*, 544 F.2d 1233, 1243 (5th Cir. 1976)).

The heightened standard for a mandatory preliminary injunction does not apply here because the plaintiffs ask the Court to maintain the status quo. An injunction that “maintain[s] the status quo and prevent[s] irreparable harm while a lawsuit remains pending” is prohibitory rather than mandatory. *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014) (quoting *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013)). The Fourth Circuit has defined “the status quo” as the “last uncontested status between the parties which preceded the controversy.” *Id.* In *Pashby*, the plaintiffs moved for a preliminary injunction the day before the policy they challenged took effect. 709 F.3d at 320. While the policy had been approved by the legislature months earlier, it had not taken effect at the time the plaintiffs filed their motion. *Id.* For that reason, the court held the plaintiffs sought a prohibitory injunction. *Id.* Here, the plaintiffs filed their motion on June 12, 2023, four days before the close of the 2022–2023 school year. At that time, the opt-out requests of the individual plaintiffs that previously had been granted were still honored. See ECF 36, ¶ 164; ECF 43, ¶ 41 (stating “accommodations would no longer be provided after the 2022–2023 school year ended”). The individual plaintiffs seek to stop the School Board from implementing a change in policy that has not yet caused them injury. That is a prohibitory, not mandatory, injunction.

### **III. Discussion**

#### **A. Likelihood of Success on the Merits**



The parties agree the preliminary injunction analysis in this case collapses into the first factor, the likelihood of success on the merits. The plaintiffs claim the School Board’s decision to disallow opt-outs from the storybooks likely violates their rights under the Free Exercise Clause of the First Amendment and the Due Process Clause of the Fourteenth Amendment. The School Board argues the plaintiffs have not established a likely constitutional violation.

### 1. Free Exercise

The First Amendment, applicable to the states through the Fourteenth Amendment, provides in part that “Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof.” U.S. Const., amend. I. The Free Exercise Clause “protects against laws that discriminate against or among religious beliefs or that restrict certain practices because of their religious conduct.” *Alive Church of the Nazarene, Inc. v. Prince William Cnty., Va.*, 59 F.4th 92, 108 (4th Cir. 2023). To violate the Free Exercise Clause, a law, regulation, or government policy must “burden religious exercise.” *Fulton v. City of Philadelphia*, --- U.S. ----, 141 S. Ct. 1868, 1876 (2021); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 462–63 (2017); *Sch. Dist. of Abington Twp., Pa. v. Schempp*, 374 U.S. 203, 223 (1963) (noting “a violation of the Free Exercise Clause is predicated on coercion”). Even when state action burdens religious exercise, it still may be “constitutionally permissible” if it survives the requisite level of judicial scrutiny. *Fulton*, 141 S. Ct. at 1876. A “facially neutral and generally applicable” law that has the incidental effect of burdening

religious exercise is subject to rational basis review. *Alive Church of the Nazarene*, 59 F.4th at 108; see *Emp't Div., Dep't of Human Res. of Ore. v. Smith*, 494 U.S. 872, 878–82 (1990). “Laws that are not neutral and generally applicable, however, are subject to strict scrutiny review.” *Alive Church of the Nazarene*, 59 F.4th at 108.

The parties debate whether the plaintiffs’ free exercise claims are subject to strict scrutiny or rational basis review. The plaintiffs argue, first, that strict scrutiny applies under *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972), whenever laws restrict the “right of parents . . . to direct the [religious] upbringing of their children.” Next, they argue strict scrutiny applies under *Fulton v. City of Philadelphia*, 141 S. Ct. at 1877, which reaffirmed that policies are not generally applicable when they allow for individualized exemptions. The plaintiffs argue the Religious Diversity Guidelines, which allowed parents to opt out of the storybooks last school year, operate as a system of discretionary exemptions and invite “individualized governmental assessment of the reasons for” opt-out requests. See *Smith*, 494 U.S. at 884. Third, the plaintiffs argue strict scrutiny applies under *Tandon v. Newsom*, --- U.S. , 141 S. Ct. 1294, 1296 (2021), which held that laws are not generally applicable when they treat “*any* comparable secular activity more favorably than religious exercise.” The plaintiffs argue the School Board allows opt-outs for secular reasons from its family life and human sexuality curriculum but refuses to allow opt-outs for religious reasons from the storybooks, which they view as covering some of the same topics. Finally, the plaintiffs argue the no-opt-out policy is not neutral because its adoption was

surrounded by official expressions of hostility toward religion and, as a result, it is subject to strict scrutiny under *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm’n*, --- U.S. ----, 138 S. Ct. 1719 (2018), and *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). The defendants argue the no-opt-out policy is neutral and generally applicable because it was not adopted based on hostility toward religion and no one can opt out of instruction involving the storybooks for any reason. Thus, they contend, the policy is subject to rational basis review.

Before the Court may reach the question of the appropriate level of judicial review, it first must address the threshold question of whether the plaintiffs can establish that the no-opt-out policy burdens their religious exercise. They assert the policy substantially interferes with their sacred obligations to form their children in their faiths and the religious exercise of their children. The School Board argues the no-opt-out policy does not burden the plaintiffs’ religious exercise because the parents and their children are not being directly or indirectly coerced into activity that violates their religious beliefs.

#### **a. Burden – Legal Principles**

“[T]he ordinary meaning of ‘prohibiting the free exercise of religion’ was (and still is) forbidding or hindering unrestrained religious practices or worship.” *Fulton*, 141 S. Ct. at 1896 (Alito, J., concurring). Thus, “it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion.” *Schempp*, 374 U.S. at 223; see *Burwell*

*v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 720 (2014) (finding religious exercise burdened by a law that required the plaintiffs to “engage[] in conduct that seriously violates their religious beliefs”). Coercion can be direct or indirect. *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 450 (1988). Direct coercion is the express prohibition of conduct required by faith or the compulsion to perform conduct prohibited by faith. *See Smith*, 494 U.S. at 878 (recognizing an individual’s religious exercise is burdened by any law that “requires (or forbids) the performance of an act that his religious belief forbids (or requires)”). Indirect coercion exists when government action places “substantial pressure on an adherent to modify his behavior and violate his beliefs[.]” *Thomas v. Rev. Bd. of Ind. Emp’t Sec. Div.*, 450 U.S. 707, 717–18 (1981).<sup>8</sup>

The early indirect coercion cases involved “state unemployment compensation rules that conditioned the availability of benefits upon an applicant’s willingness to work under conditions forbidden by his

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<sup>8</sup> At oral argument, the plaintiffs suggested a burden on religious exercise may not be required to establish a free exercise violation, citing three recent Supreme Court cases they say did not address burden. However, in one case, the Court stated, “it is plain that the City’s actions have burdened [the plaintiff’s] religious exercise . . . .” *Fulton*, 141 S. Ct. at 1876. In the other cases, the burden was equally obvious. California had prohibited private religious gatherings of a certain size. *Tandon*, 141 S. Ct. at 1297. And Colorado had ordered an individual to engage in conduct contrary to his beliefs. *Masterpiece Cakeshop*, 138 S. Ct. at 1726. These cases do not support the plaintiffs’ position that a burden on religious exercise may not be required to establish a free exercise claim, a position that cannot be squared with the text of the Free Exercise Clause.

religion.” *Smith*, 494 U.S. at 883. For example, in *Sherbert v. Verner*, a woman lost her job and was unable to obtain other employment because she refused to work on her religious day of rest. 374 U.S. 398, 399 (1963). She sought unemployment benefits, but under state law, she was ineligible because she had failed, without good cause, to accept available suitable work. *Id.* at 400–01. The Supreme Court held the state law burdened the plaintiff’s religious exercise because “the pressure upon her to forego [the practice of her religion] is unmistakable”—the law “force[d] her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand.” *Id.* at 404. “Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against [an individual] for her Sunday worship.” *Id.*; see also *Thomas*, 450 U.S. at 717–18.

The Supreme Court has clarified that these cases support a general rule that “a State violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits.” *Carson v. Makin*, --- U.S. ---, 142 S. Ct. 1987, 1998 (2022). Thus, in *Carson*, the Court concluded a state law that provided certain parents with tuition assistance for their school-aged children but prohibited religious schools from receiving the state-issued tuition assistance burdened the parents’ religious exercise. *Id.* The law forced the parents to choose between religious schooling and a public benefit, just as the unemployment benefits framework in *Sherbert* forced the worker to choose between honoring her religious

day of rest and receiving unemployment assistance. *Id.*; see also *Trinity Lutheran*, 582 U.S. at 462 (“[T]he Department’s policy puts Trinity Lutheran to a choice: It may participate in an otherwise available benefit program or remain a religious institution.”). Similar reasoning led the Court to find indirect coercion when a policy forced a religious organization to choose between “curtailing its mission” and violating its beliefs. *Fulton*, 141 S. Ct. at 1876. In *Fulton*, a Catholic foster care agency faced exclusion from municipal contracts for the placement of needy children into foster homes unless it agreed to certify same-sex foster families—conduct it viewed as “approving relationships inconsistent with its beliefs.” *Id.* There, too, the coercive pressure to forgo religious exercise was clear.

This case involves objections to a public-school curriculum. The Fourth Circuit has not addressed the question of when a mandatory public-school curriculum might burden the religious exercise of students or parents. Other courts have. Every court that has addressed the question has concluded that the mere exposure in public school to ideas that contradict religious beliefs does not burden the religious exercise of students or parents. See, e.g., *Parker v. Hurley*, 514 F.3d 87, 107 (1st Cir. 2008); *Bauchman v. West High Sch.*, 132 F.3d 542, 557 (10th Cir. 1997); *Fleischfresser v. Dirs. of Sch. Dist. 200*, 15 F.3d 680, 690 (7th Cir. 1994); *Mozert v. Hawkins Cnty. Bd. of Educ.*, 827 F.2d 1058, 1065 (6th Cir. 1987); *Grove v. Mead Sch. Dist. No. 354*, 753 F.2d 1528, 1542–43 (9th Cir. 1985); *Jones v. Boulder Valley Sch. Dist. RE-2*, No. 20-cv-3399-RM- NRN, 2021 WL 5264188, at \*14 (D. Colo. Oct. 4, 2021); *Coble v. Lake*

*Norman Charter Sch., Inc.*, No. 3:20-CV-596, 2021 WL 1109360, at \*7 (W.D.N.C. Mar. 23, 2021); *Sabra v. Maricopa Cnty. Cmty. Coll. Dist.*, 479 F. Supp. 3d 808, 818 (D. Az. 2020); *Cal. Parents for Equalization of Educ. Mats. v. Torlakson*, 267 F. Supp. 3d 1218, 1227 (N.D. Cal. 2017), *aff'd*, 973 F.3d 1010 (9th Cir. 2020); *Freedom From Religion Found. v. Hanover Sch. Dist.*, 665 F. Supp. 2d 58, 71 (D.N.H. 2009). The Court will discuss a few of these cases in detail, but in brief, these courts reasoned that the mere exposure to ideas in public school did not burden religious exercise because (1) students were not required to behave contrary to their faiths or affirm any views contrary to their religious beliefs, and (2) parents were not prevented from discussing and contextualizing any contrary views at home.

In *Mozert v. Hawkins*, students and parents brought a free exercise challenge against a mandatory public-school curriculum involving a series of basic reading textbooks. 827 F.2d at 1059–60. The families had religious objections to several themes in the books, including mental telepathy, evolution, and pacifism. *Id.* at 1060–61. Initially, the school worked with the families to provide an alternative reading program for students whose parents objected to the books. *Id.* at 1060. But the school board later voted to eliminate all alternative reading programs, making the books mandatory. *Id.* Several students who refused to read the books or attend reading classes in which they were used were suspended, others transferred schools or withdrew from public school, and a few received unsanctioned accommodations. *Id.* The families claimed the mandatory curriculum violated their rights under the Free Exercise Clause. The lower

court agreed, concluding “the plaintiffs’ free exercise rights ha[d] been burdened because their ‘religious beliefs compel[led] them to refrain from exposure to the [book] series,’ and the defendant school board ‘ha[d] effectively required that the student plaintiffs either read the offensive texts or give up their free public education.” *Id.* at 1062. But the Sixth Circuit reversed and held exposure to ideas did not burden the families’ religious exercise. *Id.* at 1065. The court discussed indirect coercion cases, noting that in each, “there was compulsion to do an act that violated the plaintiffs’ religious convictions.” *Id.* at 1065–66. But nothing in the record suggested “any student was ever required to affirm his or her belief or disbelief in any idea or practice mentioned in the various stories.” *Id.* at 1063–64. The plaintiffs pointed to guidance in teachers’ materials that they viewed as encouraging teachers to present the objectionable ideas as “truth,” but the court noted students did not read the teachers’ materials and there was “no proof that any plaintiff student was ever called upon to say or do anything . . . or to engage or refrain from engaging in any act either required or forbidden by the student’s religious convictions.” *Id.* The court concluded “compulsion” must mean something beyond simply “reading and discussing assigned materials.” *Id.* at 1064.

Similarly, in *Fleischfresser v. Directors of School District 200*, the Seventh Circuit affirmed the dismissal of a free exercise challenge brought by parents against a public school district for its use of a series of books in a supplemental reading program. 15 F.3d at 690. The parents alleged the book series focused on supernatural beings including “wizards, sorcerers, giants and unspecified creatures with



supernatural powers” and “indoctrinate[d] children in values directly opposed to their Christian beliefs by teaching tricks, despair, deceit, parental disrespect and by denigrating Christian symbols and holidays.” *Id.* at 683. The court acknowledged the parents’ right “to control the religious upbringing and training of their minor children.” *Id.* at 689 (citing *Yoder*, 406 U.S. at 213–14). But it found no free exercise violation because the parents had not alleged the use of the books had “a coercive effect that operate[d] against the [] practice of their religion.” *Id.* at 689–90. The defendants were “not precluding the parents from meeting their religious obligation to instruct their children,” and “the use of the series [did not] compel the parents or children to do or refrain from doing anything of a religious nature. Thus, no coercion exist[ed] . . . .” *Id.* at 690. The court concluded by endorsing a concern Justice Jackson had expressed nearly 50 years earlier: “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. Nothing but educational confusion and a discrediting of the public school system can result from subjecting it to constant law suits.” *Id.* (quoting *McCullum v. Bd. of Educ.*, 333 U.S. 203, 235 (1948) (Jackson, J., concurring)).

The most recent circuit-level analysis of free exercise challenges to public-school curricula is found in *Parker v. Hurley*, 514 F.3d 87 (1st Cir. 2008). In that case, parents brought free exercise challenges to two books that portrayed families with same-sex parents. *Id.* at 90. The parents sought advance notice from the school about when the books would be used and the opportunity to opt their children out of instruction

using the books, which they believed contradicted their religious beliefs. *Id.* The First Circuit affirmed the dismissal of the parents' claims, which it characterized as seeking an "exemption from religiously offensive material." *Id.* at 95, 104. It began with "the standard constitutional threshold question"—"whether the plaintiffs' free exercise is interfered with at all." *Id.* at 99 (quoting N.M. Stolzenberg, "*He Drew a Circle That Shut Me Out*": *Assimilation, Indoctrination, and the Paradox of a Liberal Education*, 106 Harv. L. Rev. 581, 592–93 (1993)). It found no allegations of direct coercion:

The parents do not allege coercion in the form of a direct interference with their religious beliefs, nor of compulsion in the form of punishment for their beliefs . . . . Nor do they allege the denial of benefits. Further, plaintiffs do not allege that the mere listening to a book being read violated any religious duty on the part of the child. There is no claim that as a condition of attendance at the public schools, the defendants have forced plaintiffs—either the parents or the children—to violate their religious beliefs.

*Id.* at 105. Instead, the court determined the "heart of the plaintiffs' free exercise claim is a claim of 'indoctrination': that the state has put pressure on their children to endorse an affirmative view of gay marriage and thus has undercut the parents' efforts to inculcate their children with their own opposing religious views." *Id.* It declined to decide whether such a theory might be cognizable, instead concluding that the plaintiffs had not alleged coercion through indoctrination. *Id.* "[A]s to the parents' free exercise

rights, the mere fact that a child is exposed on occasion in public school to a concept offensive to a parent's religious belief does not inhibit the parent from instructing the child differently" because parents remain "free to discuss [objectionable] matters and to place them in the family's moral or religious context . . . ." *Id.* (quoting *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 185 (3d Cir. 2005)). In addressing the children's rights, the court imagined a spectrum between impermissible indoctrination and permissible "influence-toward- tolerance." *Id.* at 106. One child's rights were not burdened at all because he was never required to read the book, which in his case merely depicted same-sex couples and did not endorse homosexuality. *Id.* The other child had "a more significant claim" because he was forced to sit through a classroom reading of a book that did endorse same-sex marriage and homosexuality. But his claim still fell well short of potentially actionable indoctrination because he was not required to affirm same-sex marriage, faced no consequences for disagreeing with the books or refusing to read them, and was not "subject to a constant stream of like materials." *Id.* The court concluded the "reading by a teacher of one book, or even three, and even if to a young and impressionable child, does not constitute 'indoctrination.'" *Id.* at 107.

When courts have found free exercise violations based on public-school curricula, the challenged curricula involved more than exposure to ideas. The curricula required conduct that conflicted with students' faiths. In *Moody v. Cronin*, for example, parents and students brought a free exercise challenge against a statewide requirement that public-school

students “attend all coeducational physical education classes under penalty of suspension, expulsion, denial of credits for graduation and other discipline.” 484 F. Supp. 270, 272 (C.D. Ill. 1979). The families had religious objections to their children being “required to view and interact with members of the opposite sex who are wearing ‘immodest attire.’” *Id.* The court found the statewide requirement “substantially interfere[d] with the religious development of the Pentecostal children and their integration into the way of life of the Pentecostal faith community.” *Id.* at 276. It reasoned:

[T]here is a degree of visual and physical contact inherent in physical education that is not present in other classes. The required participation in coeducational physical education forces interaction with members of the opposite sex who are wearing “immodest attire.” The nature of the activities engaged in effectively deprives the Pentecostal children of the decision of “taking the second look” and is thus in direct violation of Church teachings regarding being a party to lust, either by being provocative themselves or by allowing themselves to be put in a position where the temptation is present.

*Id.* at 275. The court held the students could not be required to participate in coeducational physical education in violation of their religious beliefs. *Id.* at 277. Similarly, another court found a requirement that high school students participate in a military training program or be denied a diploma burdened the religious exercise of a student whose religious beliefs prohibited

him from participating in training to prepare for war. *Spence v. Bailey*, 465 F.2d 797, 800 (6th Cir. 1972). That choice was tantamount to indirect coercion, as in *Sherbert*. *Id.* at 799. A court in this circuit found a school's uniform requirement that contravened a parent's religious beliefs burdened religious exercise. *Hicks ex rel. Hicks v. Halifax Cnty. Bd. of Educ.*, 93 F. Supp. 2d 649, 659 (E.D.N.C. 1999). And in yet another case, a court recognized that a school's refusal to excuse students with religious objections to watching movies and listening to recordings of any kind burdened parents' rights to pass on their faiths because it "allows to be done in school what is prohibited at home. It places the children between the Scylla of obeying their parents' religious teachings and the Charybdis of obeying the commands of their teachers and school authorities." *Davis v. Page*, 385 F. Supp. 395, 399–400 (D.N.H. 1974).

Each of these cases relied on *Yoder*, a seminal Supreme Court case that reaffirmed the "right of parents to direct the religious upbringing of their children." 406 U.S. at 233. In *Yoder*, Amish parents challenged their convictions under a state criminal statute requiring them to cause their children to attend public or private school until age 16. *Id.* at 207. The parents had declined to send their 14- and 15-year-old children to public or private school. *Id.* They believed their children's attendance in school was contrary to the Amish religion and way of life, and that "by sending their children to high school, they would not only expose themselves to the danger of the censure of the church community, but . . . also endanger their own salvation and that of their children." *Id.* at 209. Substantial evidence supported

the parents' contention that their religious communities were "characterized by a fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence." *Id.* at 209–210. The evidence included "the unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents' entire mode of life . . ." *Id.* at 219. Based on this evidence, the Supreme Court found that

secondary schooling, by exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to their beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent stage of development, contravenes the basic religious tenets and practice of the Amish faith[.]

*Id.* at 218. In other words, the record showed compulsory school attendance for Amish children "carrie[d] with it a very real threat of undermining the Amish community and religious practice as they exist today; they must either abandon belief and be assimilated into society at large, or be forced to migrate to some other and more tolerant religion." *Id.* The Court acknowledged the state's interest in universal compulsory education but held it was not absolute and did not outweigh the Amish parents' fundamental rights and interests "with respect to the religious upbringing of their children . . ." *Id.* at 214–

15.

The *Yoder* Court was clear that its holding was inexorably linked to the Amish community's unique religious beliefs and practices. *Id.* at 235–36. It stated its heightened scrutiny of the challenged law was compelled by the combination of “the interests of parenthood” and “a free exercise claim *of the nature revealed by this record.*” *Id.* at 233 (emphasis added). It anticipated “probably few other religious groups or sects could make” a showing similar to the evidence provided by the Amish parents, including the interrelationship of their beliefs and a centuries-long practice of isolated and self-sufficient communal living, and it counseled courts to “move with great circumspection in performing the sensitive and delicate task of weighing a State’s legitimate social concern when faced with religious claims for exemption from generally applicable educational requirements.” *Id.* For these reasons, *Mozert* distinguished *Yoder* as resting “on such a singular set of facts that . . . it cannot be held to announce a general rule that exposure without compulsion to act, believe, affirm or deny creates an unconstitutional burden.” 827 F.2d at 1067. *Parker*, too, observed that “*Yoder* emphasized that its holding was essentially sui generis, as few sects could make a similar showing of a unique and demanding religious way of life that is fundamentally incompatible with *any* schooling system.” 514 F.3d at 100. Still, *Yoder* stands as the ultimate application of the Free Exercise Clause’s protection against compulsory public-school education that violates parents’ religious beliefs.

Finally, it is worth emphasizing one throughline in all

these cases. The Supreme Court never has “interpreted the First Amendment to require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family.” *Bowen v. Roy*, 476 U.S. 693, 699 (1986). In *Bowen*, parents challenged the government’s practice of assigning and using Social Security numbers. They asserted that practice, as applied to their two-year-old daughter, would violate their religious beliefs and limit their daughter’s spiritual development. The Court rejected their claims because the “Free Exercise Clause simply cannot be understood to require the Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens.” *Id.* “Just as the Government may not insist that appellees engage in any set form of religious observance, so appellees may not demand that the Government join in their chosen religious practices by refraining from using a number to identify their daughter.” *Id.* at 699–700. “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.” *Id.* at 700. The Court acknowledged that the parents’ “religious views may not accept this distinction between individual and governmental conduct[,]” but it concluded that “the Constitution, rather than an individual’s religion, must supply the frame of reference.” *Id.* at 701 n.6. For the same reasons, the Court rejected free exercise challenges to federal agency actions that had authorized road construction across land used for religious purposes. *Lyng*, 485 U.S. at 442. The Court reaffirmed the Free



Exercise Clause’s protection against forms of indirect coercion like the disqualification from unemployment benefits based on religious conduct, which it analogized to direct fines on religious worship. *Id.* at 450. But the Court held that line of indirect-coercion cases “does not and cannot imply that incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs, require” judicial scrutiny. *Id.* at 450–51.

#### **b. Burden – Application**

With these principles in mind, the Court considers whether the plaintiffs likely have established their and their children’s religious exercise rights will be burdened by the no-opt-out policy. In their declarations, the parents claim a sacred obligation to teach their children their faiths and their religious views on family structure, gender, and human sexuality. ECF 23-2, ¶¶ 4, 14; ECF 23-3, ¶ 12; ECF 23-4, ¶ 7; ECF 52, ¶ 7. Mahmoud and Barakat state their faith prohibits prying into others’ private lives and discourages public disclosure of sexual behavior. ECF 23-2, ¶ 17. They state it would violate their religious beliefs and the beliefs of their children if their children “were asked to discuss romantic relationships or sexuality with schoolteachers or classmates.” *Id.* They also state “[i]ntentionally exposing” their children to contrary instruction would conflict with their religious obligations. *Id.* ¶ 18. The Romans state their child loves his teachers and implicitly trusts them, so “[h]aving them teach principles about sexuality or gender identity that conflict with [their] religious

beliefs significantly interferes with [their] ability to form his religious faith and religious outlook on life and is spiritually and emotionally harmful to his well-being.” ECF 23-3, ¶ 20. The Persaks state “exposing” their children to viewpoints that contradict their beliefs “conflicts” with their religious duties and “undermines [their] efforts to raise [their] children in accordance with [their] faith . . . .” ECF 23-4, ¶¶ 12, 16. Finally, Morrison, a board member of Kids First, states her religious obligations are “pressured” by the books because “it is practically impossible for [her and her husband] to contradict” contrary instruction due to her child’s learning disability, which prevents her from understanding their disagreement with the books and differentiating their instruction from her teachers’ instruction. ECF 52, ¶¶ 8–9. Morrison also states she has no realistic alternative to public school for her child’s education. *Id.* ¶¶ 10, 14.

The Court begins with the asserted burden on the children’s religious exercise. The plaintiffs contend not allowing opt-outs from the storybooks exerts “behavioral pressure” on the children to “modify their religious beliefs and behavior.” ECF 47, at 10–11. The pressure comes from the books’ calls to action and introspection and the inevitable teacher-led discussion, which advance the School Board’s express goal to normalize an inclusive environment. In essence, the plaintiffs argue that by being forced to read and discuss the storybooks, their children will be pressured to change their religious views on human sexuality, gender, and marriage. The Court interprets this argument as an indoctrination claim of the sort contemplated in *Parker*.

The plaintiffs have not identified any case recognizing a free exercise violation based on indoctrination. The closest any court has come to doing so appears to be *Tatel v. Mount Lebanon School District*, 637 F. Supp. 3d 295 (W.D. Penn. 2022). In *Tatel*, the court denied a motion to dismiss a free exercise claim brought by parents who challenged a public-school teacher’s non-curricular instruction on transgender topics. *Id.* at 330. The parents alleged the teacher had engaged in a year-long course of instruction to first graders on gender dysphoria, including books, videos, discussions, and private counseling. *Id.* at 303–05. She also had “instructed the children in her first-grade class that their parents might be wrong about their children’s gender,” told one student that he could dress like a different gender, said she would never lie to them (suggesting their parents would), and encouraged her students “not to tell their parents about her instruction.” *Id.* Such instruction was “contrary to the District’s published curriculum,” though administrators allegedly had adopted a *de facto* policy allowing the teacher to continue her activities. *Id.* at 304.

The *Tatel* Court’s basis for finding a burden on the parents’ religious exercise is not clear, but the court’s analysis seems to align with the First Circuit’s description of indoctrination in *Parker*. In distinguishing *Parker*, the court noted that the teacher “did attempt to indoctrinate” the children by telling them their parents “may be wrong and her teachings about gender identity were right.” *Id.* at 325. Later, in summarizing its reason for finding a viable free exercise claim, the court stated the teacher had impermissibly “advocated her own agenda and beliefs

about gender identity” in the classroom despite the parents’ objections. *Id.* at 330.<sup>9</sup> The teacher allegedly engaged in a consistent, multi-pronged, year-long effort to convince her first-grade students to believe her views on gender and, in some cases, to change their gender identities. *Id.* at 303–05. She told her students she would never lie to them, and she encouraged them not to discuss her instruction with their parents. *Id.* The students were not just exposed to ideas. They were being pressured by their teacher to change their religious views on gender identity.

Here, the plaintiffs have not shown that the no-opt-out policy likely will result in the indoctrination of their children. Their allegations do not approach the

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<sup>9</sup> On a motion for reconsideration, the court expanded on its analysis. *Tatel v. Mt. Lebanon Sch. Dist.*, --- F. Supp. 3d ---, 2023 WL 3740822, at \*13–14 (W.D. Penn. May 31, 2023). The court reasoned, first, that the plaintiffs did not have to allege coercion because “a non-neutral policy to the detriment of a religious belief is a *per se* burden on Free Exercise rights” under *Kennedy v. Bremerton School District*, --- U.S. ---, 142 S. Ct. 2407 (2022). *Tatel*, 2023 WL 3740822, at \*13. In support, the court cited the following language from *Kennedy*: “[A] plaintiff may carry the burden of proving a free exercise violation in various ways, including by showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not ‘neutral’ or ‘generally applicable.’” 142 S. Ct. at 2421–22. The Court does not read this language from *Kennedy* as describing a *per se* burden. Rather, the language explains when strict scrutiny may be triggered by a law that imposes a burden. The *Tatel* Court reasoned in the alternative that the plaintiffs had pled coercion because they “must either withdraw their children from the public school or submit to [the teacher’s] advocacy.” 2023 WL 3740822, at \*14 n.18. This reasoning seems to find indirect coercion based on the pressure either to “submit to” indoctrination or abandon a public education.

parents' allegations in *Tatel* or the description of indoctrination in *Parker*. To be sure, the topics in the storybooks the plaintiffs find objectionable—gender identity, transgenderism, and same-sex marriage—outnumber the single objectionable issue (same-sex marriage) in the two books in *Parker*. And some of the books may be viewed as endorsing particular viewpoints, like one of the books in *Parker* that the court suggested presented “a more significant claim.” *Parker*, 514 F.3d at 106. But the storybooks are still a small subset of many books used in the MCPS English language arts curriculum; they are not a “constant stream of like materials.” *Id.* Moreover, as in *Parker*, the School Board “imposes no requirement that the student[s] agree with or affirm” the books’ views on the topics and threatens no punishment if they refuse to do so. *Id.* To the contrary, it consistently has stated, “No child, or adult, who does not agree with or understand another student’s gender identity or expression of their sexual identity is asked to change how they feel about it.” ECF 1-5; ECF 43, ¶ 30; ECF 55-3, at 2 (suggesting teachers to respond to student religious objections by saying, “I understand that is what you believe, but not everyone believes that” and “we don’t have to understand a person’s identity to treat them with respect and kindness”). Even if one or two of the suggested answers to possible student questions in the School Board’s guidance could be interpreted to promote a particular view as correct, they are not required answers, and they are outliers among the suggested answers that do not promote a particular view. ECF 55-3. And some MCPS educators have expressed concerns about the more assertive suggested answers, suggesting those responses are less likely to

be used in the classroom. ECF 47-1, at 10. On the current record, the plaintiffs have not shown that MCPS's use of the storybooks crosses the line from permissible influence to potentially impermissible indoctrination. Therefore, as in *Parker*, the Court need not decide whether indoctrination burdens religious exercise.

The plaintiffs contend the Morrisons' daughter, at least, has a viable indoctrination claim. Their daughter has Down Syndrome and Attention Deficit Disorder. She is enrolled in the Learning for Independence Program, has an IEP, and qualifies for the full-time, one-on-one assistance of a paraeducator. Morrison states her daughter's learning disability prevents the child from understanding or differentiating instructions from her teachers and her parents and renders her unable to understand how or why her parents disagree with the ideas presented in the storybooks. As a result, Morrison states, it is practically impossible for Morrison and her husband to contradict instruction the child receives at school that conflicts with the family's religious beliefs.

The Morrisons are not named plaintiffs, and the Court questions whether Kids First has standing to bring claims on their behalf. *See Harris*, 448 U.S. at 320–21; *Cornerstone Christian Schs.*, 563 F.3d at 133–34 (rejecting religious school's claims of associational standing to bring free exercise challenges on behalf of parents and students); 13A Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Fed. Prac. & Proc.* § 3531.9.5 (3d ed.) ("Some substantive claims may seem inherently so personal that individual participation should be required simply because of the nature of the

claim.”). Even if the Court were to assume the Morrisons’ claims are properly presented, the Morrisons have not shown the use of the storybooks will result in their daughter’s indoctrination. She may be uniquely vulnerable to indoctrination due to her neurodivergence, but on the current record, the Morrisons still have not established that indoctrination is likely to occur. The evidence suggests that, generally, MCPS teachers will occasionally read one of the handful of books, lead discussions and ask questions about the characters, and respond to questions and comments in ways that encourage tolerance for different views and lifestyles. That is not indoctrination. That the Morrisons’ child cannot distinguish between what her parents and teachers instruct does not convert the teachers’ instruction into indoctrination—nothing suggests she will be pressured to affirm or agree with the views presented in the storybooks. Moreover, the Morrisons have not offered evidence about how the books will be incorporated into the Learning for Independence Program or whether the Morrisons have requested a modification to their daughter’s IEP to accommodate her disability as it relates to the storybooks. Based on the evidence before the Court, the Morrisons are likely to succeed on an indoctrination claim.<sup>10</sup>

Separate from any indoctrination claim, Mahmoud

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<sup>10</sup> Even if Kids First has standing to bring a claim on behalf of the Morrisons and the Morrisons could satisfy the standard for a preliminary injunction, the unique situation of one family would not justify a broad injunction applicable to the individual plaintiffs and every Kids First member.

and Barakat contend their son would be forced to violate Islam's prohibition of "prying into others' private lives" and its discouragement of "public disclosure of sexual behavior" if his teacher were to ask him to discuss "romantic relationships or sexuality." ECF 23-2, ¶ 17. Forcing a child to discuss topics that his religion prohibits him from discussing goes beyond the mere exposure to ideas that conflict with religious beliefs. But nothing in the current record suggests the child will be required to share such private information. Based on the evidence of how teachers will use the books, it appears discussion will focus on the characters, not on the students. *See* ECF 43, ¶ 30 (stating the books "are used to assist students with mastering concepts like answering questions about characters, retelling key events . . . and drawing inferences about story characters"); ECF 1-15, at 24 (same); ECF 1-5 (noting "think-aloud moments" about what characters feel). While some instructional guidance seems to encourage student introspection, none encourages students to share their personal experiences or to discuss their or their families' romantic relationships, gender identities, or sexuality. *See* ECF 55-3, at 3 ("Are you comfortable sharing your pronouns with me?"). Additionally, Mahmoud and Barakat have not established the likelihood that prohibited conversations will occur. They do not allege they have told their son's teachers that his religion does not allow him to discuss prohibited topics with others or that his teachers, when on notice that he cannot discuss these topics, will pressure him to do so. Thus, the Court cannot conclude the child is likely to be coerced into violating his beliefs in the manner identified by his parents.



The *sine qua non* of a free exercise claim is coercion, and the plaintiffs have not shown the no-opt-out policy likely will result in the indoctrination of their children or otherwise coerce their children to violate or change their religious beliefs. “Public schools are not obliged to shield individual students from ideas which potentially are religiously offensive, particularly when the school imposes no requirement that the student” violate his or her faith during classroom instruction. *Parker*, 514 F.3d at 106.

The parents’ burden arguments, too, fall short. The parents assert that their children’s exposure to the storybooks, including discussion about the characters, storyline, and themes, will substantially interfere with their sacred obligations to raise their children in their faiths. The Court’s analysis of the parents’ asserted burden is guided by *Parker* and the other circuit-level cases, which the Court finds persuasive. Under these cases, the parents’ inability to opt their children out of reading and discussion of the storybooks does not coerce them into violating their religious beliefs. *See Parker*, 514 F.3d at 105–06; *Fleischfresser*, 15 F.3d at 690; *Mozert*, 827 F.2d at 1065–66. The parents still may instruct their children on their religious beliefs regarding sexuality, marriage, and gender, and each family may place contrary views in its religious context.<sup>11</sup> No government action prevents the parents

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<sup>11</sup> The Morrises, too, do not face any coercion to violate their sacred duty to raise their child in their faith. Morrison states they cannot contextualize contrary ideas for their disabled daughter because her disability prevents her from understanding the difference between what her parents say and what her teachers say. But the no-opt-out policy does not prevent the

from freely discussing the topics raised in the storybooks with their children or teaching their children as they wish. The no-opt-out policy does not prevent the parents from exercising their religious obligations or coerce them into forgoing their religious beliefs.<sup>12</sup>

The plaintiffs argue this conclusion is inconsistent with Justice Alito’s concurrence in *Morse v. Frederick*, which stated: “It is a dangerous fiction to pretend that parents simply delegate their authority—including their authority to determine what their children may say and hear—to public school authorities.” 551 U.S. 393, 424 (2007) (Alito, J., concurring). *Morse* involved a free speech challenge to a school’s decision to punish a student for raising a controversial banner at an off-campus, school-approved event. *Id.* at 396. In context, Justice Alito was reaffirming that schools act as agents of the State and not private actors when they regulate student speech. *See id.* (“When public school authorities regulate student speech, they act as agents of the State; they do not stand in the shoes of the students’ parents.”). In the same paragraph, he observed that “[m]ost parents, realistically, have . . .

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Morrison from taking the action required by their religion—trying to teach their daughter their beliefs.

<sup>12</sup> The plaintiffs argue they will not know what to discuss with their children or when without advance notice of when the storybooks will be read. But parents know the books are a part of the English language curriculum and must be used in the classroom at some point during the upcoming school year. They may read the books for themselves and decide whether, when, and how best to address them with their children. Not receiving notice of the precise dates on which the books will be read does not burden their religious exercise.

little ability to influence what occurs in the school[.]” undermining the plaintiffs’ argument that Justice Alito intended to suggest parents’ have substantial control over public-school curricula. *Id.* The Court’s findings here are not inconsistent with the holding in *Morse* or Justice Alito’s concurrence.

The plaintiffs further argue *Parker*, *Mozert*, and *Fleischfresser* are not persuasive and should not be followed here. They argue first that, even if they remain free to teach their beliefs to their children, their religious exercise is nonetheless burdened because the storybooks impede their efforts to instill their religious beliefs in their children. In other words, they argue instruction that uses the storybooks will make it less likely they will accomplish their religious obligations to raise their children in their faiths. Yet, they cite no case that has recognized a free exercise claim based on government action that reduces the likelihood of meeting a sacred obligation. Such a finding would seem to contravene the Supreme Court’s guidance that the Free Exercise Clause cannot be used to “require the Government *itself* to behave in ways that the individual believes will further his or her spiritual development or that of his or her family.” *Bowen*, 476 U.S. at 699. It is not enough for a plaintiff to identify “the incidental effects of government programs, which may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs[.]” *Lyng*, 485 U.S. at 450. “The crucial word in the constitutional text is ‘prohibit’: ‘For the Free Exercise Clause is written in terms of what the government cannot do to the individual, not in terms of what the individual can exact from the

government.” *Id.* (quoting *Sherbert*, 374 U.S. at 412). With or without an opt-out right, the parents remain free to pursue their sacred obligations to instruct their children in their faiths. Even if their children’s exposure to religiously offensive ideas makes the parents’ efforts less likely to succeed, that does not amount to a government-imposed burden on their religious exercise.

The plaintiffs next argue that the no-opt-out policy is a form of indirect coercion, which they claim *Parker* did not address. They contend the policy pressures them to choose between the benefits of a public education and exercising their religious rights. Indirect coercion, as discussed above, is substantial pressure short of an express command to modify one’s behavior or to violate one’s beliefs. Such pressure may come from conditions on receiving public benefits, which courts have found are analogous to fines. Certainly, public education is a valuable public benefit. And many families cannot afford to send their children to private schools. But the benefit of a public education in this case is not conditioned on any activity or abstention that violates the parents’ religious beliefs. The no-opt-out policy does not pressure the parents to refrain from teaching their faiths, to engage in conduct that would violate their religious beliefs, or to change their religious beliefs. The policy may pressure them to discuss the topics raised by the storybooks with their children, but those discussions are anticipated, not prohibited, by the parents’ faiths. The parents are not pressured into violating their religious beliefs in order to obtain the benefits of a public education.

Third, the plaintiffs argue the Supreme Court's decision in *Yoder* compels the conclusion that the no-opt-out policy interferes with their rights to direct the religious upbringing of their children and teach their religious views on topics central to their faiths. They claim the reading and discussion of the storybooks will interfere with this right by encouraging their children to think about and question their sexuality and gender identity, to focus prematurely on romantic relationships, and to disregard religious teachings.

*Parker* and *Mozert* are representative of how courts have viewed *Yoder* in cases challenging curricula on free exercise grounds. The Sixth Circuit in *Mozert* noted “*Yoder* was decided in large part on the impossibility of reconciling the goals of public education with the religious requirement of the Amish that their children be prepared for life in a separated community” and the threat to the Amish way of life and religious practice posed by the public-school attendance requirement. 827 F.2d at 1067. It found no similar threat to the parents on the facts before it because they wanted the benefits of a public education, albeit with greater control over the curriculum, and because they did not claim their children's exposure to the curriculum would prevent them from practicing their religion. *Id.* The First Circuit in *Parker* likewise found “substantial differences” between the parents' claims and the claims in *Yoder*, covering much the same ground as *Mozert*. 514 F.3d at 100. Unlike in *Yoder*, the parents in *Parker* had chosen to enroll their children in public school and made no claim of a distinct community and lifestyle threatened by the curriculum. *Id.* They had not shown that “exposure to the materials in dispute” would “automatically and

irreversibly prevent [them] from raising [their children] in the religious belief that gay marriage is immoral.” *Id.* By contrast, the continued education of the Amish children in *Yoder* would have prevented their parents from raising their children in their separate and distinct religious culture and lifestyle. *Id.* And, in both cases, the courts noted the parents had legal alternatives to public school (private schools and homeschooling) that would satisfy their religious concerns, whereas the Amish parents in *Yoder* did not. *Id.*; *Mozert*, 827 F.2d at 1067.

The plaintiffs argue these readings of *Yoder* are too narrow and conflict with the Supreme Court’s recent description of the parental right at issue in that case. They cite *Espinoza v. Montana Department of Revenue*, in which parents challenged a state regulation that blocked private religious schools from receiving funds from a state scholarship program. --- U.S. ----, 140 S. Ct. 2246, 2249 (2020). The majority in *Espinoza* noted that *Yoder* supported the Court’s longstanding recognition of “the rights of parents to direct ‘the religious upbringing’ of their children.” *Id.* at 2261. Justice Gorsuch, writing in concurrence, stated “this Court has already recognized that parents’ decisions about the education of their children . . . can constitute protected religious activity.” *Id.* at 2276 (Gorsuch, J., concurring). And Justice Breyer, writing in dissent, noted “the Free Exercise Clause draws upon a history that places great value upon the freedom of parents to teach their children the tenets of their faith.” *Id.* at 2284 (Breyer, J., dissenting). In each instance, *Yoder* is referred to in passing and at a high level of generality.

Such stray statements offer limited guidance here, with facts that are a far cry from both *Yoder* and *Espinoza*. Neither the majority, the concurrence, nor the dissent stated lower courts' interpretations of *Yoder* in this context is incorrect or provided any analysis from which this Court may infer their dissatisfaction with those interpretations. At the same time, the plaintiffs offer no analogous case to support their proposed application of *Yoder* to these facts. Even if the plaintiffs are correct that the Supreme Court has never adopted the reading of *Yoder* followed by lower courts in this context, the Court is persuaded to follow the persuasive authority in the absence of any controlling authority to the contrary. *Yoder* is *sui generis*. The Supreme Court itself said as much, anticipating few groups could match the Amish parents' claims. The outcome in that case turned on the Court's findings that the Amish parents' religious beliefs required them to live apart from the modern world and that their children's continued enrollment in school would destroy their religious way of life. Thus, the statutory requirement that they send their children to school on pain of criminal punishment coerced them to violate their religious beliefs. The plaintiffs here do not and cannot make a similar claim.<sup>13</sup>

“[A] violation of the Free Exercise Clause is

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<sup>13</sup> The plaintiffs argue distinguishing their claims from the Amish parents' claims requires the Court to engage in “doctrinal favoritism.” ECF 57, at 3. Not so. The Court's analysis does not turn on religious doctrine. It turns on whether the facts involve government coercion to violate religious beliefs. In *Yoder*, they did; here, they do not.

predicated on coercion,” either direct or indirect. *Schempp*, 374 U.S. at 223. The plaintiffs have not shown the no-opt-out policy likely coerces them to violate their religious beliefs. Regardless of the wisdom of affording opt-outs in these circumstances, the weight of existing authority is clear. The plaintiffs’ free exercise claims are not likely to succeed on the merits.<sup>14</sup>

## 2. Substantive Due Process

The plaintiffs assert that the School Board’s refusal to allow parents to opt their children out of reading and discussion of the storybooks infringes their right to direct their children’s upbringing in violation of the Due Process Clause of the Fourteenth Amendment. They claim this due process right is fundamental, triggering strict scrutiny.

Under substantive due process jurisprudence, “courts examine whether government intrusions into citizens’ liberties are justified by adequate state interests.” *Herndon by Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174, 177 (4th Cir. 1996). “A substantive due process challenge is considered under rational-basis review unless some fundamental right is implicated.” *Doe v. Settle*, 24 F.4th 932, 953 (4th Cir. 2022) (citing *Herndon*, 89 F.3d at 177). Fundamental rights are those “which are, objectively, deeply rooted in this Nation’s history and tradition.” *Hawkins v. Freeman*, 195 F.3d 732, 739

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<sup>14</sup> Because the plaintiffs have not shown that the no-opt-out policy likely will burden their religious exercise, the Court need not address whether the policy is neutral and generally applicable under *Fulton*, *Tandon*, and *Masterpiece/Lukumi*.



(4th Cir. 1999) (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997)). “Critical to the ‘fundamental interest’ inquiry is the requirement that it be conducted on the basis of a ‘careful description of the asserted fundamental liberty interest.’” *Id.* (quoting *Glucksberg*, 521 U.S. at 720). In defining the asserted liberty interest, courts must avoid “overgeneralization in the historical inquiry.” *Id.* at 747 (citing *Glucksberg*, 521 U.S. at 722–23).

In their complaint and preliminary injunction motion, the parents asserted a violation of their substantive due process rights to direct the upbringing of their children, which they described as “[s]eparate and apart from” their free exercise claims. ECF 23-1, at 31; see ECF 36, ¶¶ 262–75. But in their reply brief and at oral argument, they characterized their due process rights as concerning the *religious* upbringing of their children, blurring the line between their due process arguments and their free exercise arguments based on *Yoder*. See ECF 47, at 16. The Court considers the asserted secular due process right and its religious variation, in turn.

The “interest of parents in the care, custody, and control of their children [] is perhaps the oldest of the fundamental liberty interests recognized by” the Supreme Court. *Troxel v. Granville*, 530 U.S. 57, 65 (2000). Nearly 100 years ago, the Court held that the “liberty” protected by the Due Process Clause includes the right of parents “to control the education of their own,” *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923), and “to direct the upbringing and education of children under their control,” *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925). *Troxel*, 530 U.S. at 65. In the

subsequent decades, the Court has addressed parents' rights in different contexts, often using broad language. *See, e.g., id.*; *Glucksberg*, 521 U.S. at 720 (noting the right “to direct the education and upbringing of one’s children” under *Meyer* and *Pierce*); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972) (“The rights to conceive and to raise one’s children have been deemed ‘essential,’ ‘basic civil rights of man,’ and ‘[r]ights far more precious . . . than property rights[.]’”) (citations omitted). Relying on these cases, the parents argue the right to control the upbringing of their children is fundamental.<sup>15</sup>

There is no doubt parents have substantial rights under the Due Process Clause, but the Court still must define the specific right at stake with granularity. *Hawkins*, 195 F.3d at 747. Indeed, “[a]lthough the Supreme Court has never been called upon to define the precise boundaries of a parent’s right to control a child’s upbringing and education,’ it is clear that the right is neither absolute nor unqualified.” *Bailey v. Va. High Sch. League, Inc.*, 488 F. App’x 714, 716 (4th Cir. 2012) (unpublished per curiam)

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<sup>15</sup> The plaintiffs cite several other cases that have no clear application to the facts of this case. *See, e.g., Mahanoy Area Sch. Dist. v. B.L. ex rel. Levy*, --- U.S. ---, 141 S. Ct. 2038, 2043–44 (2021) (concerning a school’s regulation of off-campus speech); *Troxel*, 530 U.S. at 60–63 (concerning parents’ control over visitation rights for their children); *Edwards v. Aguillard*, 482 U.S. 578, 584 (1987) (concerning school’s adoption of a religious curriculum in violation of the Establishment Clause); *Stanley*, 405 U.S. at 646–47 (concerning unwed father’s custodial rights); *Gruenke v. Seip*, 225 F.3d 290, 295 (3d Cir. 2000) (concerning parents’ rights to learn and control the disclosure of information about their daughter’s pregnancy).

(collecting cases) (quoting *C.N.*, 430 F.3d at 182). The Court has noted, for example, that there is “no support [for] the contention that parents may replace state educational requirements with their own idiosyncratic views of what knowledge a child needs to be a productive and happy member of society.” *Runyon v. McCrary*, 427 U.S. 160, 177 (1976). And in several cases, the Court has expressly adopted a narrow reading of *Meyer* and *Pierce*. *Id.* (describing the rights established in *Meyer* and *Pierce* as protecting “the subject matter . . . taught at . . . private school” and the right to send children to private school); *Norwood v. Harrison*, 413 U.S. 455, 462 (1973) (finding *Pierce* “affirmed the right of private schools to exist and operate” and “said nothing of any supposed right of parochial schools” to state funding); *see also Leebaert v. Harrington*, 332 F.3d 134, 140–41 (2d Cir. 2003) (holding “*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”). So, while parents have the right to “control the education of their own” and “to direct the upbringing and education of children under their control,” the existence of those rights does not require the application of strict scrutiny every time parents assert authority over a child’s education. *Herndon*, 89 F.3d at 179; *see also Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 395 (6th Cir. 2005) (“While parents may 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.”).

The controlling Fourth Circuit authority regarding parental control over a child’s public education is

*Herndon by Herndon v. Chapel Hill-Carrboro City Board of Education*, 89 F.3d 174 (4th Cir. 1996). *Herndon* involved a substantive due process challenge by parents to a public school's community service requirement. *Id.* at 176–77. The challenge was not motivated by religious objections. *Id.* at 179. After discussing the relevant Supreme Court cases, including *Meyer*, *Pierce*, and *Yoder*, the court summarized:

[T]he Supreme Court has stated consistently that parents have a liberty interest, protected by the Fourteenth Amendment, in directing their children's schooling. Except when the parents' interest includes a religious element, however, the Court has declared with equal consistency that reasonable regulation by the state is permissible even if it conflicts with that interest. That is the language of rational basis scrutiny.

*Id.* Because the plaintiffs conceded “their interest [was] not religious,” the court applied rational basis review to the service requirement. *Id.* Thus, *Herndon* stands for the proposition that the parental right to direct a child's education is not fundamental unless it includes a religious element. To the extent the parents' substantive due process claims are premised on a secular liberty interest, they do not assert a fundamental right, and their claims are subject to rational basis review.

The plaintiffs do not address this holding in *Herndon*. Instead, they emphasize the religious nature of their opposition to the storybooks. They argue that, under *Herndon*, whenever a due process claim

involves both a parent's right to direct their child's education and free exercise concerns, as is the case here, strict scrutiny automatically applies. They see support for such a rule in *Herndon's* statement that the Supreme Court had applied rational basis review "[e]xcept when the parents' interest includes a religious element" and its subsequent discussion of *Yoder*, which it described as having "reaffirmed that parental rights are among the liberties protected by the Constitution." 89 F.3d at 178. The court continued, "When those rights combine with First Amendment free exercise concerns, the [*Yoder*] Court held, they are fundamental[.]" *Id.* (citing *Yoder*, 406 U.S. at 232).

There are several problems with the plaintiffs' reading of *Herndon*. First, *Herndon* did not involve any free exercise concerns, so the court had no cause to adopt such a broad rule. Its description of *Yoder* is *dicta*, and it would be strange indeed if the court fundamentally rewrote its constitutional jurisprudence in a single sentence when its holding did not depend on such a revision. Second, when the court discussed *Yoder*, it wrote descriptively. It observed the parents' rights asserted in *Yoder* were fundamental for the reasons stated in *Yoder*. It did not extend *Yoder's* holding beyond its unique facts. Neither *Yoder* nor the Fourth Circuit's interpretation of *Yoder* in *Herndon* holds that a parent's right to direct their children's upbringing automatically rises to the level of a fundamental right whenever the parent's interest includes a religious element.

At oral argument, the plaintiffs proposed another reading of *Herndon* that they believe warrants the

application of strict scrutiny to the no-opt-out policy. They suggested *Herndon* indicated the Fourth Circuit would be open to so-called “hybrid-rights” claims, in which two constitutional rights violations are based on the same set of facts. The concept of hybrid-rights claims originated in *Smith*. 494 U.S. at 881–82. *Smith*’s central holding was that the Free Exercise Clause “does not relieve an individual of the obligation to comply with” neutral and generally applicable laws. *Id.* at 879. In discussing that rule, the Court observed that “the only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections[.]” *Id.* at 881–82. The Court included *Pierce* and *Yoder* on its list of “hybrid” cases to which its general rule did not apply. *Id.* “Whether and how to apply the hybrid-rights exception described in *Smith* have been the subject of much debate and disagreement among the circuit courts of appeal and academic commentators” since *Smith*’s publication. *Hicks*, 93 F. Supp. 2d at 659. Over the years, several justices have expressed skepticism about the hybrid-rights doctrine. Most recently, Justice Alito stated in his concurrence in *Fulton*, “[I]t is hard to see the justification for this curious doctrine . . . such a scheme is obviously unworkable and has never been recognized outside of *Smith*.” 141 S. Ct. at 1915 (Alito, J., concurring). Justice Alito also suggested “the hybrid-rights exception would largely swallow up *Smith*’s general rule” because “a great many claims for religious exemptions can easily be understood as hybrid free-

exercise/free-speech claims.” *Id.* But see *Danville Christian Academy, Inc. v. Beshear*, --- U.S. ----, 141 S. Ct. 527, 529 (2020) (Gorsuch, J., dissenting) (“[U]nder this Court’s precedents, even neutral and generally applicable laws are subject to strict scrutiny where a plaintiff presents a ‘hybrid’ claim—meaning a claim involving the violation of the right to free exercise *and* another right, such as the right of parents ‘to direct the education of their children.’”).

*Herndon* cannot be read to endorse a hybrid-rights theory. Beyond the fact that *Herndon* was not itself a hybrid-rights case and did not expressly refer to the concept, the Fourth Circuit more recently has confirmed that it has not taken a stance on the topic. See *Workman v. Mingo Cnty. Bd. of Educ.*, 419 F. App’x 348, 353 (4th Cir. 2011) (unpublished table opinion) (“We observe that there is a circuit split over the validity of this ‘hybrid-rights’ exception. However, we do not need to decide this issue here . . . .”). The Court does not read *Herndon* to require strict scrutiny anytime a plaintiff challenges a public-school curriculum based on both parental and religious rights.

Without Fourth Circuit guidance on when strict scrutiny *is* required in such cases, the Court looks outside the circuit. Notably, as of 2008, “[n]o published circuit court opinion . . . ha[d] ever applied strict scrutiny to a case in which plaintiffs argued they had presented a hybrid claim.” *Parker*, 514 F.3d at 98. That observation remains true today. Three circuits have expressly rejected the hybrid-rights theory. See *Combs v. Homer-Center Sch. Dist.*, 540 F.3d 231, 244–47 (3d Cir. 2008); *Leebaert v. Harrington*, 332 F.3d at

143–44; *Kissinger v. Bd. of Trs. of Ohio St. Univ., Coll. of Veterinary Med.*, 5 F.3d 177, 180 (6th Cir. 1993). The circuits that have not rejected the theory have held that the component claims must be, at least, colorable. See *303 Creative LLC v. Elenis*, 6 F.4th 1160, 1188 (10th Cir. 2021), *rev'd on other grounds*, --- U.S. ---, 143 S. Ct. 2298 (2023); *Henderson v. McMurray*, 987 F.3d 997, 1005–07 (11th Cir. 2021); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1237–38 (9th Cir. 2020); *Cornerstone Christian Schs.*, 563 F.3d at 136 n.8; *Parker*, 514 F.3d at 97–99; *Civil Liberties for Urban Believers v. Chicago*, 342 F.3d 752, 764–65 (7th Cir. 2003). “Colorable” in this context means likely to succeed on the merits. *Parents for Privacy*, 949 F.3d at 1237.<sup>16</sup>

In the absence of persuasive authority to the contrary, the Court will not adopt a lower standard. Any hybrid-rights claim, if such a claim is cognizable at all, does not warrant strict scrutiny here because the plaintiffs’ free exercise claims are not likely to succeed on the merits. The Court concludes the plaintiffs’ asserted due process right to direct their children’s upbringing by opting out of a public-school curriculum that conflicts with their religious views is not a fundamental right. Rational basis review is the appropriate level of scrutiny.

Rational basis review “requires only that the [challenged state action] be shown to bear some rational relationship to legitimate state purposes.”

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<sup>16</sup> At least one district court in this circuit has applied strict scrutiny to a hybrid-rights claim that involved colorable free exercise and substantive due process claims. See *Hicks*, 93 F. Supp. 2d at 657–63.



*Herndon*, 89 F.3d at 177 (quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 37–40 (1973)); see also *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 561 (4th Cir. 2013). The plaintiffs do not dispute the no-opt-out policy would survive rational basis review. Indeed, the policy serves the School Board’s legitimate interest in “[f]oster[ing] social integration and cultural inclusiveness of transgender and gender nonconforming students” by ensuring all MCPS students are exposed to inclusive and representative instructional materials. See ECF 42-7, at 4; ECF 43, ¶ 6. It also helps prevent students who identify with characters in the storybooks from feeling stigmatized or discriminated against when other students leave the room when the books are read, furthering the School Board’s interests in providing a safe and supportive learning environment for its students, protecting LGBTQ students’ health and safety, and complying with anti-discrimination laws. ECF 43, ¶ 39.

The plaintiffs are not likely to succeed on their substantive due process claim.

### **B. The Remaining Preliminary Injunction Factors**

Because the plaintiffs have not established any of their claims is likely to succeed on the merits, the Court need not address the remaining preliminary injunction factors. Nonetheless, because a constitutional violation is not likely or imminent, it follows that the plaintiffs are not likely to suffer imminent irreparable harm, and the balance of the equities and the public interest favor denying an

injunction to avoid undermining the School Board's legitimate interests in the no-opt-out policy. *See Leaders*, 2 F.4th at 346.

#### **IV. Injunction Pending Appeal**

At the hearing on the preliminary injunction motion, the plaintiffs made an oral motion for a stay pursuant to Rule 8(a)(1) of the Federal Rules of Appellate Procedure if the Court were to deny their motion. That rule requires that a “party ordinarily move first in the district court for . . . a stay of the judgment or order of a district court pending appeal.” Fed. R. App. P. 8(a)(1)(A). There is no judgment or order of this Court to be stayed. The Court construes the plaintiffs’ motion as a request for an injunction pending appeal under Federal Rule of Civil Procedure 62(d).<sup>17</sup> The standard for injunctive relief pending appeal is the same as for a preliminary injunction. *See Nken*, 556 U.S. at 434; *Goldstein v. Miller*, 488 F. Supp. 156, 171–72 (D. Md. 1980). This is so “because similar concerns arise whenever a court order may allow or disallow anticipated action before the legality of that action has been conclusively determined.” *Nken*, 556 U.S. at 434.

The plaintiffs seek the same relief pending appeal as in their preliminary injunction motion: an injunction that requires the Board to provide advance notice and opt-outs from instruction involving the storybooks and family life and human sexuality. For the reasons stated in this opinion, the Court cannot conclude the plaintiffs are likely to succeed on the

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<sup>17</sup> Fed. R. App. P. 8(a)(1)(C) requires parties to move for such relief first in the district court.

merits of an appeal. The plaintiffs' request for a preliminary injunction pending appeal is denied.

**V. Conclusion**

The plaintiffs have not established the requirements for a preliminary injunction. Their motion is denied. Their request for an injunction pending appeal is denied. A separate Order follows.

Date: August 24, 2024    /s/ Deborah L. Boardman  
Deborah L. Boardman  
United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
*et al.*,

Plaintiffs,

v.

MONIFA B. MCKNIGHT,  
*et al.*,

Defendants.

Civ. No. DLB-23-1380

**ORDER**

For the reasons stated in the memorandum opinion issued this same date, it is, this 24th day of August, 2023, hereby ORDERED that

1. The plaintiffs' Motion for Preliminary Injunction, ECF 23, is denied; and
2. The plaintiffs' oral motion for an injunction pending appeal is denied.

/s/ Deborah L. Boardman

Deborah L. Boardman

United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD AND  
ENAD BARAKAT; JEFF AND  
SVITLANA ROMAN; CHRIS  
AND MELISSA PERSAK, *in*  
*their individual capacities and*  
*ex rel. their minor children,*  
[REDACTED], and KIDS FIRST, *an*  
*unincorporated association,*  
*Plaintiffs,\**

v.

MONIFA B. MCKNIGHT, *in her*  
*official capacity as*  
*Superintendent of the*  
*Montgomery Board of*  
*Education,* THE  
MONTGOMERY COUNTY  
BOARD OF EDUCATION; AND  
SHEBRA EVANS, LYNNE  
HARRIS, GRACE RIVERA-  
OVEN, KARLA SILVESTRE,  
REBECCA SMONDROWSKI,  
BRENDA WOLFF, and JULIE  
YANG, *in their official*  
*capacities as members of the*  
*Board of Education,*  
*Defendants.*

Case No. 8:23-  
CV-01380-DLB

**VERIFIED  
FIRST  
AMENDED  
COMPLAINT**

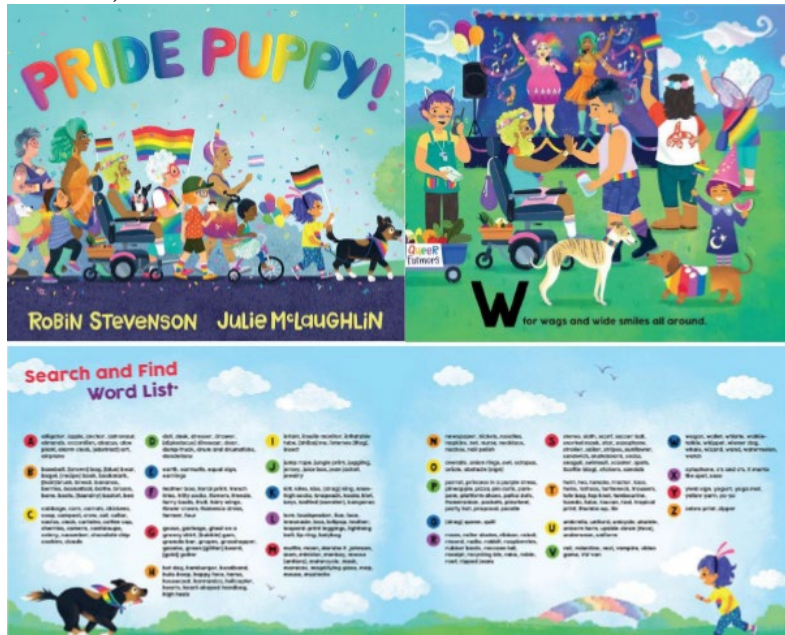
**DEMAND FOR  
JURY TRIAL**

\* The individual Plaintiffs reside in Montgomery County, Maryland. In a concurrently filed motion, Plaintiffs have requested a waiver of the requirement under Local Rule 102.2(a) to provide their own and Defendants' home addresses in the caption of this complaint.

### **NATURE OF THE ACTION**

1. This lawsuit against the Montgomery County Board of Education and its superintendent and board members (collectively, the “School Board”) is about whether parents have the right to opt their children out of classroom instruction regarding family life and human sexuality.
2. Maryland law says “yes.” COMAR 13A.04.18.01(D)(2)(e)(iv), (i)-(ii).
3. Pursuant to written policy, the School Board has always said “yes” too, including in an email to parents as recent as March 22, 2023.
4. But on March 23, 2023, the School Board flipped positions.
5. Now, it claims authority to introduce pre-K and elementary school kids to certain books (the “Pride Storybooks”) that promote one-sided transgender ideology, encourage gender transitioning, and focus excessively on romantic infatuation—with no parental notification or opportunity to opt out.
6. The individual Plaintiff Parents and Kids First (collectively, “the Parents”) have kids in the Montgomery County Public Schools (“MCPS”).
7. They come from many faith backgrounds, including diverse strands of Islam and Christianity. Their concerns reflect those of thousands of other Montgomery County parents from a variety of faiths and political persuasions.
8. They are united in the conviction that the Pride Storybooks are age-inappropriate and inconsistent with their religious beliefs and practices and their child-raising philosophies.

9. For example, one book invites three- and four-year-olds to look for images of things they might find at a pride parade, including an “intersex [flag],” a “[drag] king” and “[drag] queen,” “leather,” “underwear,” and an image of a celebrated LGBTQ activist and sex worker, “Marsha P. Johnson.”



10. A book mandated for fourth graders describes a child “blush[ing] hot” as she daydreams about “galloping off” with a classmate who makes her “heart skip.”



11. The teachers' guide invites students to "acknowledg[e] how uncomfortable we might [be] ... when we feel our heart beating 'thumpity thump' & how hard it can be [to] talk about our feelings with someone that we don't just 'like' but we 'like like.'"

12. Another book, for fifth graders, advocates a child-knows-best approach to gender transitioning, telling students that a decision to transition doesn't have to "make sense" and that students are the best "teacher" on such matters, not parents or other adults.





13. If a student insists that you “can’t be a boy if ... born a girl” or that sex depends on “[w]hat body parts [you] have,” teachers are told to correct the student:

When we are born, people make a guess about our gender and label us “boy” or “girl” based on our body parts. Sometimes they’re right, and sometimes they’re wrong. Our body parts do not decide our gender. Our gender comes from inside—we might feel different than what people tell us we are. We know ourselves best.

14. This school year, after the Parents were told about the books, requests for their kids to opt out were honored.

15. Now the Parents have been told that, next year, no notice will be given and no opt-outs tolerated because their kids must learn to be more “LGBTQ-Inclusive.”

16. Under long-standing precedent, government schools are not “empowered ... to ‘save’ a child from himself or his [religious] parents” by imposing “compulsory” education to “influence ... the religious future of the child.” *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

17. The Maryland law that lets parents opt their children out from instruction on “family life and human sexuality” reflects that principle. *See* COMAR 13A.04.18.01(D)(2)(e)(iv), (i)-(ii).

18. So do the School Board’s own written policies on upholding religious diversity. *See, e.g.,* Ex. A at 3 (committing “to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs”).

19. The School Board’s recent about-face strips away this long-standing protection of parental rights. This violates not just Maryland law and Board policy and practice but also the United States Constitution.

20. Specifically, the First Amendment’s Religion and Free Speech Clauses and the Fourteenth Amendment’s Due Process Clause guarantee the parental right to opt

children out of classroom instruction on such sensitive religious and ideological issues.

21. The Parents bring this lawsuit to vindicate that long-recognized right.

### **JURISDICTION AND VENUE**

22. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

23. Venue lies in this district under 28 U.S.C. § 1391(b).

### **THE PARTIES**

#### ***The Mahmoud-Barakat Family***

24. Plaintiffs Tamer Mahmoud and Enas Barakat are Muslims and residents of Montgomery County.

25. They currently have three children enrolled in MCPS—a son and daughter in tenth grade and a son in second grade.

#### ***The Roman Family***

26. Plaintiffs Jeff and Svitlana Roman are also Montgomery County residents.

27. Jeff is Roman Catholic and an MCPS graduate of Sherwood High School; Svitlana is Ukrainian Orthodox.

28. The Romans currently have one son enrolled in MCPS in second grade.

#### ***The Persak Family***

29. Plaintiffs Chris and Melissa Persak are Catholic and life-long residents of Montgomery County.

30. Melissa is an MCPS graduate of Sherwood High School.

31. The Persaks have two elementary school age daughters (the “Student Plaintiffs”) enrolled in MCPS.

***Kids First***

32. Kids First is an unincorporated association of parents and teachers who prioritize the needs of children in the Montgomery County Public Schools and who believe that children deserve to be kids first.

33. The association was formed to advocate for the return of parental notice and opt-out rights with respect to any instruction related to family life and human sexuality in the Montgomery County Public Schools.

34. The Association includes Muslims, Catholics, Protestants, Latter-day Saints, and Jews, and is open to individuals of all faiths.

35. Many members of Kids First have children in the Montgomery County Public Schools or would have children in the Montgomery County Public Schools but for the removal of parental notice and opt-out rights with respect to instruction related to family life and human sexuality.

***Defendants***

36. Defendant Montgomery County Board of Education is a government entity authorized by the State of Maryland to administer MCPS. Md. Code, Educ. Art. §§ 3-103, 3-104(a).

37. It controls educational matters that affect Montgomery County, *id.* at § 4-101, and is authorized to adopt educational policies, rules, and regulations for MCPS, as long as they are consistent with State law, *id.* at § 4-108(3)-(4).

38. As of fall 2021, MCPS comprises 209 schools and approximately 160,000 students, including approximately 70,000 elementary school students.

39. It is the largest public school system in Maryland and routinely among the twenty largest public school systems in the United States. *See At a Glance, Montgomery County Public Schools* (Oct. 2019), <https://perma.cc/U3AS-EMWT>.

40. Its principal place of business is 850 Hungerford Drive, Rockville, Maryland.

41. Defendant Monifa B. McKnight, Ed.D., is the superintendent of MCPS.

42. In that role, Dr. McKnight is charged with implementing the policies at issue.

43. She regularly attends board meetings and participated in the decision to strip parents of their notice and opt-out rights with respect to the Pride Storybooks.

44. At all relevant times, Dr. McKnight was acting under color of state law.

45. She is sued in her official capacity only.

46. Defendants Karla Silvestre, Shebra Evans, Grace Rivera-Oven, Rebecca Smondrowski, Julie Yang, Brenda Wolff, and Lynne Harris are elected members of the Montgomery County Board of Education.

47. Each regularly attends board meetings and participated in the decision to strip parents of their notice and opt-out rights with respect to the Pride Storybooks.

48. At all relevant times, they were acting under color of state law.

49. They are sued in their official capacities only.

## FACTUAL BACKGROUND

### *The Parents' religious beliefs*

#### The Mahmoud/Barakat Family

50. As taught by the Qu'ran, Plaintiffs Tamer Mahmoud and Enas Barakat believe that all humans are God's creations with God-given dignity that must be respected, regardless of the person's faith, race, ethnic origin, sex, gender identity, sexual orientation, or social status. *Surah al-Israa* 17:70.

51. As also taught by the Qu'ran, they believe that mankind has been divinely created as male and female, *Surah al-Hujurat* 49:13, and that all people are connected through a common ancestor: the first male and the first female, *Surah an-Nisaa* 4:1.

52. Based on this teaching, Tamer and Enas believe that sex and sexuality are sacred gifts from God to be expressed through the forming of a spiritual, marital bond between spouses—one male and one female—for the shared promise of security, tranquility, compassion, contentment, and joy. *Surah al-A'raf* 7:189; *Surah ar-Rum* 30:21.

53. Tamer and Enas believe that this sacred bond between husbands and wives entails sexually distinct but mutual duties and affections: "They are clothing for you and you are clothing for them." *Surah al-Baqarah* 2:187.

54. Tamer and Enas believe that marriage, sex, and sexuality are also meant for creating children and teaching them virtue—not only to build a loving family but also to serve as an example of righteousness for society at large. *Surah al-Furqan* 25:74.

55. Inherent in this teaching, Tamer and Enas believe that “gender” cannot be unwoven from biological “sex”—to the extent the two are even distinct—without rejecting the dignity and direction God bestowed on humanity from the start.

56. Tamer and Enas believe that humans attain their fullest God-given potential by embracing their biological sex.

57. Tamer and Enas believe that they have a sacred obligation to teach these principles to their children.

#### The Roman Family

58. The Romans’ Christian faith teaches that all humans are children of God created in God’s image and likeness.

59. Based on this teaching, they believe God commands them to treat others as bearers of this intrinsic nature. They believe that what God has created by His design cannot be redefined or recreated by man.

60. Also based on this teaching, they believe that sexuality is a sacred gift from God, reflecting that men and women together are capable of cooperating with God in creating new life.

61. For this reason, the Romans believe sexuality is expressed only in marriage between a man and a woman for creating life and strengthening the marital union.

62. For the same reasons, the Romans believe that gender and biological sex are intertwined and inseparable and that encouraging children to unwind them will teach them that their bodies are “an object, a mere tool at the disposal of the soul, one that each

person may dispose of according to his or her own will,” rather than a “constitutive part of the human subject, a gift to be received, respected, and cared for as something intrinsic to the person.” Committee on Doctrine United States Conference of Catholic Bishops, *Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body 4* (2023), <https://perma.cc/T6Y6-NXAB>.

63. The Romans believe that humans attain their fullest God-given potential by embracing their biological sex.

64. They believe they have a sacred obligation to teach these principles to their son.

#### The Persak Family

65. The Persaks believe that questions about sex and sexuality should be informed by sound science and common sense.

66. They believe that all persons should be treated with respect and dignity regardless of religion, race, sex, ethnicity, gender identity, sexual orientation, or other characteristics.

67. The Persak parents want their daughters to understand and appreciate the unique gifts and challenges of every individual.

68. The Persaks’ understanding of what is best for their child is informed by their Roman Catholic faith.

69. The Persaks believe that matters regarding family life and human sexuality should be taught in a way that is consistent with their beliefs, sound science, and common sense.



70. They believe that children—particularly those, like their own, in elementary school—are highly impressionable to ideological instruction presented in children’s books or by schoolteachers.

71. They believe this risk is even more serious when ideological instruction is imposed to the exclusion of other viewpoints.

Kids First

72. The members of Kids First come from diverse religious traditions, including Islam, Judaism, Christianity, and more. They believe in prioritizing the needs of children and allowing elementary-age children to be kids first, without prematurely exposing them to issues regarding human sexuality, gender identity, and gender transitioning.

73. They agree that parents have the primary responsibility to decide how and when to introduce instruction on family life and human sexuality to their own children.

74. They have a religious obligation to ensure that their children are taught about family life and human sexuality in a manner that is consistent with their respective religious beliefs.

75. Aspects of some or all of the Pride Storybooks violate their religious understanding of human sexuality and contradict the religious teachings they seek to convey to their children.

\* \* \*

76. The Parents believe that every individual has equal dignity before God and should be treated with love, kindness, and respect.

77. They want their children to understand and appreciate the unique gifts and challenges of every individual.

78. The Parents believe that matters regarding family life and human sexuality should be taught in a way that is consistent with their respective religious beliefs.

79. The Parents also believe that such matters should be taught to children in age-appropriate ways. This includes teaching children, at the proper time, to channel their romantic passions, rather than indulge them at first spark.

80. The Parents also believe that the Pride Storybooks go far beyond teaching kindness and respect (as a matter of manners or virtuous citizenship).

81. Rather, the Pride Storybooks are being used to impose an ideological view of family life and sexuality that characterizes any divergent beliefs as “hurtful.”

82. The Pride Storybooks also promote political ideologies about family life and human sexuality that are inconsistent with sound science, common sense, and the well-being of children.

83. The Parents believe it is spiritually, mentally, and physically injurious to introduce children prematurely to many of the topics introduced by the Pride Storybooks.

***Instruction on family life and human sexuality***

84. By regulation, every “local school system” in Maryland is required to provide a “comprehensive health education” that includes “family life and human sexuality.” COMAR 13A.04.18.01(A), (C)(1)(c), (D)(2).

85. Such instruction “will begin in or prior to the grade 5.” *Id.* at 18.01(D)(2)(d).

86. Nothing in Maryland law requires that this instruction be reserved to a single class or a discrete section of the curriculum.

87. Rather, schools are required to teach “indicators and objectives” and “concepts and skills” related to “family life and human sexuality.” *Id.* at 18.01(D)(2)(d), (g).

88. Such “indicators and objectives” and “concepts and skills” comprise a wide range of instruction.

89. This instruction must “represent all students regardless of ability, sexual orientation, gender identity, and gender expression.” *Id.* at 18.01(D)(2)(a).

90. By grade 7, the instruction “shall emphasize that refraining from sexual activity is the best method to avoid sexually transmitted infections, including HIV, and unintended pregnancy.” *Id.* at 18.01(D)(2)(b).

91. It must also include “medically accurate information about contraception and condoms.” *Id.*

92. And “in every grade in which the curriculum is taught,” there must be “age-appropriate instruction on the meaning of ‘consent’ and respect for personal boundaries.” *Id.* at 18.01(D)(2)(f).

***The national consensus on notice and opt-outs***

93. Forty-three states and the District of Columbia require or permit some instruction in human sexuality.

94. In some states, that instruction is limited to reproductive health or HIV/AIDS, while other states—

like Maryland—speak more broadly to “family life” and “human sexuality.”

95. Thirty-two of those 44 jurisdictions allow for student opt-outs, including Maryland.<sup>2</sup>

96. Another four states require that human sexuality be taught to children only when parents opt *in*.<sup>3</sup>

97. One state doesn’t require human sexuality instruction—but still requires opt-outs should any schools implement that instruction.<sup>4</sup>

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<sup>2</sup> See Ariz. Rev. Stat. Ann. § 15-716(E); Cal. Educ. Code § 51937; Conn. Gen. Stat. Ann. § 10-16e; Fla. Stat. Ann. § 1003.42(5); Ga. Code Ann. § 20-2-143(d); Idaho Code Ann. § 33-1611; 105 Ill. Comp. Stat. Ann. 5/27-9.1a(d); Iowa Code Ann. § 256.11(6)(a); La. Rev. Stat. Ann. § 17:281(D); Mass. Gen. Laws Ann. Ch. 71, § 32A; Me. Rev. Stat. Ann. tit. 22, § 1911; Mich. Comp. Laws. § 380.1507(4); Minn. Stat. Ann. § 120B.20; Mo. Ann. Stat. § 170.015(5)(2); N.J. Stat. Ann. § 18A:35-4.7; N.C. Gen. Stat. § 115C-81.30(b); Ohio Rev. Code Ann. § 3313.60(A)(5)(c); Okla. Stat. Ann. tit. 70, § 11-103.3(C); Or. Rev. Stat. § 336.465(1)(b); R.I. Gen. Laws § 16-22-17(c); S.C. Code. Ann. § 59-32-50; Tenn. Code Ann. §49-6-1305; Va. Code. Ann. § 22.1-207.2; Vt. Stat. Ann. tit. 16, § 134; Wash. Rev. Code. Ann. § 28A.230.070(4); W. Va. Code Ann. § 18-2-9(c); D.C. Mun. Regs. subtit. 5e, § 2305.5; Kan. Admin. Regs. § 91-31-35(a)(5)(b); N.M. Pub. Educ. Dep’t, Health Education Standards with Benchmarks and Performance Standards § 6.29.6.11 (2009); N.M. Code R. § 6.29.6 (2018); N.Y. Comp. Codes R. & Regs. tit. 8, § 135.3 (Westlaw through Oct. 10, 2018); 22 Pa. Code § 4.29(c).

<sup>3</sup> See Colo. Rev. Stat. Ann. § 22-25-104(6)(d); Miss. Code Ann. § 37-13-173; Nev. Rev. Stat. Ann. § 389.036(4); Utah Code Ann. § 53E-9-203(3).

<sup>4</sup> See Tex. Educ. Code Ann. § 28.004(i).

***Maryland law on notice and opt-outs***

98. Within this broad consensus for ensuring opt-outs, Maryland is among the jurisdictions most protective of parental rights, broadly requiring both parental notice and the ability to opt out.

99. Maryland law provides, “The local school system shall provide an opportunity for parents/guardians to view instructional materials to be used in the teaching of family life and human sexuality objectives.” COMAR 13A.04.18.01(D)(2)(e)(iv).

100. And there must be “policies, guidelines, and/or procedures for student opt-out regarding instruction related to family life and human sexuality objectives.” *Id.* at 18.01(D)(2)(e)(i).

101. Students that opt out of this instruction must then be provided “with appropriate alternative learning activities and/or assessments in health education.” *Id.* at 18.01(D)(2)(e)(ii).

102. The opt-out provision does not require a religious or moral objection.

***The School Board’s own rules on notice and opt-outs***

103. Beyond the state regulations protecting opt-outs, the School Board’s own guidelines reinforce this parental right.

104. In particular, the School Board’s 2022-2023 “Guidelines for Respecting Religious Diversity” (the “Guidelines”) “commit to making feasible and reasonable accommodations for [religious] beliefs and practices.” *See* Ex. A at 1.

105. The School Board’s Guidelines promise:

a. “to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs,” *id.* at 3;

b. to allow students “to be excused from the classroom activity if the students, or their parents/guardians, believe the activity would invade student privacy by calling attention to the student’s religion,” *id.* at 3-4; and

c. to “accommodate objections from students or their parents/guardians to a particular reading assignment on religious grounds by providing an alternative selection that meets the same lesson objectives,” *id.* at 4.

106. The Guidelines also ensure other religious accommodations for MCPS students.

107. They provide for excused absences for religious holidays—with a “case-by-case” approach to determining whether students must make up missed assignments. *Id.* at 2.

108. They also allow for “excus[ing] students who do not want to participate” in “activities” that “may be viewed by others as having religious overtones,” including “birthdays or other occasions that many may consider to be secular, such as Halloween and Valentine’s Day.” *Id.* at 4.

109. Beyond religious accommodations, the Guidelines also “expect instructional activities to be fair,

objective, and not demean any religious or nonreligious beliefs.” *Id.* at 4.

110. They provide that “[r]especting students’ differing beliefs is an essential element of a pluralistic society.” *Id.*

111. Accordingly, the Guidelines prohibit “teachers, students, and guest speakers” from “advocat[ing] particular religious viewpoints as superior to other religious or nonreligious viewpoints.” *Id.*

112. Similarly, when guest speakers come to school or students are allowed to speak at assemblies, “[s]chools should make appropriate, neutral disclaimers to avoid conveying the perception to other students, their parents/guardians, or guests that the school endorses the student’s or guest speaker’s viewpoints (whether religious or not).” *Id.*

### ***The Pride Storybooks***

113. In October 2022, the School Board announced it had “approved a selection of over 22 LGBTQ+-inclusive texts for use in the classroom.” *See Diverse and Inclusive*

*Instructional Materials & Resources*, Montgomery County Public Schools, <https://perma.cc/B5B3-GCEU>; *See* also Ex. B. This came in response to a comprehensive “Antiracist System Audit” that the School Board commissioned in 2021. *See* Dr. Monifa McKnight, *MCPS Antiracist Audit Implementation*, Montgomery County Public Schools (Feb. 2, 2022), <https://perma.cc/ZT69-ZURR>.

114. For children in pre-K and Head Start programs, the School Board approved *Pride Puppy*, a book

relating the story of two women taking their children to a pride parade, where their puppy gets lost. Ex. C.

115. The story uses the letters of the alphabet to illustrate what a child might see at a pride parade.

116. The book's "Search and Find Word List" encourages children to search for images of, among other things, the "intersex [flag]," a "[drag] king," "leather," a "lip ring," a "[drag] queen," "underwear," and a celebrated sex worker.

117. The book's illustrations encourage unqualified support for pride parades, with illustrations ostensibly geared toward three- and four-year-olds, showing things such as a minister wearing pride apparel and students and teachers enthusiastically advocating for "Peers + Queers," "Pride Club," "Love Knows No Gender," and "Two Spirit Pride."

118. One illustration celebrates Marsha P. Johnson, a self-defined "transvestite" or "queen" who, again as self-described, built a life "around sex and gay liberation, being a drag queen" and sex work. *Stonewall 1979: The Drag of Politics*, The Village Voice, <https://perma.cc/9NRA-JF2A>.

119. Other illustrations similarly introduce concepts around transgenderism, "queer" ideology, same-sex marriage, intersectionality, gender transitioning, drag, and drag shows. Ex. C at 3-17.

120. Pre-K teachers assigned to read the book in their classrooms are provided a resource guide from the Human Rights Campaign (HRC) for "defining LGBTQ+ words for elementary students." Ex. D at 2.

121. HRC is an activist organization that advocates for ideological education on sexual orientation and gender



identity starting in kindergarten. To that end, it publishes teaching guides using some of the books approved by the School Board. *See, e.g.*, Ex. D at 2.

122. Beyond laudable aims of promoting equality, fairness, and the end of bullying, HRC espouses a specific ideology on issues regarding family life and human sexuality.

123. For example, HRC advocates “sex positivity,” *HRC Foundation Launches Gen Z Sexual Health Program: GENERATE*, Human Rights Campaign, <https://perma.cc/P4S4-3VSN>, which is generally understood as promoting “an attitude towards human sexuality that regards all consensual sexual activities as fundamentally healthy and pleasurable, encourages sexual pleasure and experimentation.” Allena Gabosch, *A Sex Positive Renaissance* (Dec. 8, 2014), <https://perma.cc/92WD-W94R>.

124. “[S]ex positivity can be understood as an ideology that promotes, with respect to gender and sexuality, being open-minded, non-judgmental and respectful of personal sexual autonomy, when there is consent.” Chantelle Ivanski & Taylor Kohut, *Exploring definitions of sex positivity through thematic analysis*, 26 *Can. J. of Hum. Sexuality* 3, 216-25 (2017), <https://utpjournals.press/doi/10.3138/cjhs.2017-0017>.

125. The HRC guide promotes discussion with students including vocabulary such as “cisgender,” “gender binary,” “transgender,” “pansexual,” and “queer.” Ex. D at 2.

126. Many individuals who argue in favor of children attending pride parades do so for reasons that the Parents—and countless others—find ideological and objectionable.

127. For example, a recent article in *Fatherly* argues for kids “absolutely” participating in pride parades, opining that it is simply “necessary to talk to [them]” in advance “about new things they may see,” like “public nudity and kink.” Heather Tirado Gilligan, *Should You Take Your Kids To A Pride Parade?*, *Fatherly* (June 1, 2022), <https://perma.cc/E22H-5DN4>.

128. One parent quoted in the article contended that her kids “just had to learn to laugh and enjoy things. Like there were these Beanie Babies with giant penises on them. ... For a fourth- and fifth-grade kid, that’s super funny.” *Id.*

129. A 2021 op-ed in the *Washington Post* argued in support of exposing children to “a few dozen kinksters who danced down the street, laughing together as they twirled their whips and batons, some leading companions by leashes.” Lauren Rowello, *Yes, kink belongs at Pride. And I want my kids to see it*, *Washington Post* (June 29, 2021), <https://perma.cc/RM3Q-9W6N>.

130. This parent was happy to explain to her elementary-age child and toddler why a “bare-chested man in dark sunglasses whose black suspenders clipped into a leather thong ... paused to be spanked playfully by a partner with a flog.” *Id.*

131. The storybook *Pride Puppy* makes no mention of this broader context, instead promoting pride parades only as a laudable family experience, without acknowledging they often contain material that many parents find inappropriate for young children.

132. Other Pride Storybooks similarly promote an ideologically one-sided view of issues that are religiously, socially, and scientifically controverted.

133. For example, books for first through fifth graders include *Uncle Bobby's Wedding*; *Intersection Allies*; *My Rainbow*; *Prince & Knight*; *Love, Violet*; and *Born Ready—The True Story of a Boy Named Penelope*.

134. *Uncle Bobby's Wedding* is a story meant, as its jacket states, to “validat[e]” same-sex marriage in the eyes of a small child. The book describes itself as a “celebration of love in all its forms.” The story consists of a young girl upset that her uncle wants to marry, until her uncle’s boyfriend befriends her and gains her trust. Ex. E.

135. The book *Intersection Allies* describes nine interconnected characters and what makes them unique. Ex. F. One character’s story advocates that, to be “safe,” bathrooms should be gender neutral. Ex. F at 15.

136. The text also defines the terms “sex,” “gender,” “transgender,” and “non-binary,” followed by a discussion of pronouns that asks elementary-aged children, “What pronouns fit you best?” Ex. F at 42.

137. *My Rainbow* tells the story of an elementary-age, autistic, boy who believes that short hair keeps him from being a real girl. When the mother points to her own short hair, he responds “People don’t care if cisgender girls like you have short hair. But it’s different for transgender girls. I *need* long hair!” The mother concludes that her son knows best and sews him a rainbow-colored wig. Ex. G at 16.

138. The teacher’s guide eschews analysis of the various other ways parents might appropriately help their children experiencing gender dysphoria, concluding simply that “[s]tudents will recognize unfairness on the individual level (e.g., biased speech)

and injustice at the institutional or systemic level (e.g., discrimination).” Ex. D at 4.

139. *Prince and Knight* is the story of a prince being arranged for marriage by his parents, the king and queen. After “[t]he prince met many ladies (and made the maidens swoon!),” he tells his parents “I’m looking for something different in a partner by my side.” After “climb[ing] atop” an attacking dragon to “tie[] a rope around its head,” he fell and was “caught” in the “embrace” of a knight. The knight “reveal[ed] his handsome face,” “and as they gazed into each other’s eyes, their hearts began to race.” The story ends with the kingdom cheering on “the two men’s wedding day,” while the prince and the knight dance intimately. Ex. H.

140. The story, *Love, Violet*, is about an elementary school girl’s crush on one of her classmates. “As far as Violet was concerned,” it reads, “only one person in her class raced like the wind. Only one had a leaping laugh. Only one made Violet’s heart skip.” Ex. I at 4. The story details Violet’s inhibition to express her romantic feelings until the end of the story when the two classmates exchange a valentine and a locket. Violet is described as “blush[ing] hot” when asked about her valentine. *Id.* at 8.

141. A school resource encourages a “think aloud” moment with the students so they can “acknowledg[e] how uncomfortable we might [be] in situations when we feel our heart beating ‘thumpity thump’ & how hard it can be [to] talk about our feelings with someone that we don’t just ‘like’ but we ‘like like.’” Ex. D at 4.

142. *Born Ready* is based on the true story of a girl named Penelope who explains to her mother, “I don’t

*feel* like a boy. I AM a boy.” The mother agrees to tell their family “what we know. ... You are a boy.” Grandpa agrees that “gender isn’t such a big deal.” When Penelope’s brother protests—“You can’t *become* a boy. You have to be born one”—he’s told that “[n]ot everything *needs* to make sense. *This is about love.*” Papa agrees that Penelope is a boy as long as Penelope will “tell me yourself.” And when Penelope tells the principal “I think like a boy. I feel like a boy. ... I’m sure I’m a boy,” the teacher says, “today you’re *my* teacher.” Ex. J.

143. The resource guide for this book encourages children to notice “how happy Penelope is when his mom ... commits to sharing with their loved ones that he is a boy” and to question why gender is “such a big deal [in the United States].” Ex. D at 5; Ex. J at 18.

144. If students question the story’s narrative with comments like “[h]e can’t be a boy if he was born a girl” or “[w]hat body parts do they have?,” the School Board’s guidance encourages teachers to impose an ideological response:

When we are born, people make a guess about our gender and label us “boy” or “girl” based on our body parts. Sometimes they’re right, and sometimes they’re wrong. Our body parts do not decide our gender. Our gender comes from inside—we might feel different than what people tell us we are. We know ourselves best.

Ex. D at 5.

***The science around transgenderism and sexual orientation***

145. A significant body of scientific evidence indicates that most children who experience gender dysphoria will outgrow those feelings. *See, e.g.,* Devita Singh et al., *A Follow-Up Study of Boys With Gender Identity Disorder*, 12 *Frontiers Psych.*, Mar. 2021, <https://perma.cc/5CRN-3LXU> (almost 88% of observed gender dysphoria resolved by puberty); World Pro. Ass'n for Transgender Health, *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People* 11 (7th ed. 2012), <https://perma.cc/2DGD-AXFT> (footnote omitted); *see also* Nondiscrimination in Health Programs and Activities, 81 Fed. Reg. 31435 n.263 (May 18, 2016) (“Gender dysphoria ... does not inevitably continue into adulthood,” with “persistence rate[s]” in boys of “only 6-23%” and “12-27%” for girls).

146. This desistance data comes from an association that *supports* sex “reassignment” surgery—“one side in a sharply contested medical debate.” *See Gibson v. Collier*, 920 F.3d 212, 221 (5th Cir. 2019) (agreeing with the First Circuit that “Standards of Care” from the World Professional Association for Transgender Health—“WPATH”—“reflect not consensus”).

147. As the American College of Pediatrics put it in 2018, “[t]he debate over how to treat children with [gender dysphoria] is primarily an ethical dispute; one that concerns physician worldview as much as science. ... Medicine also does not occur in a political vacuum and being on the wrong side of sexual politics can have severe consequences for individuals who hold the politically incorrect view.” *Am. Coll. of Pediatricians, Gender Dysphoria in Children* (Nov. 2018),

<https://perma.cc/HY5B-C24Q>; see also Jennifer Block, *Gender dysphoria in young people is rising—and so is professional disagreement*, *BMJ* (Feb. 23, 2023), <https://perma.cc/DE8X-CZWT>.

148. Many children also experience feelings of same-sex attraction or infatuation but do not identify as gay or lesbian in adulthood. See Miles Ott et al., *Stability and Change in Self-Reported Sexual Orientation Identity in Young People: Application of Mobility Metrics*, 40 *Archives Sexual Behav.* 519, 520 (2011), <https://perma.cc/VY75-RVEC> (“[I]t has been acknowledged that a person’s sexual orientation may change not only during adolescence but also across the adult lifespan.”); see also Bennett McIntosh, *There’s (Still) No Gay Gene*, *Harv. Mag.* (Aug. 29, 2019), <https://perma.cc/KJ8P-TFCE> (“‘It’s effectively impossible to predict an individual’s sexual behavior from their genome,’ said Neale, director of genetics at the Stanley Center for Psychiatric Research at the Broad and an associate professor in medicine at Harvard Medical School (HMS), during a Tuesday teleconference introducing the paper’s findings.”).

149. There is also significant evidence that an individual’s well-being is not improved to a statistically significant degree by indulging that individual’s subjective perception of his gender identity. See, e.g., William Malone, *Puberty Blockers for Gender Dysphoria: The Science is Far from Settled*, 5 *Lancet Child & Adolescent Health* 33 (2021), <https://perma.cc/5RCS-HHVH>; Lisa Littman, *Individuals Treated for Gender Dysphoria with Medical and/or Surgical Transition Who Subsequently Detransitioned: A Survey of 100 Detransitioners*, 50 *Archives Sexual Behav.* 3353

(2021), <https://perma.cc/852N-6EHW>; *see also Gibson*, 920 F.3d at 222 (quoting expert who “emphasized that ‘large gaps’ exist in the medical community’s knowledge regarding the long-term effects of [sex “reassignment” surgery] and other [gender dysphoria] treatments in relation to its positive or negative correlation to suicidal ideation.” (alterations in original)).

150. This scientific and experiential data is consistent with many parents’ religious beliefs that a person’s biological sex is a gift from God and that the greatest happiness comes from appreciating the body given as a free gift to the person.

151. Many religious believers also accept that sexual relations are intended by God to take place only within marriage between a man and a woman and encourage their children to live consistent with those religious teachings.

***The School Board’s decision to conceal information and reject opt-outs***

152. Hundreds of parents in Montgomery County have expressed concern that the new Pride Storybooks introduce issues around family life and sexuality that are inappropriate for children in elementary school.

153. Indeed, a poll by the *Washington Post* and University of Maryland showed that, among registered voters, sixty-six percent of Marylanders disapproved of schoolteachers discussing LGBTQ issues with students from kindergarten through third grade. Nicole Asbury and Emily Guskin, *Most Md. voters say elementary school discussion of LGBTQ acceptance ‘inappropriate,’* *The Washington Post* (Oct. 12, 2022), <https://perma.cc/6NED-E9RH>.



154. Fifty-six percent disapproved for fourth and fifth graders. *Id.*

155. Even for middle schoolers, forty-two percent of voters disapproved. *Id.*

156. Only for high schoolers, did a strong majority support such conversations, with only twenty-seven percent of voters disapproving. *Id.*

157. One parent expressed concern at a School Board meeting that the book *My Rainbow* was pushing transgender ideology: “this is not instruction, it is indoctrination.” Testimony at the Montgomery County Public Schools Business Meeting, at 27:11-29:09 (Jan. 12, 2023), <https://perma.cc/T234-559Q>.

158. Defendant Harris responded urging the School Board to adhere to the curriculum, and a colleague emphasized in reference to the parent’s testimony that, “[y]es, ignorance and hate does exist in our community.” *Id.* at 38:34-40:40.

159. Nevertheless, on March 22, 2023, consistent with its policies and past practices, the School Board issued a statement confirming parents’ notification and opt-out rights:

When a teacher selects a curriculum, a notification goes out to parents about the book. If a parent chooses to opt out, a teacher can find a substitute text for that student that supports these standards and aligns with curriculum.

*See* Stephanie Ramirez, *MCPS revises policy on LGBTQ-friendly books*, Fox 5 Washington DC (Mar. 22, 2023), <https://perma.cc/8L5G-XQ9X>.

160. But the next day, in a “Revised Message Regarding the Use of Inclusive Texts,” the School Board reversed course:

[T]here is as an expectation that teachers utilize these inclusive lessons and texts with all students. ... Students and families may not choose to opt out of engaging with any instructional materials, other than “Family Life and Human Sexuality Unit of Instruction” which is specifically permitted by Maryland law. As such, teachers will not send home letters to inform families when inclusive books are read in the future.

*See 5 Things to Know*, Montgomery County Public Schools (March 23, 2023), <https://perma.cc/6XVG-R3CF>.

161. The School Board’s attempt to segregate the Pride Storybooks from “family life and human sexuality” is inconsistent with the Maryland regulation requiring parental notice and opt-outs.

162. The regulation extends parental notice and opt-out rights to any teaching of “indicators and objectives” or “concepts and skills” regarding family life and human sexuality—not a single class or “[u]nit.” *See* COMAR 13A.04.18.01(D)(2)(d)(g).

163. The next day in the Persak Plaintiffs’ elementary school, teachers were instructed to introduce and read the books in their classrooms.

164. The principal informed the Persaks that, because they had requested an opt-out, their daughter was excused from the classroom when one of the Pride Storybooks was read.

165. The principal made clear, however, that no further notifications or opt-outs would be provided.

166. As the principal put it earlier, these opt-outs were made “[t]o accommodate [parents’] fears” and she “disagree[d] with th[em] unequivocally.” Ex. K.

167. The Roman Plaintiffs corresponded with the principal of their elementary school, seeking both an opt-out for their son and guarantees that parents would continue to receive notice about the Pride Storybooks and that teaching them would be optional for teachers. *See* Ex. L.

168. On February 1, 2023, the principal told the Romans that “it is your right to ask that [your son] not be present when this book is read to the class and if any other parents reach out I will meet with them to have the same discussion we engaged in and they can make a decision for their family.” *Id.* at 7.

169. Plaintiffs Tamer Mahmoud and Enas Barakat asked the acting principal of their elementary school to opt their son out of class reading of *Prince and Knight*, and to assign him an alternative activity. Ex. M.

170. The acting principal offered the parents an opportunity to read the book. *Id.*

171. The acting principal then followed up by stating that MCPS is not supporting parents opting out of the Pride Storybooks, and teachers are not required to provide alternative assignments. *Id.*

172. Tamer and Enas responded by saying that their decision to opt-out did not change after reading the book. *Id.*

173. They again asked for their son to receive an alternate assignment. *Id.*

174. The acting principal finally responded (on March 20) that he would allow their son to sit outside the classroom while the book was discussed. *Id.*

175. Nevertheless, on March 23, the School Board announced that the Pride Storybooks were being read to students and that parents would no longer receive advance notice or opportunity to opt their children out. *Id.*

176. On March 28, Defendant Harris addressed the issue at a School Board meeting, accusing parents who had just testified in support of opt outs that they were motivated by hate:

Rogers and Hammerstein got it right seven years: “You have to be taught to hate.” You know, no child is born other-izing, marginalizing, thinking somebody else is not as good as they are .... Saying that a kindergartener can’t be present when you read a book about a rainbow unicorn because it offends your religious rights or your family values or your core beliefs is just telling that kid, “Here’s another reason to hate another person.”

Lynne Harris, Remarks at the MCPS Board Meeting at 1:48:00-1:48:15 (March 28, 2023), <https://perma.cc/AW3T-DMJB>; *see also* Ex. N at 16 (suggesting that parents seeking opt-outs are engaging in a “dehumanizing form of erasure”).

**CLAIMS FOR RELIEF**  
**Count I**  
**42 U.S.C. § 1983**  
**Violation of the First Amendment**  
**to the U.S. Constitution**  
**Free Exercise Clause**  
**Religious Upbringing of Children**

177. Plaintiffs incorporate by reference all preceding paragraphs.

178. Independent of the lack of general applicability or neutrality toward religion, the Pride Storybooks violate the Free Exercise Clause’s guarantee of an “enduring American tradition”: “the rights of parents to direct ‘the religious upbringing’ of their children.” *Espinoza v. Mont. Dep’t of Revenue*, 140 S. Ct. 2246, 2261 (2020) (quoting *Yoder*, 406 U.S. at 213-14); *Emp. Div. v. Smith*, 494 U.S. 872, 881 (1990) (citing “the right of parents ... to direct the education of their children” even against laws that are “neutral, generally applicable”); *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2129-30 (2022) (“how we protect other constitutional rights” is to analyze whether a constitutional amendment’s “plain text covers an individual’s conduct,” and if so, “[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition”); *see also Firewalker-Fields v. Lee*, 58 F.4th 104, 123 n.7 (4th Cir. 2023) (historical tradition analysis applies to “constitutional provisions where the Supreme Court has directed that historical tradition defines an exception, rather than the rule”); *Espinoza*, 140 S. Ct. at 2258-59 (analyzing whether Montana could identify a “comparable ‘historic and

substantial tradition” to overcome protection of the Free Exercise Clause).

179. The long-standing American tradition protecting the right of parents to shape their children’s religious education meant “courts tended to rely on a common law presumption of the soundness of parental judgment in making educational decisions pertaining to their children.” Ralph D. Mawdsley & Daniel Drake, Commentary, *Involving Parents in the Public Schools: Legal and Policy Issues*, 76 Educ. L. Rep. 299, 301 (1992).

180. The American tradition was a departure from the English religious establishment, where laws fined parents for instructing their children “in the popish religion.” 1 William Blackstone, *Commentaries on the Laws of England* 451 (Edward Christian ed., 1793); see also *id.* at 450 (“Yet in one case, that of religion, [parents] are under peculiar restrictions.”).

181. Under the American tradition, unless the parental decision would detrimentally “affect the government of the school or incommode the other students or the teachers,” “it is for the parent, not the [school], to direct the branches of education [a child] shall pursue, so far as they are taught.” *Trs. of Schs. v. People ex rel. Van Allen*, 87 Ill. 303, 309 (1877); see also *Morse v. Frederick*, 551 U.S. 393, 424 (2007) (Alito, J., concurring) (“It is a dangerous fiction to pretend that parents simply delegate their authority—including their authority to determine what their children may say and hear—to public school authorities.”); *Bell v. Itawamba Cty. Sch. Bd.*, 799 F.3d 379, 391 (5th Cir. 2015) (en banc) (explaining “Justice Alito’s controlling concurrence”).

182. Accordingly, unless public safety or the “special characteristics” of the school setting are at issue, a school’s desired “educational mission” is insufficient to restrict First Amendment rights. *Morse*, 551 U.S. at 423 (Alito, J., concurring).

183. Here, the forced inculcation of the Pride Storybooks without parental notice or opt-out rights burdens the Parents’ right to form their children on a matter of core religious exercise and parenting: how to understand who they are.

184. There is no analogous tradition of restricting this right.

185. To the contrary, as discussed above, a long-standing national consensus of broadly allowing opt-outs from instruction on family life and human sexuality instruction exists, including in Maryland. *Supra* ¶¶ 85-94.

186. And at least one court has already blocked an earlier effort by the Board to transgress the First Amendment rights of parents through related instruction. *Citizens for a Responsible Curriculum v. Montgomery County Public Schools*, No. CIV.A.AW-05-1194, 2005 WL 1075634, at \*11 (D. Md. May 5, 2005) (“The Court is extremely troubled by the willingness of Defendants to venture—or perhaps more correctly bound—into the crossroads of controversy where religion, morality, and homosexuality converge.”).

187. Unable to show a contrary tradition of restricting parental control over family life and human sexuality education by denying opt-outs, the School Board cannot overcome the Parents’ free exercise right. *See Bruen*, 142 S. Ct. at 2126 (holding that the

Constitution “presumptively protects that conduct” not rebutted by an analogous “historical tradition” of regulation).

188. The Parents have and will continue to suffer the irreparable injury of their First Amendment rights being denied by Defendants.

189. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the School Board’s disregard for their constitutional rights.

190. To remedy their injuries, Plaintiffs are entitled to declaratory, injunctive, and monetary relief.

191. To the extent that the Court finds the Free Exercise Clause inapplicable to the Parents’ rights, then *Employment Division v. Smith*, 494 U.S. 872 (1990) was wrongly decided.

**Count II**  
**42 U.S.C. § 1983**  
**Violation of the First Amendment**  
**to the U.S. Constitution**  
**Free Exercise Clause**  
**General Applicability**

192. Plaintiffs incorporate by reference all preceding paragraphs.

193. A government policy will fail the Free Exercise Clause’s general applicability requirement if it prohibits any religious conduct while permitting similar conduct that “undermines the government’s asserted interests in a similar way, or if it provides a mechanism for individualized exemptions.” *Kennedy v.*



*Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2422 (2022) (cleaned up).

194. The mere existence of a mechanism for individualized exemptions means the policy at issue is not generally applicable, “regardless whether any exceptions have been given.” *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1879 (2021).

195. If a policy is not generally applicable for either of these reasons, that “is sufficient to trigger strict scrutiny.” *Kennedy*, 142 S. Ct. at 2422 (citation omitted).

196. Here, both general applicability triggers are met by the School Board’s refusal to accommodate Plaintiffs’ notification and opt-out requests from the *Pride Storybooks*.

197. This failure burdens the Parents’ freedom to form their children on a matter of core religious exercise and parenting: how to understand who they are.

198. It also burdens the Student Plaintiffs’ rights to opt out of books that violate their religious beliefs and practices.

199. The first trigger—not accommodating some opt-out requests while permitting conduct that similarly undermines the supposed government interest—is demonstrated in multiple ways.

200. Maryland law requires parental notification and opt-out rights for instruction regarding family life and human sexuality for any reason, religious or not.

201. The School Board has traditionally extended parental notification and opt-out rights for instruction regarding family life and human sexuality.

202. For the 2022-23 school year, the School Board provided parental notification and allowed parental opt outs for the new Pride Storybooks.

203. This included honoring opt-out requests for the Persak children, acknowledging an opt-out for the Roman's son, and giving Tamar and Enas's son an opt-out.

204. The School Board has also traditionally allowed students to opt out of books that violate their religious beliefs and receive a different reading assignment instead.

205. But then, on March 23, the School Board suspended all opt-outs without explanation.

206. The second trigger for general applicability—a mechanism for individualized assessments—is also met by much of the same evidence.

207. The School Board has allowed administrators and teachers to provide parental notification and opt outs on a case-by-case basis.

208. Indeed, the School Board's written Guidelines provide that "each situation" of religious-based absence from school "must be addressed on a case-by-case basis." Ex. A at 2.

209. The School Board's decision to reverse itself and no longer honor opt-outs from the Pride Storybooks—when it had already allowed some, and continues to allow analogous opt-outs (as they must under Maryland law and their own Guidelines)—is not generally applicable.

210. Strict scrutiny therefore applies.

211. The School Board cannot meet its burden to prove that forced exposure to the Pride Storybooks pursues a compelling governmental interest or that it is narrowly tailored to achieve such an interest.

212. The School Board cannot “rely on broadly formulated interests” but must explain “the asserted harm of granting specific exemptions to particular religious claimants.” *Fulton*, 141 S. Ct. at 1881 (cleaned up).

213. In other words, the School Board cannot explain why it must force *these* Parents to violate *their* religious freedom to form their children in their own religious traditions. *See, e.g., id.* (“[S]o long as the government can achieve its interests in a manner that does not burden religion, it must do so.”).

214. The School Board cannot show forcing all children to read the Pride Storybooks is the only way to teach inclusion and civility toward all individuals.

215. Plaintiffs have and will continue to suffer the irreparable injury of their First Amendment rights being denied by Defendants.

216. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the Board’s disregard for their constitutional rights.

217. To remedy their injuries, Plaintiffs are entitled to declaratory, injunctive, and monetary relief.

218. To the extent this Court finds the Board’s Pride Storybooks policy generally applicable, then *Employment Division v. Smith*, 494 U.S. 872 (1990) was wrongly decided.

**Count III**  
**42 U.S.C. § 1983**  
**Violation of the First Amendment**  
**to the U.S. Constitution**  
**Free Exercise Clause**  
**Neutrality**

219. Plaintiffs incorporate by reference all preceding paragraphs.

220. The Free Exercise Clause requires that government policies be “neutral” toward religious exercise.

221. “A government policy will not qualify as neutral if it is specifically directed at religious practice”—detectable if the policy “discriminates on its face, or if a religious exercise is otherwise its object.” *Kennedy*, 142 S. Ct. at 2422 (cleaned up).

222. “A plaintiff may also prove a free exercise violation by showing that ‘official expressions of hostility’ to religion accompany laws or policies burdening religious exercise; in cases like that [the Supreme Court] ha[s] ‘set aside’ such policies without further inquiry.” *Id.* at 2422 n.1 (citing *Masterpiece Cakeshop, Ltd. V. Colorado C.R. Comm’n*, 138 S. Ct. 1719, 1732 (2018)).

223. But even “[f]acial neutrality is not determinative.” *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993).

224. The Free Exercise Clause also “forbids subtle departures from neutrality,” “protect[ing] against governmental hostility which is masked, as well as overt.” *Id.*

225. The School Board's policy to mandate the Pride Storybooks to discourage a biological understanding of human sexuality is not neutral toward religion, in part because it assumes that traditional religious views regarding family life and sexuality as supported by sound science and common sense are hurtful, hateful, or bigoted.

226. This burdens the Parents' freedom to form their children on a matter of core religious exercise and parenting: how to understand who they are.

227. It also burdens the Student Plaintiff's freedom to receive an education in an environment free from religious discrimination.

228. The School Board's policy of forced participation in the Pride Storybooks is not neutral toward religious exercise and expressly encourages teachers to tell students that their religious and scientific perspectives are "hurtful."

229. A principal at one School made this explicit when saying that parents who voiced religious-based concerns over subjecting their children to Pride Storybooks are being "motivat[ed]" by "fear." "Fear is a powerful motivator," and the School Board only considered an opt out from the Pride Storybooks "[t]o accommodate these fears." Ex. K.

230. And Defendant Harris was even more explicit after the School Board decided to end opt-outs on the Pride Storybooks. She said that allowing such opt-outs for religious reasons "is just telling that kid, 'Here's another reason to hate another person.'"

231. To the contrary, the School Board's Guidelines permit opt-out requests on any subject, classroom discussion, or activity that violates parents' or students' religious beliefs or practices.

232. Maryland also requires opt-outs from instruction on "family life and human sexuality," which extends to issues of sexual orientation, gender identity, and gender expression, consent, and personal boundaries.

233. It is not neutral to exclude the Pride Storybooks from these otherwise general religious accommodations.

234. Moreover, non-neutrality toward religion is also demonstrated by teachers no longer notifying parents when the Pride Storybooks will be read to their children.

235. The School Board's Guidelines require that affirmative steps be taken by schools to ensure that "instructional activities" are "fair, objective, and [do] not demean any religious or nonreligious beliefs." *Supra* ¶ 101.

236. Those steps, when guest or student speakers are involved, can also include "disclaimers" issued to parents and guardians. *Supra* ¶ 104.

237. Now, however, the Parents will have no way of knowing when or how these books are foisted upon their children—despite their religious objections.

238. As with general applicability, the School Board's lack of neutrality toward religious concerns "is sufficient to trigger strict scrutiny." *Kennedy*, 142 S. Ct. at 2422 (citation omitted).

239. For the foregoing reasons, the School Board cannot meet its burden to establish that the Pride

Storybooks achieve a compelling government interest, and that forcing Plaintiffs to violate their religious beliefs toward is narrowly tailored to achieve that interest.

240. Plaintiffs have and will continue to suffer the irreparable injury of their First Amendment rights being denied by Defendants.

241. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the School Board's disregard for their constitutional rights.

242. To remedy their injuries, Plaintiffs are entitled to declaratory, injunctive, and monetary relief.

243. To the extent this Court finds the Board's Pride Storybooks policy neutral, then *Employment Division v. Smith*, 494 U.S. 872 (1990) was wrongly decided.

**Count IV**  
**42 U.S.C. § 1983**  
**Violation of the First Amendment**  
**to the U.S. Constitution**  
**Free Speech Clause**  
**Viewpoint Discrimination**

244. Parents incorporate by reference all preceding paragraphs.

245. The School Board's policy to discourage a biological understanding of human sexuality through the Pride Storybooks is religious viewpoint discrimination and thereby violates the First Amendment's Free Speech Clause.

246. No matter the "forum" in which speech occurs, viewpoint discrimination is always prohibited.

*Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

247. Accordingly, schools—like other fora for private speech—cannot exclude speech “on the basis of the religious nature of the speech.” *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 105 (2001); *Rosenberger*, 515 U.S. at 831 (“Religion may be a vast area of inquiry, but it also provides, as it did here, a specific premise, a perspective, a standpoint from which a variety of subjects may be discussed and considered.”).

248. Here, however, the School Board’s Pride Storybooks are excluding religious perspectives on the topic of gender identity.

249. As early as pre-K, children will be introduced to what it means to be “cisgender,” “gender binary,” “transgender,” “pansexual,” and “queer.” Ex. D.

250. First-graders will read a book discussing being “non-binary” and “what pronouns fit you best.” *Id.*

251. In second grade, the Pride Storybooks will make children recognize “biased speech” and “discrimination.” *Id.* Later in fifth grade, children will read about a mother committing to sharing with loved ones that her boy “is” a girl. *Id.*

252. The Pride Storybooks promote a single viewpoint on what it means to be “affirming” on matters of and human sexuality. Different viewpoints on what “affirming” means in this context are either not provided or outright discouraged.

253. Moreover, and despite the School Board’s Guidelines on religious diversity, its “resource guide”



on the Pride Storybooks prohibits divergent religious perspectives too.

254. For example, the resource guide suggests teachers tell students who question the premise of gender identity that the “comment is hurtful; we shouldn’t use negative words to talk about peoples’ identities.” *Id.* at 5.

255. Were other students to state what their parents taught them—that gender is not “assigned” at birth but an observation of biological reality—the teacher is suggested to tell the student that “[w]hen we are born, people make a guess about our gender and label us ‘boy’ or ‘girl’ based on our body parts. Sometimes they’re right, and sometimes they’re wrong.” *Id.*

256. Similarly, were a student to question why subjective feelings override objective biological reality, teachers are suggested to say that “[o]ur gender comes from inside – we might feel different than what people tell us we are. We know ourselves best.” *Id.*

257. Far from guaranteeing a fair and objective discussion of religious perspectives, the School Board’s Pride Storybooks and corresponding “resource guide” preclude religious viewpoints on the topics of sexual orientation and gender identity—because of their viewpoint. That is unconstitutional.

258. As a “finding of viewpoint bias end[s] the matter,” there is no subsequent analysis of strict scrutiny. *Iancu v. Brunetti*, 139 S. Ct. 2294, 2302 (2019) (“Once we have found that a law aims at the suppression of views, why would it matter that Congress could have captured some of the same speech through a viewpoint-neutral statute.”) (cleaned up).

259. Plaintiffs have and will continue to suffer the irreparable injury of their First Amendment rights because of the School Board's viewpoint discrimination.

260. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the Board's disregard for their constitutional rights.

261. To remedy their injuries, Plaintiffs are entitled to declaratory, injunctive, and monetary relief.

**Count V**  
**42 U.S.C. § 1983**  
**Violation of the Fourteenth Amendment**  
**to the U.S. Constitution**  
**Substantive Due Process**  
**Parental Right to Direct Children's**  
**Education and Upbringing**

262. Plaintiffs incorporate by reference all preceding paragraphs.

263. "[T]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (quoting *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 535 (1925)).

264. That right—that high duty—is not only deeply embedded in "[t]he history and culture of Western civilization," *Yoder*, 406 U.S. at 232; it also has "a constitutional dimension," *Troxel*, 530 U.S. at 65.

265. A century of Supreme Court decisions establish that "it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the

fundamental right of parents to make decisions concerning the care, custody, and control of their children.” *Id.* at 66.

266. Simply put, the “liberty’ specially protected by the Due Process Clause includes the right[] ... to direct the education and upbringing of one’s children.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

267. The School Board’s policies regarding the Pride Storybooks violate the Parents’ fundamental right to make key decisions regarding the upbringing, education, custody, care, and control of their children, including the right to opt their children out of instruction on family life and human sexuality that violates their religious beliefs and practices.

268. There is no compelling state interest in forcing elementary school children to participate in the Pride Storybooks that outweighs the Parents’ constitutional right to direct the education, upbringing, care, custody, and control of their children.

269. The Parents have and will continue to suffer irreparable injury to their constitutional rights because of Defendants’ actions.

270. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the Board’s disregard for their constitutional rights.

271. At bottom, the School Board’s actions violate the “cardinal” principle “that the custody, care and nurture of the child reside *first* in the *parents*, whose primary function and freedom include preparation for obligations the state can *neither supply nor hinder*.”

*Troxel*, 268 U.S. at 65-66 (emphases added) (quoting *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)).

272. Eyes wide open, the School Board has disavowed what “[p]ublic schools must not forget”: “that ‘*in loco parentis*’ does not mean ‘displace parents.’” *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000).

273. The Parents have and will continue to suffer the irreparable injury of their Fourteenth Amendment rights being denied by Defendants.

274. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the Board’s disregard for their constitutional rights.

275. To remedy their injuries, the Parents are entitled to declaratory, injunctive, and monetary relief.

### **Count VI** **Violation of Maryland State Law**

276. Plaintiffs incorporate by reference all preceding paragraphs.

277. Article 24 of the Declaration of Rights of the Maryland Constitution provides, “That no man ought to be ... disseized of his ... liberties or privileges ... or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.” Md. Const. Declaration of Rights Art. § 24.

278. Article 5(a)(1) of the Declaration of Rights of the Maryland Constitution also provides, that “the Inhabitants of Maryland are entitled to the Common Law of England ... and to the benefit of such of the English statutes as existed on the Fourth day of July, seventeen hundred and seventy-six ... subject,

nevertheless, to the revision of, and amendment or repeal by, the Legislature of this State.” Md. Const. Declaration of Rights Art. § 5(a)(1).

279. These provisions in Maryland’s Constitution protect parents’ fundamental rights to direct the care, custody, education, welfare, safety, and control of their minor children.

280. The State of Maryland by regulation has given explicit protection for these rights in the context of public school instruction regarding “family life and human sexuality.”

281. State regulations require a local school system like MCPS to “provide an opportunity for parents/guardians to view instructional materials to be used in the teaching of family life and human sexuality objectives.” COMAR 13A.04.18.01(D)(2)(e)(iv)

282. They further provide that the local school system “shall establish policies, guidelines, and/or procedures for student opt-out regarding instruction related to family life and human sexuality objectives.” *Id.* at 18.01(D)(2)(e)(i).

283. The School Board’s own policies reinforce these rights to notice and opportunity to opt out, committing “to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs”. Ex. A at 3.

284. The School Board’s policy of withholding notice and opt-outs violates Maryland’s Constitution, state law, and the School Board’s own regulations.

285. Plaintiffs have and will continue to suffer the irreparable injury of their state rights being denied by Defendants.

286. The Parents also have or may in the future suffer monetary damages in being forced to pursue other educational opportunities for their children because of the Board's disregard for their state rights.

287. To remedy their injuries, Plaintiffs are entitled to declaratory, injunctive, and monetary relief.

### **JURY DEMAND**

Plaintiffs request a trial by jury on all issues so triable.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs request that the Court:

- a. Enter a declaration that the refusal to afford Plaintiffs a right to opt out from family life and human sexuality instruction, including the forced reading of the Board's Pride Storybooks, violates the Free Exercise Clause of the First Amendment;
- b. Enter a declaration that forcing Plaintiffs to educate their children, read, and/or speak consistently with the perspectives contained in the Pride Storybooks and compelling the Student Plaintiffs to accept one viewpoint to the exclusion of all others violates their rights under the Free Speech Clause of the First Amendment;
- c. Enter a declaration that forcing students, over their Parents' objection, to read or listen to the School Board's Pride Storybooks violates the Parents' rights under the Due Process Clause of the Fourteenth Amendment;

- d. Enter a declaration that forcing students, over their Parents' objection, to read or listen to the School Board's Pride Storybooks violates the Parents' rights under Maryland law;
- e. Enter preliminary and permanent injunctions prohibiting the School Board from forcing the Parents' children and other students—over the objection of their parents—to read, listen to, or discuss the School Board's Pride Storybooks, and also requiring the School Board to provide advance notice and an opportunity for opt-outs to any other instruction related to family life or human sexuality.
- f. Award nominal damages to the Parents;
- g. Award actual damages incurred by the Parents in being forced to pursue other educational opportunities for their children because of the School Board's disregard for their constitutional rights;
- h. Award attorneys' fees and costs under 42 U.S.C. § 1988; and
- i. Award such other relief as the Court may deem just and proper.

Respectfully submitted this 6th day of July, 2023.

/s/ Eric S. Baxter  
Eric S. Baxter  
(Bar #: 15640)  
William J. Haun  
(pro hac vice)  
Michael O'Brien\*  
(pro hac vice)

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Brandon L. Winchel\*\*  
(pro hac vice)  
THE BECKET FUND FOR  
RELIGIOUS LIBERTY  
1919 Pennsylvania Ave,  
N.W.  
Suite 400  
Washington, DC 20006  
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*Attorneys for Plaintiffs*

\*Not a member of the DC Bar;  
admitted in Louisiana. Practice  
limited to cases in federal court.

\*\*Not a member of the DC Bar;  
admitted in California. Practice  
limited to cases in federal court.

**VERIFICATION OF COMPLAINT  
ACCORDING TO 28 U.S.C. § 1746**

I, Tamer Mahmoud, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

/s/ Tamer Mahmoud  
Tamer Mahmoud

\* \* \*

I, Enas Barakat, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

/s/ Enas Barakat  
Enas Barakat



208a

\* \* \*

I, Jeff Roman, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

/s/ Jeff Roman  
Jeff Roman

\* \* \*

I, Svitlana Roman, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

/s/ Svitlana Roman  
Svitlana Roman

\* \* \*

I, Chris Persak, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

/s/ Chris Persak  
Chris Persak

\* \* \*

I, Melissa Persak, declare under penalty of perjury that the foregoing allegations that pertain to me are true and correct to the best of my knowledge.

Dated: 7/6/2023

/s/ Melissa Persak  
Melissa Persak

209a

\* \* \*

I, Blen Moges, on behalf of Kids First, declare under penalty of perjury that the foregoing allegations that pertain to Kids First are true and correct to the best of my knowledge.

Dated: 7/6/2023

/s/ Blen Moges

Blen Moges

Director, Kids First

210a

2022-2023

**Guidelines for Respecting  
RELIGIOUS DIVERSITY  
in Montgomery County Public Schools**

[www.montgomeryschoolsmd.org](http://www.montgomeryschoolsmd.org)

\* \* \*

Office of the Superintendent of Schools

September 2022

Dear Students, Parents/Guardians, and Colleagues,

Returning to school five days a week and in person during the 2021–2022 school year was rewarding, but not without challenges. As a community, we have adjusted to changing guidelines for in-school and out-of-school operations, necessitated by the ongoing pandemic, to keep all of us safe. As a community, it has become more important than ever before to collaborate and partner in every aspect of the work that must be done to ensure a high-quality education for all students.

We must continue to embrace the vibrant diversity of our Montgomery County community and ensure that all individuals, no matter their race, ethnicity, or religious identification, feel welcomed and valued in our school system. This is foundational so that everyone can successfully participate, teach, and learn at high levels, in a welcoming environment.

This commitment is codified in Montgomery County Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*, and it is needed more than ever, given the rise in hate, bias, and racism

against minoritized communities. Part of that commitment is making sure our students have the right to express their religious and nonreligious beliefs and practices, free from discrimination, bullying, and harassment. As a school district, we are committed to making feasible and reasonable accommodations for those beliefs and practices, as we strive to create safe, positive, and respectful learning environments for all of our students.

In partnership,

/s/ Monifa B. McKnight  
Monifa B. McKnight

\* \* \*

## INTRODUCTION

### **Respecting Religious Diversity in Montgomery County Public Schools**

Montgomery County Public Schools (MCPS) is committed to providing all students with opportunities to succeed and thrive. Part of that commitment is making sure our students have the right to express their religious or nonreligious beliefs and practices, free from discrimination, bullying, or harassment.

Our nation and the state of Maryland have a deep and long-standing commitment both to the protection of religious liberty and to the separation of church and state. The First Amendment to the U.S. Constitution states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” This means that the government may not promote one religion over another, prefer

religion over nonreligion, or express hostility or opposition to religion.

The U.S. Supreme Court has emphasized the importance of neutrality toward religion by public schools. Schools must protect the religious liberty rights of all students, while rejecting public endorsement of religion. Schools may neither inculcate nor inhibit religion, and students have a right to an academic environment where religious beliefs are not advocated in courses or in school-sponsored activities, such as commencements or assemblies. Equally important, students have the right to their religious or nonreligious beliefs and practices, free from discrimination, bullying, or harassment, and MCPS is committed to making feasible and reasonable accommodations for those beliefs and practices.

These guidelines are intended to provide a quick reference regarding several Montgomery County Board of Education policies and MCPS regulations, as well as state and federal laws, which guide the district on these topics. These guidelines put all of this information together in one place and answer frequently asked questions about religious guidelines for students, while in school and during school-sponsored activities, so that the expectations are clear to our staff, our students, our families, and our community. Please note that these legal requirements are subject to change between editions of this publication, and any changes supersede the statements and references contained in this publication.

MCPS created these guidelines in collaboration with the Montgomery County Executive's Faith Community Working Group and other stakeholders.

This partnership and collaboration seek to promote respect and appreciation for the religions, beliefs, and customs of our diverse student population. They foster a culture where all families feel respected and deepen our commitment to our core values of Learning, Relationships, Respect, Excellence, and Equity. MCPS believes that diversity is one of our greatest strengths and should enrich our community as we learn together in our schools.

We hope you find these guidelines helpful. If you have questions about anything in this handbook, please first talk with your school administrators. If you have further questions, contact the MCPS Office of the Chief of Districtwide Services and Supports, Student Welfare and Compliance, at 240-740-3215, or SWC@mcpsmd.org. If your questions cannot be answered by MCPS staff, you also may contact the Board of Education chief of staff or the Board ombudsman at 240-740-3030, or boe@mcpsmd.org.

<b>Frequently Asked Questions</b>
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**Are students' absences excused for observances of religious holidays?**

YES. Families must follow all of the regular procedures to report and document absences. Please see the *Absences for Religious Holidays* section of these guidelines for further information (page 2).

**Can students make up work due to absences for religious holidays?**

YES. Families should work with their child's school to arrange for making up work. Please see the *Absences*

*for Religious Holidays* section of these guidelines for more detailed information (page 2).

**Can students pray during the school day?**

YES, under certain circumstances. Please see the *Prayer and Religious Dress* section of these guidelines for more specific information (page 3).

**Can students wear clothing associated with their religion?**

YES. Students may wear scarves, hijabs, yarmulkes, parkas, kufis, or other clothing associated with their religion in accordance with Board policies and MCPS regulations. Please see the *Prayer and Religious Dress* section of these guidelines for more specific information (page 3).

**Can religious topics be discussed in school assignments?**

YES. Students may express their religious beliefs or nonbelief in school assignments as long as their expressions meet the assignment's requirements, are relevant to the topic, and follow the other guidelines discussed in this *handbook*. In addition, objective and factual lessons about religion in literature, history, and the arts may be part of the MCPS curriculum. Please see the *Religion in the Instructional Program* section of these guidelines for further information (page 3).

**Do schools accommodate students' religion related dietary restrictions?**

YES. Schools regularly work with students who may have religion-related dietary restrictions. Please see the *Food and Religious Observance* section of these guidelines for more information (page 5).

**Can students distribute religious informational materials?**

YES. Students may distribute religious materials on the same terms as they are permitted to distribute other informational material unrelated to school activities. Students must follow school rules about where, when, and how materials are distributed. Please see the *Distributing Religious Informational Materials* section of these guidelines for more information (page 5).

**Are religious extracurricular clubs allowed in schools?**

YES. Students have a right to organize religion-related extracurricular clubs or assemble and conduct religious meetings, prayer groups, or other observances of religious practices during noninstructional time, on the same basis as other extracurricular student groups that are not related directly to a subject taught in school. These religion-related extracurricular meetings or clubs must be student led. For more information and specific guidance, please see the *Extracurricular Student Religious Activities* section of these guidelines (page 6).

<b>Absences for Religious Holidays</b>
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**Attendance and Absences for Observance of Religious Holidays**

Daily attendance at school is crucial to student achievement. Nevertheless, MCPS understands that students may occasionally miss school for a variety of reasons, including the observance of religious



holidays. These are excused absences, and students will be allowed to make up missed assignments. If students miss school, they should bring a note from a parent/ guardian providing a written explanation within three school days of returning to school.

MCPS will accommodate reasonable requests for late arrivals or early dismissals related to the observance of a religious holiday, but they must be authorized by a parent/guardian.

Although participation in any athletic event or practice generally requires athletes to attend all of their scheduled classes on the day of the event or practice, students who have prescheduled activities, such as the observance of a religious holiday, will be permitted to participate in athletic events or practices on the day of the absence, provided they receive advance approval from their school.

Because free exercise of religion is a constitutional right, MCPS schools that have perfect attendance awards may not withhold these awards from students whose only absences have been excused for the observance of religious holidays.

**References:**

MCPS Regulation JEA-RA, *Student Attendance*.

**Making Up Work After an Absence for Observing Religious Holidays**

Students have a responsibility and generally are expected to make up work they miss while absent from school. It is best for students and their parents/ guardians to plan ahead to arrange extensions or other accommodations for work that students will miss when they are absent to observe a religious holiday.

However, MCPS realizes that it is not always realistic or possible to do so. If the absence is excused, the student's teacher will help the student make up work, offer a retest, or grant an extension on classwork or homework that was due during the student's observance of a religious holiday. While each situation must be addressed on a case-by-case basis, students typically will be eligible for an extension of up to three school days to make up work after an excused absence for observance of a religious holiday.

In addition, when assigning homework, schools should be mindful of cultural, ethnic, religious, and other celebrations or events that are important to members of our community. Montgomery County has developed a listing of Days of Commemoration, including certain holidays relating to the religious, ethnic, and cultural heritage of county residents, available at [www.montgomerycountymd.gov/mcg/commemorations.html](http://www.montgomerycountymd.gov/mcg/commemorations.html).

The Equity Initiatives Unit has a document that provides staff with background information about the many commemorations/holidays, which staff and other members of the MCPS community may find helpful as well. The calendar on the MCPS website will display the Days of Commemoration as a reference for staff, students, parents/guardians, and community members, in addition to MCPS school closure information. The calendar is available at [www.montgomeryschoolsmd.org/info/calendars/](http://www.montgomeryschoolsmd.org/info/calendars/).

<b>Prayer and Religious Dress</b>
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**Prayer at School**

Students are free to pray and discuss their religious views with other students, as long as these activities are voluntary, student initiated, and do not materially disrupt or infringe on classroom instruction, other school activities, or the rights of others. For example, a student may say a prayer or read religious texts before a meal or before a test in informal settings, such as cafeterias or hallways, to the same extent that students are permitted to engage in nonreligious activities; or a student athlete may pray before a competition or after scoring a touchdown or a goal as long as it does not unreasonably delay or disrupt the competition or interfere with the rights of other athletes or spectators. While students may exercise their right to pray during the school day or at school-related activities, they may not compel, harass, or pressure others at school to participate in or listen to a prayer, sermon, or other religious activity. For instance, student-led prayers broadcast to all classes over the school's public announcement system would not be permissible.

If a student requests a quiet place to pray, schools will make a reasonable effort to accommodate the request, provided that space is available, there is appropriate staff monitoring to ensure student safety, and the educational process is not disrupted. This could mean a quiet space in the media center, an empty classroom, or other room.

Students and their parents/guardians should expect that MCPS teachers, administrators, and other staff will not organize, lead, initiate, endorse, or actively

participate in student prayers or other student religious activities during school hours or at school-sponsored events. MCPS staff may be present during student prayers or other student-led religious activities only for purposes of monitoring and providing oversight to ensure student and school safety.

### **Religious Dress**

Students may not be disciplined for their style of dress unless it—

- causes a disruption to the educational environment;
- endangers or potentially threatens the health and/or safety of self or others;
- fails to meet a reasonable requirement of a course or activity;
- is associated with gangs;
- is lewd, vulgar, obscene, or revealing or of a sexual nature; or
- promotes tobacco, alcohol, drugs, or sexual activity.

As long as their style of dress is consistent with these guidelines, students should be permitted to wear scarves, hijabs, yarmulkes, patkas, or other clothing or jewelry associated with their religion or containing a religious message.

When possible, schools should provide reasonable accommodations to students if they (or their parents/guardians on their behalf) request permission to wear or not wear certain clothing during physical education class or school-sponsored activities that they perceive as immodest, based on religious beliefs. Such accommodations do not preclude a student's

participation in an activity. For example, the Maryland Public Secondary Schools Athletics Association allows athletes participating in interscholastic competitions to “wear a head covering, wrap, or other required religious garment which is not abrasive, hard, or dangerous to any player/others, and is attached in such a way that it is unlikely to come off during play.” For other questions regarding athletic accommodations, please consult your school athletic director or the MCPS Athletics Unit.

<b>Religion in the Instructional Program</b>
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**Religion in School Assignments**

Students are free to express religious beliefs or nonbelief in school assignments as long as their expressions are relevant to the topic and meet the requirements of the assignment. In the evaluation of school assignments, teachers will not discriminate based on the religious content of students’ submissions. Schoolwork will be judged by ordinary academic standards and other legitimate educational interests. For example, if an assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (such as a psalm or a piyyut) will be evaluated based on academic standards (such as literary quality) and neither penalized nor rewarded based on the poem’s religious content.

**Requests to be Excused from Instructional Programs for Religious Reasons**

When possible, schools should try to make reasonable and feasible adjustments to the instructional program to accommodate requests from students, or requests from parents/guardians on behalf of their students, to

be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs. Students, or their parents/guardians on behalf of their students, also have the right to ask to be excused from the classroom activity if the students, or their parents/guardians, believe the activity would invade student privacy by calling attention to the student's religion. When a student is excused from the classroom activity, the student will be provided with an alternative to the school activity or assignment.

Applying these principles, it may be feasible to accommodate objections from students or their parents/guardians to a particular reading assignment on religious grounds by providing an alternative selection that meets the same lesson objectives. However, if such requests become too frequent or too burdensome, the school may refuse to accommodate the requests. Schools are not required to alter fundamentally the educational program or create a separate educational program or a separate course to accommodate a student's religious practice or belief. For example, schools are not required to excuse students from all music instruction based on a religious concern, because music is an integral part of Maryland's arts curriculum; however, schools may seek to avoid, if possible, requiring a student with a religious objection to play an instrument or sing.

### **Teaching About Religion or Religious Holidays in Schools**

MCPS believes that schools should develop a climate in which children can learn and appreciate cultures and heritages different from their own. To this end, the MCPS curriculum recognizes the role of religions

in literature, history, the humanities, and the arts. Indeed, it would be difficult to teach about these subjects without considering religious influences. The MCPS curriculum also builds students' understanding of the relationship between government and religious freedom as a preparation for full citizenship in a multicultural society. Students may attend elective classes, when available, on the history or comparative study of religions in which aspects of religion are discussed.

When students are taught about religion, they should expect instructional activities to be fair, objective, and not demean any religious or nonreligious beliefs. Respecting students' differing beliefs is an essential element of a pluralistic society. Classroom presentations by teachers, students, and guest speakers should not proselytize or advocate particular religious viewpoints as superior to other religious or nonreligious viewpoints. Students may or may not choose to share their ideas about religious traditions. Students should expect that they will not be asked to be spokespersons or representatives for their religious traditions. Singling out students in this way may make them feel uncomfortable, and one student's religious experience should never be generalized to an entire group.

As a teaching aid or resource, schools may use religious symbols in the classroom as examples of religious or cultural heritage. But these teaching aids or resources may be displayed only on a short-term basis to accompany appropriate classroom instruction.

As part of the educational program, schools may teach about religious holidays in a factual manner. School activities may feature the secular aspects of a holiday,

but holiday activities may not involve participation in a religious practice or event. Students of various faiths, or their parents/guardians, may ask for students to be excused from certain holiday activities. Teachers should work to honor these requests by planning an alternate activity for students who request one. Even birthdays or other occasions that many may consider to be secular, such as Halloween and Valentine's Day, may be viewed by others as having religious overtones. Schools are permitted to have activities around these events—as long as they are secular in nature—and may excuse students who do not want to participate.

### **Religion in School Assemblies and Concerts**

Special school events, assemblies, concerts, and programs must be designed to further a secular and objective program of education and must not focus on any one religion or religious observance. For instance, religious music may be performed at a winter concert as long as the total effect of the program is nonreligious, and secular music is also included as part of a balanced and inclusive approach.

When assemblies or programs include student bands or other musical groups, participating students may request reasonable and feasible accommodations if they feel that performing religious music is inappropriate to their beliefs. In handling requests for accommodations, school staff should consult with the students and their parents/guardians and take care to avoid embarrassment to, or coercion of, students.

Student or guest speakers at assemblies should be selected based on neutral and even-handed criteria that neither favor nor disfavor religion. Schools should



make appropriate, neutral disclaimers to avoid conveying the perception to other students, their parents/guardians, or guests that the school endorses the student's or guest speaker's viewpoints (whether religious or not). In addition, parents/guardians should expect that age will be a factor in schools' programming for assemblies and other school events involving religion-related topics or holidays. While high school students may understand that a school does not endorse the viewpoints of students or guests who are selected on an even-handed basis to speak, middle and elementary students are less likely to make this distinction, even if school staff provide appropriate disclaimers.

<b>Food and Religious Observance</b>
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**Religion-related Dietary Restrictions and Fasting**

Students, or their parents/guardians, may request schools to make reasonable and feasible accommodations for a student's dietary needs, including religion-related dietary restrictions and fasting. The MCPS Division of Food and Nutrition Services helps students who have certain dietary restrictions by labeling foods and/or offering a variety of choices for breakfast, lunch, and snacks, such as pork-free options; but schools are not required to prepare special foods solely to fulfill a student's particular religious requirements. For more information, visit [www.montgomeryschoolsmd.org/departments/food-and-nutrition/](http://www.montgomeryschoolsmd.org/departments/food-and-nutrition/).

Similarly, students who are fasting for religious reasons may be permitted to go to the media center or

another separate area, rather than the cafeteria, during lunchtime, provided there is appropriate staff supervision. In addition, students who are fasting for religious reasons and ask to be excused from strenuous activities during physical education class should be provided reasonable accommodations. Students should bring to school a note from a parent/guardian providing a written explanation identifying the requested fasting related accommodation.

### **Distributing Religious Informational Materials**

#### **Student Requests to Distribute Religion related Informational Materials**

Students may distribute religion-related informational materials to their school mates on the same terms as they are permitted to distribute other informational material that is unrelated to school curriculum or activities. This means that schools can specify at what time the distribution may occur, where it may occur, and how it may occur, as long as these time, place, and manner restrictions are applied consistently to all non-school-related informational materials.

These time, place, and manner-of-distribution requirements are reflected in MCPS regulations and rules that students' distribution of religious informational materials, like political materials or any other non-school-related informational material, should occur only outside of class time and in a nondisruptive manner. For example, schools may permit students to distribute informational materials on sidewalks and in the cafeteria, designated hallways, or student government rooms or areas.

However, students may not distribute non-school-related informational materials in classrooms, the media center, or other school rooms during the school day, except (a) when the room is being used as a voluntary meeting place or (b) when the informational material is being used in a class as part of the regular teaching program or a voluntary forum or seminar held by students. In addition, students may not distribute informational materials, whether religious or otherwise, that are obscene, defamatory, disruptive of the educational environment, or invade the rights of others in the school setting.

**References:**

MCPS Regulation JFA-RA, *Student Rights and Responsibilities*

MCPS Regulation CNA-RA, *Display and Distribution of Informational Materials and Announcements.*

MCPS Regulation KEA-RA, *Participation in Political Campaigns and Distribution of Campaign Materials*

<b>Extracurricular Student Religious Activities</b>
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**Religion-related Extracurricular Activities and Clubs**

Students have a right to organize religion-related extracurricular clubs or assemble and conduct religious meetings, prayer groups, or other observances of religious practices during noninstructional time. These religion-related extracurricular meetings or clubs must be student led. MCPS staff provide appropriate monitoring and oversight to ensure student and school safety, but they must not organize, lead, initiate, endorse, or actively

participate in prayers or any other religious activities undertaken in these extracurricular meetings or clubs.

Students should inform the MCPS administration about any student-led, religious extracurricular club or activity, and they should talk with school administrators in advance to find an adequate space within the school for these activities. Student religious groups may have access to school facilities, equipment, and services on the same basis as other extracurricular student groups that are not related directly to a subject that is taught in school. This could include access to bulletin boards, computers, and notices in the school newspaper, if such access is made available to other extracurricular student groups that are not related directly to a subject that is taught in school. These religion-related extracurricular groups also may be listed in the section of the school yearbook designated for extracurricular student groups that are not related directly to a subject that is taught in school.

Religion-related extracurricular student groups may invite outside adults or religious leaders to attend their meetings on an occasional basis. However, individuals who are not students at the school may not regularly attend or direct, conduct, control, or lead prayers or other religious activities in student-led extracurricular groups.

Student-led groups, whether religious or nonreligious, will not be permitted to meet in MCPS schools if they advocate violence or hate, engage in illegal activity, cause substantial disruption of the school, violate MCPS nondiscrimination policies, or invade the rights of others in the school setting. However, schools may not ban students from forming groups solely because

they involve discussion of controversial and complex social and legal issues.

Students may participate in before- or after-school events with religious content on the same terms as they may participate in other non-curriculum-related activities on school premises.

### **MCPS Use of Facilities Owned by Religious Organizations**

Students and their parents/guardians should expect that schools will not use space in facilities owned or operated by religious organizations for school-related activities or functions when a nonreligious alternative venue is viable and reasonably suitable for the activity or function. Schools will not select or reject the use of any private religious facility based on any facet of religious teachings with which any such facility is associated; instead, religion-neutral criteria will be employed to select these facilities, such as proximity to MCPS, suitability of the facility for the intended use, health and safety, comparative expense, and accessibility.

If a school-related activity or function is held in a facility owned or operated by a religious organization, students and their parents/guardians should expect that the school will clearly identify a secular purpose for using the facility and ensure, to the greatest extent possible, that religious symbols, messages, or artifacts are not displayed in the specific rooms utilized for the school-related activities during their use. Additionally, all reasonable steps will be taken to avoid or minimize exposure to conspicuous religious symbols, messages, or artifacts in areas where

participants in the school-related activity or function pass through.

### **Partnerships Between Schools and Faith Communities**

MCPS works to maintain and develop partnerships with the faith community, just as it does with businesses and other community and civic groups. Students and schools gain a great deal when every part of a community comes together to support education.

Any faith community partnership program must have a purely secular purpose and neither promote religion nor preclude it. Students will not be selected to participate based on membership in any religious group, or on acceptance or rejection of any religious belief, or on participation in, or refusal to participate in, any religious activity.

Volunteers from faith communities must recognize that the purpose of any partnership is educational and secular in nature, not religious, and that volunteers must respect the First Amendment rights of students. No volunteers or other participants in any faith community partnership program may proselytize about their faith to students or engage in any religious worship activity while conducting or participating in a school-sponsored activity. Volunteers and other participants in faith community partnership programs must follow the same MCPS rules for distribution of informational materials as apply to other community organizations.

<b>Fostering a Culture of Respect for All</b>
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These guidelines have been developed to assist in fostering a culture of respect among everyone in the MCPS community. With great diversity in our community, there is much that we can learn from each other when there is a culture of respect, openness, and tolerance. Our schools work to create supportive and accepting learning environments, and parents/guardians are encouraged to work closely with teachers and administrators to understand their families' needs as they pertain to their religious beliefs and practices.

As part of our efforts to create positive and respectful schools, students have a right to a safe learning environment, free from bullying, harassment, and intimidation of any sort, including intimidation based on the student's actual or perceived personal characteristics, including religion. Further, the Board prohibits the use of language and/or the display of images and symbols that promote hate and can be reasonably expected to cause substantial disruption to school or district operations or activities. Students who are bullied, students who bully, and students who are bystanders to bullying are at risk of a range of negative health, safety, and educational outcomes. MCPS has implemented a systemwide approach designed to prevent bullying, harassment, or intimidation and effectively intervene when it occurs, as well as to deter reprisal and retaliation against individuals who report acts of bullying, harassment, or intimidation. To report any such actions, students or their parents/guardians should work with school administrators to resolve any issues and complete

MCPS Form 230-35, *Bullying, Harassment, or Intimidation Reporting Form*, available via an online reporting form (preferred) and a paper reporting form. [www.montgomeryschoolsmd.org/departments/forms/detail.aspx?formNumber=230-35&catID=1&subCatId=44](http://www.montgomeryschoolsmd.org/departments/forms/detail.aspx?formNumber=230-35&catID=1&subCatId=44) In alignment with Board Policy COA, *Student Wellbeing and School Safety*, MCPS has established and maintains a behavior threat assessment process, based on an appraisal of behaviors that provides appropriate preventive or corrective measures to maintain safe and secure school environments and workplaces.

All children deserve a safe and nurturing school environment that supports their physical, social, and psychological well-being. Such safe and nurturing environments are essential prerequisites for promoting all students' opportunity to learn. In alignment with Board Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*, school safety measures should not reinforce biases against, or rely on the profiling of, students based on their actual or perceived personal characteristics. Staff responsible for implementing behavior threat assessment procedures at the school level are trained to understand implicit bias and promote diversity awareness.

**References:**

Board Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*

Board Policy COA, *Student Well-being and School Safety*

Board Policy JHF, *Bullying, Harassment, or Intimidation*



MCPS Regulation COA-RA, *Behavior Threat Assessment*.

MCPS Regulation JHF-RA, *Student Bullying, Harassment, or Intimidation*.

### **MCPS NONDISCRIMINATION STATEMENT**

Montgomery County Public Schools (MCPS) prohibits illegal discrimination based on race, ethnicity, color, ancestry, national origin, nationality, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family structure/ parental status, marital status, age, ability (cognitive, social/emotional, and physical), poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Discrimination undermines our community's long-standing efforts to create, foster, and promote equity, inclusion, and acceptance for all. The Board prohibits the use of language and/or the display of images and symbols that promote hate and can be reasonably expected to cause substantial disruption to school or district operations or activities. For more information, please review Montgomery County Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency*. This Policy affirms the Board's belief that each and every student matters, and in particular, that educational outcomes should never be predictable by any individual's actual or perceived personal characteristics. The Policy also recognizes that equity requires proactive steps to identify and redress implicit biases, practices that have an unjustified disparate impact, and structural and institutional barriers that impede equality of educational or employment opportunities. MCPS also provides equal

access to the Boy/Girl Scouts and other designated youth groups.\*\*

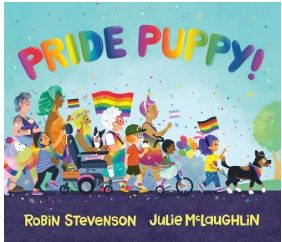
*\* Discrimination complaints may be filed with other agencies, such as the following: U.S. Equal Employment Opportunity Commission (EEOC), Baltimore Field Office, GH Fallon Federal Building, 31 Hopkins Plaza, Suite 1432, Baltimore, MD 21201, 1-800-669-4000, 1-800-669-6820 (TTY); Maryland Commission on Civil Rights (MCCR), William Donald Schaefer Tower, 6 Saint Paul Street, Suite 900, Baltimore, MD 21202, 410-767-8600, 1-800-637-6247, mCCR@maryland.gov; or U.S. Department of Education, Office for Civil Rights (OCR), The Wanamaker Building, 100 Penn Square East, Suite 515, Philadelphia, PA 19107, 1-800-421-3481, 1-800-877-8339 (TDD), OCR@ed.gov, or [www2.ed.gov/about/offices/list/ocr/complaintintro.html](http://www2.ed.gov/about/offices/list/ocr/complaintintro.html).*


*\*\*This notification complies with the federal Elementary and Secondary Education Act, as amended.*

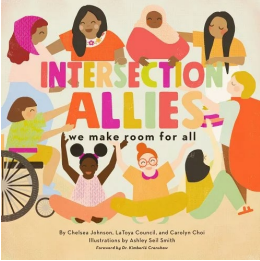
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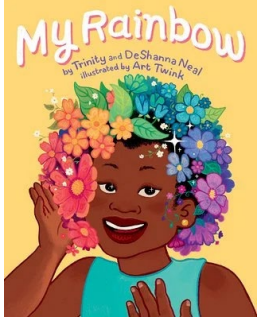
## Newly Approved LGBTQ-Inclusive Texts


Texts by Grade Level

Grade Level	Title	Author	Text Summary
PreKindergarten and Head Start	<p data-bbox="730 581 919 618"><i>Pride Puppy</i></p> 	Robin Stevenson	<p data-bbox="1304 581 1709 1114">A young child and their family are having a wonderful time together celebrating Pride Day—meeting up with Grandma, making new friends and eating ice cream. But then something terrible happens: their dog gets lost in the parade! Luckily, there are lots of people around to help reunite the pup with his family.</p>

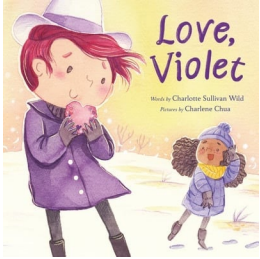
<p>Kindergarten through Grade 5</p>	<p><i>Uncle Bobby's Wedding</i></p> 	<p>Sarah Brannen</p>	<p><i>Uncle Bobby's Wedding</i> is about a fun-loving girl named Chloe and her Uncle Bobby, whom she adores. But then she finds out Uncle Bobby is getting married, and meets Bobby's intended, Jamie, and worries that Uncle Bobby won't have time to spend with her anymore.</p>
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<p>Kindergarten through Grade 5</p>	<p><i>Intersection Allies: We Make Room for All</i></p>  <p>The book cover features a central illustration of nine diverse people of various ethnicities, ages, and abilities (including a person in a wheelchair) standing in a circle. The title 'INTERSECTION ALLIES' is written in large, colorful, block letters across the middle, with the subtitle 'we make room for all' below it. At the bottom, the authors' names and the illustrator's name are listed.</p>	<p>Chelsea Johnson, LaToya Council &amp; Carolyn Choi</p>	<p>In the story, <i>Intersection Allies: We Make Room for All</i>, the nine inter-connected characters proudly describe themselves and their backgrounds, involving topics that range from a physical disability to language brokering, offering an opportunity to take pride in a personal story and connect to the collective struggle for justice.</p>
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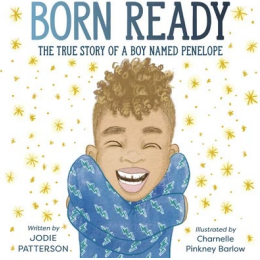
<p>Kindergarten through Grade 5</p>	<p><i>My Rainbow</i></p> 	<p>Trinity &amp; DeShanna Neal</p>	<p><i>My Rainbow</i> tells the story of a dedicated mom who puts love into action as she creates the perfect rainbow-colored wig for her transgender daughter, based on the real-life experience of mother-daughter advocate duo Trinity and DeShanna Neal. Warm morning sunlight and love fill the Neal home.</p>
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<p>Kindergarten through Grade 5</p>	<p><i>Prince &amp; Knight</i></p> 	<p>Daniel Haack</p>	<p><i>Prince &amp; Knight</i> is a children's picture book authored by Daniel Haack and illustrated by Stevie Lewis. <i>Prince &amp; Knight</i> tells the story of a young prince who falls in love with a knight after the two work together to battle a dragon threatening the kingdom. At the conclusion of the book, the two wed.</p>
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<p>Kindergarten through Grade 5</p>	<p><i>Love, Violet</i></p>  <p>The book cover for 'Love, Violet' features two children in a snowy, wintry setting. On the left, a child with red hair wearing a purple coat and a light purple hat is holding a small pink object. On the right, a smaller child with dark curly hair wearing a blue coat and a blue hat is walking. The title 'Love, Violet' is written in a purple, cursive font at the top. Below the title, it says 'Based on Charlotte Sullivan Wild's story' and 'Illustrated by Chaeleung Chua'.</p>	<p>Charlotte Sullivan Wild</p>	<p>Valentine's Day brings a shy child named Violet the chance to connect with her crush, Mira, in Sullivan Wild's uplifting wintry tale... a race through the snow — choreographically captured with dancelike grace in Chua's simple, light-filled watercolors — brings the duo together at last, making the holiday one of joyful acceptance.</p>
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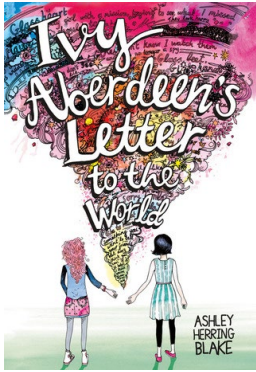
<p>Kindergarten through Grade 5</p>	<p><i>Born Ready: The True Story of a Boy Named Penelope</i></p> 	<p>Jodie Patterson</p>	<p>In this exuberant companion to Jodie Patterson's adult memoir, <i>The Bold World</i>, Patterson shares her son Penelope's frustrations and triumphs on his journey to share himself with the world. Penelope's experiences show children that it always makes you stronger when you are true to yourself and who you really are.</p>
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<p>Grade 6</p>	<p><i>Cattywampus</i></p> 	<p>Ash Van Otterloo</p>	<p>The magical story of a hex that goes haywire, and the power of friendship to set things right!</p> <p>In the town of Howler's Hollow, conjuring magic is strictly off-limits. Only nothing makes Delpha McGill's skin crawl more than rules. So when she finds her family's secret book of hexes, she's itching to use it to banish her mama's money troubles. She just has to keep it quieter than a church mouse -- not exactly Delpha's specialty. Trouble is, Katybird Hearn is hankering to get her hands</p>
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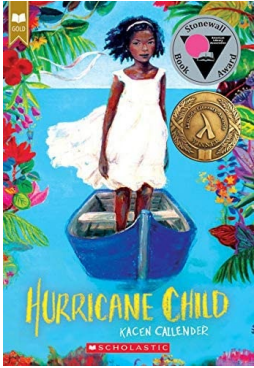
			on the spell book, too. The daughter of a rival witching family, Katy has reasons of her own for wanting to learn forbidden magic, and she's not going to let an age-old feud or Delpha's contrary ways stop her. But their quarrel accidentally unleashes a hex so heinous it resurrects a graveyard full of angry Hearn and McGill ancestors bent on total destruction. If Delpha and Katy want to reverse the spell in time to save everyone in the Hollow from rampaging zombies,
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			they'll need to mend fences and work together.
Grade 6	<p><i>The Best at It</i></p> 	Maulik Pancholy	<p>Rahul Kapoor is heading into seventh grade in a small town in Indiana. The start of middle school is making him feel increasingly anxious, so his favorite person in the whole world, his grandfather, Bhai, gives him some well-meaning advice: Find one thing you're really good at and become the BEST at it.</p> <p>Those four little words sear themselves into Rahul's brain. While he's not quite sure what that special</p>

			thing is, he is convinced that once he finds it, bullies like Brent Mason will stop torturing him at school. And he won't be worried about staring too long at his classmate Justin Emery. With his best friend, Chelsea, by his side, Rahul is ready to crush this challenge.... But what if he discovers he isn't the best at anything?
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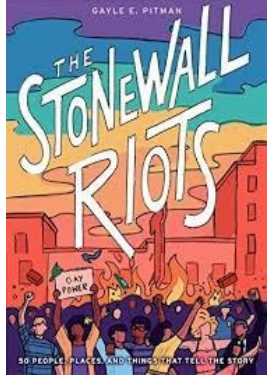
<p>Grade 7</p>	<p><i>Ivy Aberdeen's Letter to the World</i></p> 	<p>Ashley Herring Blake</p>	<p>When a tornado rips through town, 12-year-old Ivy Aberdeen's house is destroyed, and her family of five is displaced. Ivy feels invisible and ignored in the aftermath of the storm - and what's worse, her notebook filled with secret drawings of girls holding hands has gone missing.</p> <p>Mysteriously, Ivy's drawings begin to reappear in her locker with notes from someone telling her to open up about her identity. Ivy thinks - and hopes - that this someone might be her classmate, another girl</p>
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			<p>for whom Ivy has begun to develop a crush. Will Ivy find the strength and courage to follow her true feelings?</p> <p><i>Ivy Aberdeen's Letter to the World</i> exquisitely enriches the rare category of female middle-grade characters who like girls - and children's literature at large.</p>
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<p>Grade 7</p>	<p><i>Hurricane Child</i></p> 	<p>Kacen Callender</p>	<p>Caroline Murphy is a Hurricane Child. Being born during a hurricane is unlucky, and twelve-year-old Caroline has had her share of bad luck lately. She's hated and bullied by everyone in her small school on St. Thomas of the US Virgin Islands, a spirit only she can see won't stop following her, and – worst of all -- Caroline's mother left home one day and never came back. But when a new student named Kalinda arrives, Caroline's luck begins to turn around. Kalinda, a solemn girl from Barbados with a special</p>
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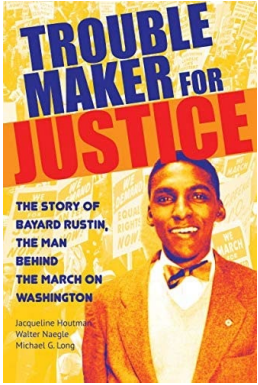


			smile for everyone, becomes Caroline's first and only friend -- and the person for whom Caroline has begun to develop a crush. Now, Caroline must find the strength to confront her feelings for Kalinda, brave the spirit stalking her through the islands, and face the reason her mother abandoned her. Together, Caroline and Kalinda must set out in a hurricane to find Caroline's missing mother -- before Caroline loses her forever.
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<p>Grade 8</p>	<p><i>The Stonewall Riots: Coming Out in the Streets</i></p> 	<p>Gayle E. Pitman</p>	<p>This book is about the Stonewall Riots, a series of spontaneous, often violent demonstrations by members of the gay (LGBTQ+) community in reaction to a police raid that took place in the early morning hours of June 28, 1969, at the Stonewall Inn in the Greenwich Village neighborhood of Manhattan, New York City. The Riots are attributed as the spark that ignited the LGBTQ+ movement. The author describes American gay history leading up to the Riots, the Riots</p>
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			<p>themselves, and the aftermath, and includes her interviews of people involved or witnesses, including a woman who was ten at the time. Profusely illustrated, the book includes contemporary photos, newspaper clippings, and other period objects. A timely and necessary read, <i>The Stonewall Riots</i> helps readers to understand the history and legacy of the LGBTQ+ movement.</p>
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<p>Grade 8</p>	<p><i>Troublemaker for Justice: The Story of Bayard Rustin, the Man Behind the March on Washington</i></p> 	<p>Jacqueline Houtman, Walter Naegle, &amp; Michael G. Long</p>	<p>Bayard Rustin was a major figure in the Civil Rights movement. He was arrested on a bus 13 years before Rosa Parks and he participated in integrated bus rides throughout the South 14 years before the Freedom Riders. He was a mentor to Dr. Martin Luther King, Jr., teaching him the techniques and philosophy of Gandhian nonviolent direct action. He organized the March on Washington in 1963, one of the most impactful mobilizations in American history.</p>
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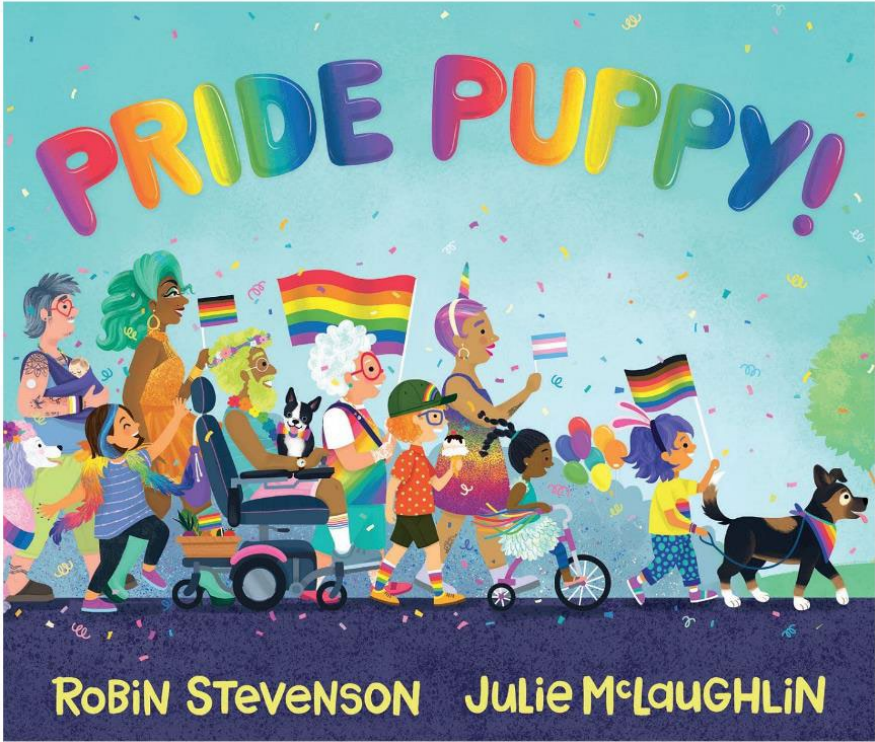
			<p>Despite these contributions, few Americans recognize his name, and he is absent from most history books, in large part because he was gay. This biography traces Rustin's life, from his childhood and his first arrest in high school for sitting in the "whites only" section of a theater, through a lifetime of nonviolent activism.</p> <p>"Authors Jacqueline Houtman, Walter Naegle, and Michael G. Long provide middle and high school students with a biography of Rustin that</p>
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			illustrates how the personal is political. Young readers will take away valuable lessons about identity, civics, and 20th-century history."— Rethinking Schools
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*Additional Texts for the high school level will be included in 2022-23.*

English Language Arts Curriculum  
Office of Curriculum and Instructional Programs, Montgomery County Public Schools



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[ivaluecanadianstories.ca](http://ivaluecanadianstories.ca)

# PRIDE PUPPY!

ROBIN STEVENSON



JULIE McLAUGHLIN

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ORCA BOOK PUBLISHERS



**A** for awake, animals and all.



**B** for breakfast



and baby

and ball.



**C** for car, our old Chevrolet.

**D** for dog, dressed up for the day.

**E** for everyone under the sun.

**F** for feathers, for flags and for fun.





**G** for Grandma, at our meeting spot.



**H** for hats

and hungry and hot.





**K** for kindness and friends that we're keeping.



**L** for leash and for loose and for leaping!





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**S**

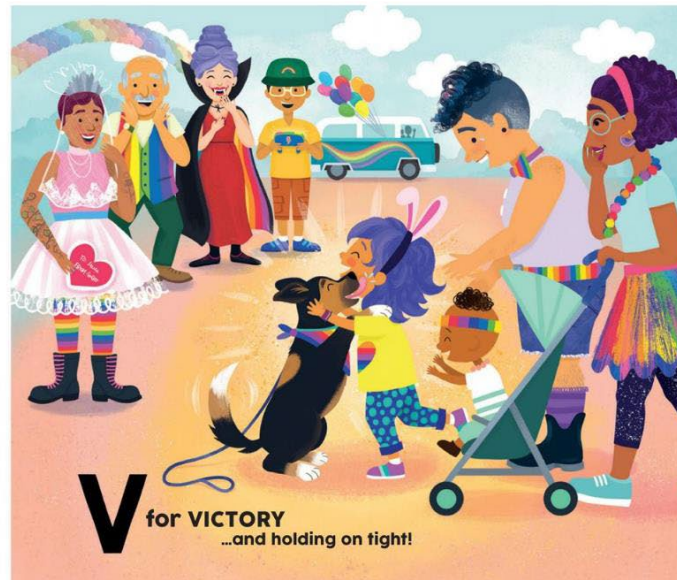
for school bus and students with signs.

**T**

for teachers and toddlers in lines.



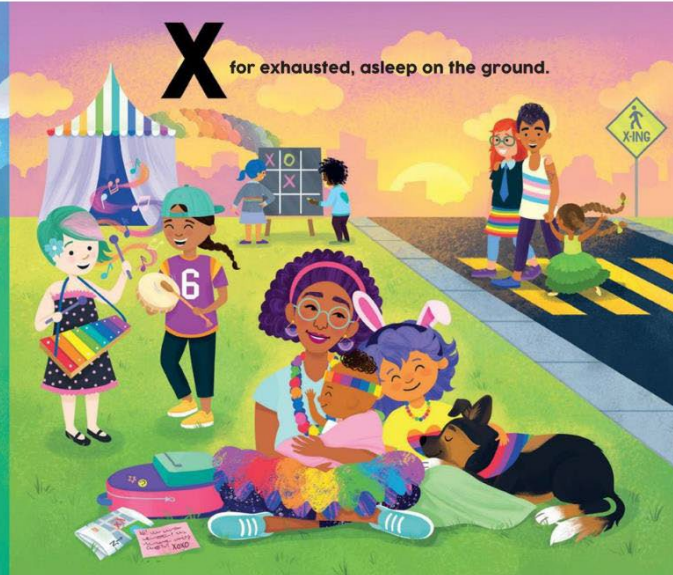
**U** for umbrellas with colors so bright.



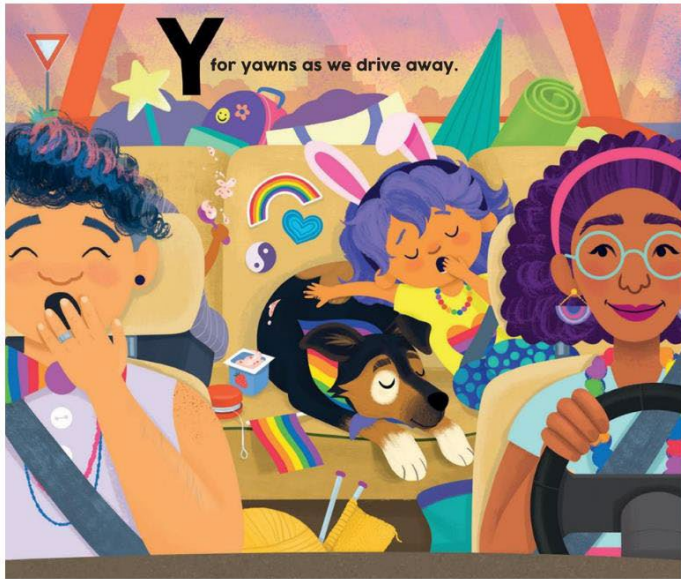
**V** for VICTORY  
...and holding on tight!



**W** for wags and wide smiles all around.



**X** for exhausted, asleep on the ground.



## Search and Find Word List\*

**A** alligator, apple, anchor, astronaut, almonds, accordion, abacus, aloe plant, alarm clock, [abstract] art, airplane

**B** baseball, [brown] bag, [blue] bear, bagel, [recipe] book, bookmark, [hair]brush, bread, bananas, berries, basketball, bottle, broom, bone, boots, [laundry] basket, bee

**C** cabbage, corn, carrots, chickens, coop, compost, crow, cat, collar, cactus, clock, curtains, coffee cup, cherries, camera, cantaloupe, celery, cucumber, chocolate chip cookies, clouds



**D** doll, desk, dresser, drawer, [dip]odocus dinosaur, door, dump truck, drum and drumsticks, dandelions

**E** earth, earmuffs, equal sign, earrings

**F** feather boa, floral print, french fries, frilly socks, flowers, freezie, furry boots, fruit, fairy wings, flower crown, flamenco dress, farmer, four

**G** goose, garbage, ghost on a groovy shirt, [bubble] gum, granola bar, grapes, grasshopper, gazebo, green [glitter] beard, [gold] guitar

**H** hot dog, hamburger, headband, hula-hoop, happy face, horse, housecoat, harmonica, helicopter, hearts, heart-shaped handbag, high heels

**I** infant, insulin monitor, inflatable tube, [shiba] inu, intersex [flag], insect

**J** jump rope, jungle print, juggling, jersey, juice box, jean jacket, jewelry

**K** kilt, kites, kiss, [drag] king, knee-high socks, knapsack, koala, kiwi, keys, knitted [sweater], kangaroo

**L** love, loudspeaker, lion, lace, lemonade, lacs, lollipop, leather, leopard-print leggings, lightning bolt, lip ring, ladybug

**M** muffin, moon, Marsha P. Johnson, Mom, minister, monkey, moose [antlers], motorcycle, mask, maracas, magnifying glass, map, mouse, mustache

**N** newspaper, nickels, noodles, napkins, net, nurse, necklace, nachos, nail polish

**O** overalls, onion rings, owl, octopus, oriole, obstacle [sign]

**P** parrot, princess in a purple dress, pineapple, pizza, pin curls, pom-pom, platform shoes, polka dots, pomeranian, pockets, pinwheel, party hat, proposal, poodle

**Q** [drag] queen, quilt

**R** roses, roller skates, ribbon, robot, record, radio, rabbit, raspberries, rubber boots, raccoon tail, receipt, recycling bin, rake, robin, root, ripped jeans

**S** stereo, sloth, scarf, soccer ball, snorkel mask, star, saxophone, stroller, sailor, stripes, sunflower, sandwich, skateboard, socks, seagull, swimsuit, scooter, spots, Scottie (dog), stickers, sandals

**T** twirl, tea, tomato, tractor, taco, twins, tattoos, turtleneck, trousers, tote bag, top knot, tambourine, tuxedo, hubs, fusca, taxi, tropical print, thumbs-up, tie

**U** umbrella, unitard, unicycle, ukulele, unicorn horn, upside-down [face], underwear, uniform

**V** veil, valentine, vest, vampire, video game, VW van

**W** wagon, wallet, whistle, walkie-talkie, whippet, wiener dog, whale, wizard, wand, watermelon, watch

**X** xylophone, x's and o's, X marks the spot, xoxo

**Y** yield sign, yogurt, yoga mat, yellow yarn, yo-yo

**Z** zebra print, zipper



\*See if you can find any we didn't list!



**For Justice, who loves my puppy, Tazza, so very much.  
—R.S.**

**For all the beautiful queerdos,  
and the late Mr. Pants, dancing over the Rainbow Bridge.  
—J.M.**

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LCSH: Gay pride parades—Juvenile literature. | LCSH: Lost dogs—Juvenile literature.  
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**Summary:** A rhyming alphabet book featuring a family that has lost its dog at a Pride parade.

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Edited by Liz Kemp  
Design by Julie McLoughlin and Rachel Page





**Maryland school district unveils LGBTQ book list that teaches words ‘intersex,’ ‘drag queen’ to pre-K students**

**Fox News**

November 15, 2022

\* \* \*

Maryland’s wealthiest school district has unveiled a new LGBTQ-inclusive book list for elementary schools that teaches words like “intersex” and “drag queen” to children as young as 4.

A PowerPoint presentation by Montgomery County Public Schools (MCPS) shows a list of LGBTQ+ books that will be provided for pre-K through fifth-grade classrooms this year. The presentation explains that the LGBTQ-inclusive reading list aims to “reduce stigmatization and marginalization of transgender and gender nonconforming students.”

“All students deserve to see themselves in their school and classroom, including students who identify as LGBTQ+ and come from LGBTQ+ headed families and have family members that are a part of the LGBTQ+ community,” the presentation states. “There are no planned explicit lessons related to gender and sexuality, but these books do mean that LGBTQ+ identities will be made visible. Inclusive curricula support a student’s ability to empathize, connect, and collaborate with a diverse group of peers, and encourage respect for all.”

“No child, or adult, who does not agree with or understand another student’s gender identity or expression or their sexuality identity is asked to change how they feel about it,” it adds.

\* \* \*

The presentation was apparently part of a professional development workshop for MCPS staff held in August about “Building Community with LGBTQ+ Affirming Picture Books.” One of the slides stated, “Use five of the books by the end of December.”

The book that MCPS has recommended for children in pre-kindergarten is “Pride Puppy,” which teaches terms like “intersex,” “drag king,” “drag queen” and “Marsha P. Johnson,” the late famed drag performer.

Pre-K teachers are also provided a resource guide about “defining LGBTQ+ words for elementary students” by the Human Rights Campaign, which includes vocabulary like “cisgender,” “gender binary,” “transgender,” “pansexual” and “queer.”

Possible Question: Can I keep my child home when you are learning about LGBTQ+ topics?

Possible Answer: As part of MCPSs commitment to equity, and our school's mission, we are working towards cultivating inclusive environments for all of our students and their families. Part of how we do this is through diversifying representation in the curriculum; expanding our representation shows our LGBTQ+ community members that this is a place where they are welcome and included. All students deserve to see themselves in their school and classroom, including students who identify as LGBTQ+ and come from LGBTQ+ headed families and have family members that are a part of the LGBTQ+ community. While there are no planned explicit lessons related to gender and sexuality, students will see these identities embedded throughout. For students for whom some of these identities are new, questions and conversations might organically happen. Inclusive curricula support a student's ability to empathize, connect, and collaborate with a diverse group of peers, and encourage respect for all. No child who does not agree with or understand another student's gender identity or expression or their sexuality identity is asked to change how they feel about it.

Students as young as 4 would be exposed to words like “intersex” and “drag queen.”

Montgomery County Public Schools

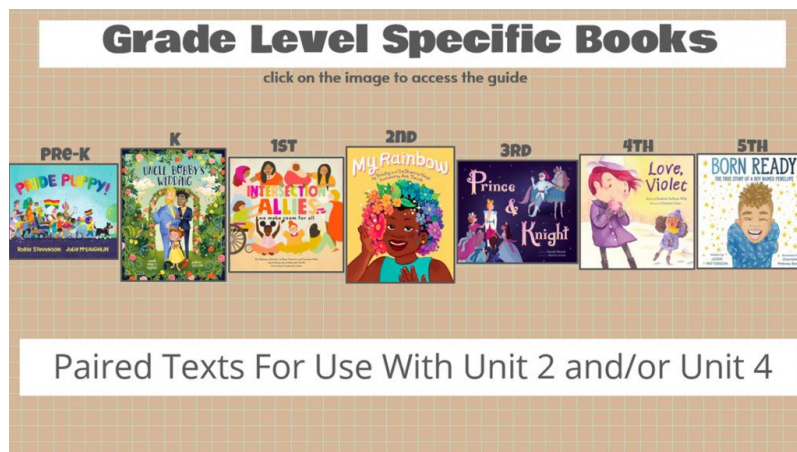
Students in kindergarten, ages 5 and 6, are advised to read the 2021 book, “Uncle Bobby’s Wedding,” which is about a wedding between two men.

“Students will recognize that people’s multiple identities interact and create unique and complex individuals,” the MCPS guide states.

Students in first grade are advised to read “IntersectionAllies: We Make Room for All,” which includes LGBTQ+ topics on being “non-binary” and deciding “what pronouns fit you best.”

“Students will recognize their own responsibility to stand up to exclusion, prejudice and injustice,” the guide states.

Students in second grade, ages 7 and 8, are recommended to read “My Rainbow,” a book about a Black transgender child that teaches the words “transgender” and “cisgender.” A “think aloud” moment, according to MCPS, includes, “Appreciating that Trinity’s identities are part of what make her a ‘masterpiece.’”



Montgomery County Public Schools says the library is meant to reduce stigmatization.  
Montgomery County Public Schools

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“Students will recognize unfairness on the individual level (e.g., biased speech) and injustice at the institutional or systemic level (e.g., discrimination),” the guide states.

Third-graders, ages 8 and 9, are recommended to read the 2018 book “Prince & Knight,” which tells the story of a prince who falls in love with a knight.

The objective of that book is for students to “be able to describe characters’ traits, motivations and feelings in a story,” MCPS states.

“Some think aloud moments” for the book, according to MCPS, include, “Noticing that the prince doesn’t seem happy about all the princesses trying to get his attention,” “wondering how he might feel about the pressure his parents are putting on him to find a princess” and “appreciating that when the prince is saved by the knight, we see him smile for the first time.”

Fourth-graders are recommended to read the 2022 book “Love, Violet,” which tells the story of a queer child who develops a crush on her friend, Mira.

A “think aloud” moment for that book is “acknowledging how uncomfortable we might [be] in situations when we feel our heart beating ‘thumpity thump’ & how hard it can be [to] talk about our feelings with someone that we don’t just ‘like’ but we ‘like like,’” according to MCPS.

“Students will develop language and knowledge to accurately and respectfully describe how people (including themselves) are both similar to and different from each other and others in their identity groups,” the guide states.

Students in fifth-grade, ages 10 and 11, are advised to read “Born Ready,” which tells the story of a Black transgender child.

“Some think aloud moments,” for that book, according to MCPS, include, “noticing how happy Penelope is when his mom hears him and commits to sharing with their loved ones that he is a boy—say again that we know ourselves best” and “noticing that in Ghana they think about gender differently than we do in the US—wondering why is it such a big deal here?”

The presentation provides several examples of potential complaints from students, parents and community members and how MCPS staff should respond.

“That’s weird,” reads a sample comment from a student. “He can’t be a boy if he was born a girl. What body parts do they have?”

The answer suggested by MCPS states: “That comment is hurtful; we shouldn’t use negative words to talk about peoples’ identities. Sometimes when we learn information that is different from what we always thought, it can be confusing and hard to process. When we are born, people make a guess about our gender and label us ‘boy’ or ‘girl’ based on our body parts. Sometimes they’re right, and sometimes they’re wrong. Our body parts do not decide our gender. Our gender comes from inside – we might feel different than what people tell us we are. We know ourselves best.”

In a statement to Fox News Digital, MCPS insisted the readings are not mandatory and that they will not be scheduled for use until families are notified.

However, the original MCPS presentation includes a guide on “Responding to Caregivers/Community Questions,” and two of the example questions include, “Why can’t I opt out of this...” and “Can I keep my child home...,” and neither of the example answers to those questions included saying that families can opt out.

In fact, if a parent asks why they “can’t” opt their children out of the readings like they can with sexual health-related topics, MCPS staff are advised to explain that the readings are about “diversity” not anatomy.

“During Family Health & Life, we are learning about scientific topics like biology, anatomy, puberty and reproduction,” the sample response states. “In these picture books and discussions, students are learning about the diversity of identities that exist in the world and in our classroom; we are not getting into any of the scientific specifics. This is similar to when we’re learning about different races, ethnicities and religions which are other social identities commonly talked about in school. All children and their families deserve to see themselves and their families positively represented in our school community.”

If a parent asks whether they can keep their child home during the LGBTQ+ readings, MCPS faculty are advised to explain that no effort will be made to persuade a child from holding certain beliefs.

“While there are no planned, explicit lessons related to gender and sexuality, students will see these identities embedded throughout,” the sample response states. “For students for whom some of these identities are new, questions and conversations might organically happen. Inclusive curricula support a student’s ability

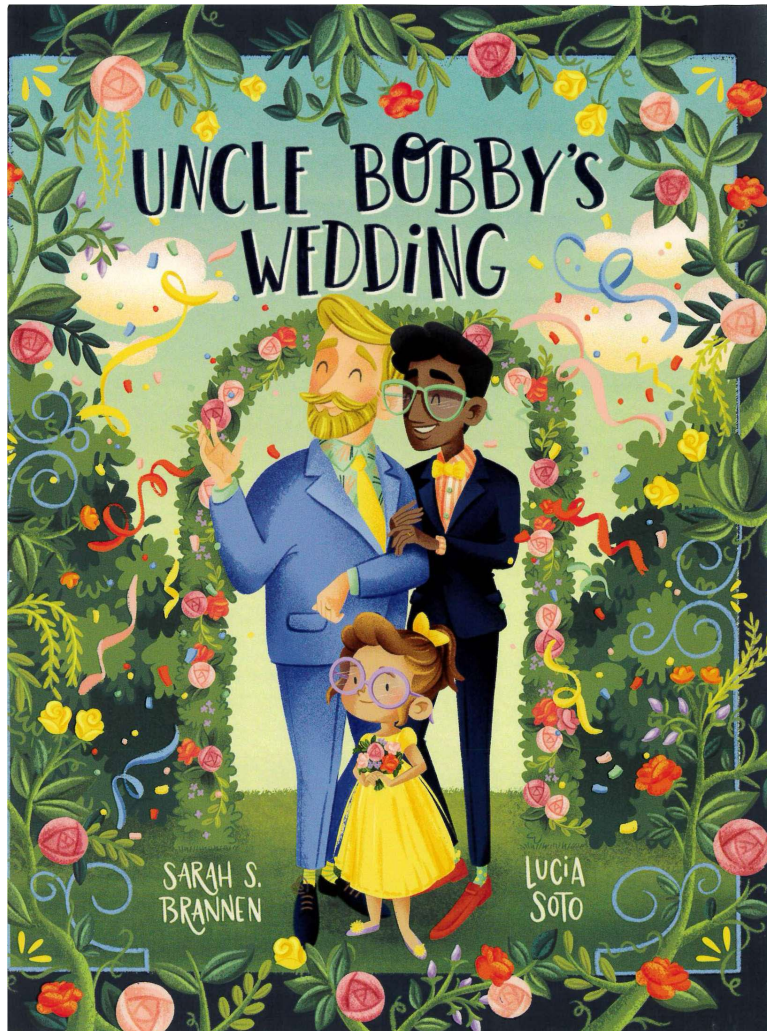
to empathize, connect, and collaborate with a diverse group of peers, and encourage respect for all. No child who does not agree with or understand another student's, gender, identity or expression, or their sexuality identity is asked to change how they feel about it."

MCPS told Fox News Digital that "these books are a way to actualize the policy and guidelines and have undergone a rigorous evaluation process. All the content within them is age and developmentally appropriate."

"MCPS is committed to ensuring all students and their families see themselves in the curriculum to cultivate an inclusive and welcoming learning environment," the school district continued. "These books are not mandatory. These books are on the approved list of supplemental materials schools will have access to that align with our goal of providing more inclusive texts and resources in support of curriculum standards. As is our standard practice, these materials are not scheduled for use until system-wide communication has been sent to families."

"As part of MCPS' mission to equity, 'instructional materials are chosen to reflect the diversity of our global community, the aspirations, issues and achievements of women, persons with disabilities, persons from diverse, racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation,'" it added.

279a







*to all the children*  
SARAH

*to the ghost  
in the lift*  
LUCIA

HODDER CHILDREN'S BOOKS

First published in the United States by Little Bee Books in 2020  
This edition published by Hodder and Stoughton in 2021

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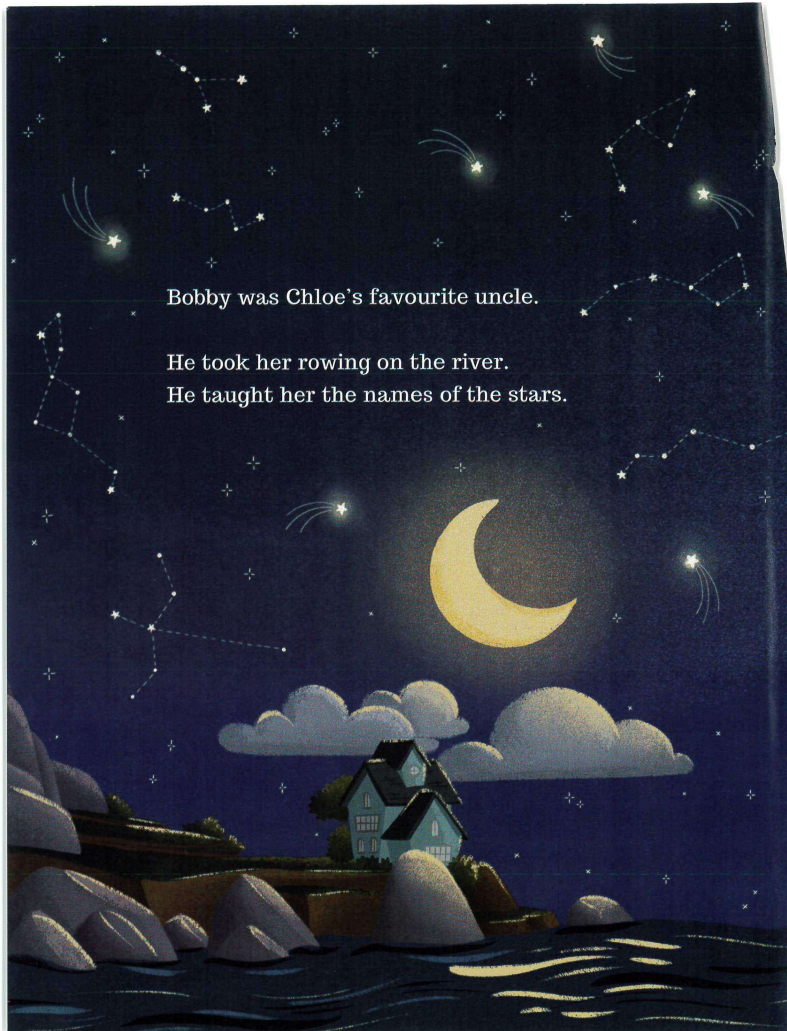
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# UNCLE BOBBY'S WEDDING

SARAH S. BRANNEN  
LUCIA SOTO



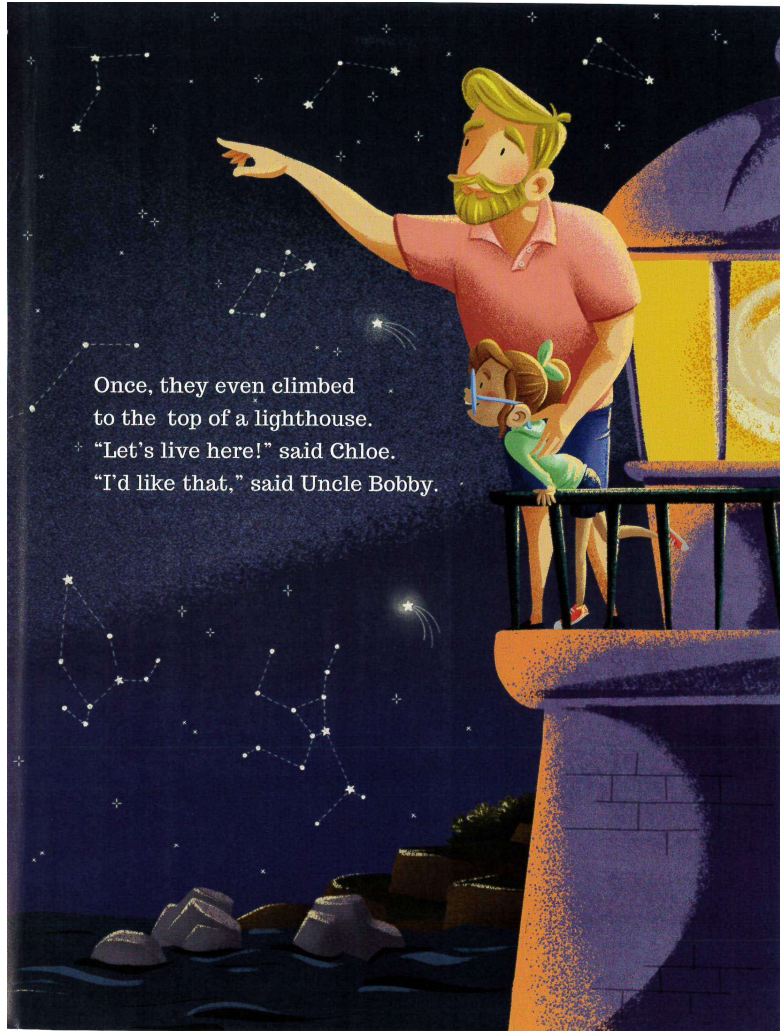
282a



Bobby was Chloe's favourite uncle.

He took her rowing on the river.

He taught her the names of the stars.

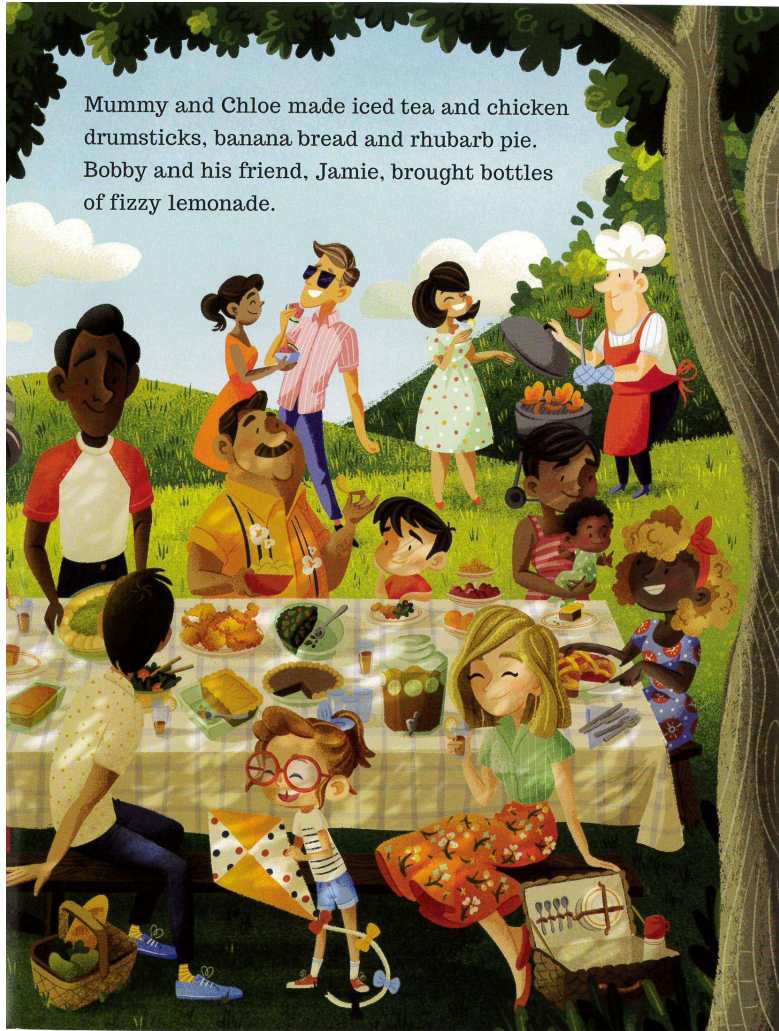


Once, they even climbed  
to the top of a lighthouse.  
✦ "Let's live here!" said Chloe.  
✦ "I'd like that," said Uncle Bobby.

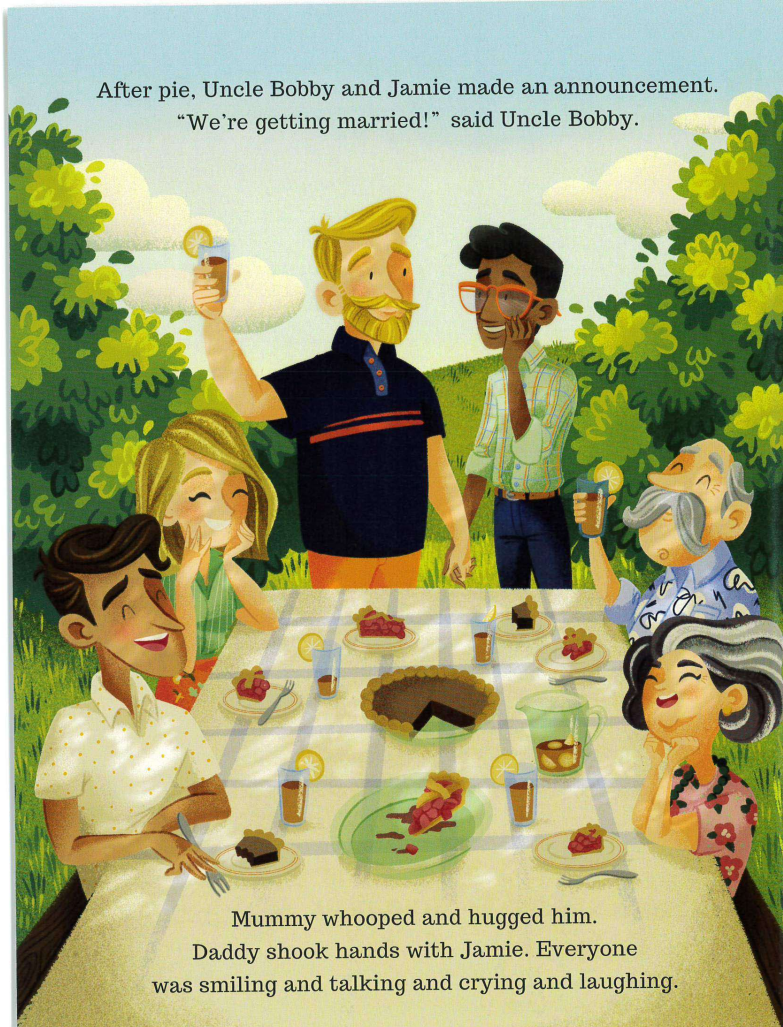
Most of all, Chloe loved flying kites with Uncle Bobby. So when Mummy planned the first picnic of summer, Chloe was as happy as a ladybird.



Mummy and Chloe made iced tea and chicken drumsticks, banana bread and rhubarb pie. Bobby and his friend, Jamie, brought bottles of fizzy lemonade.



After pie, Uncle Bobby and Jamie made an announcement.  
“We’re getting married!” said Uncle Bobby.



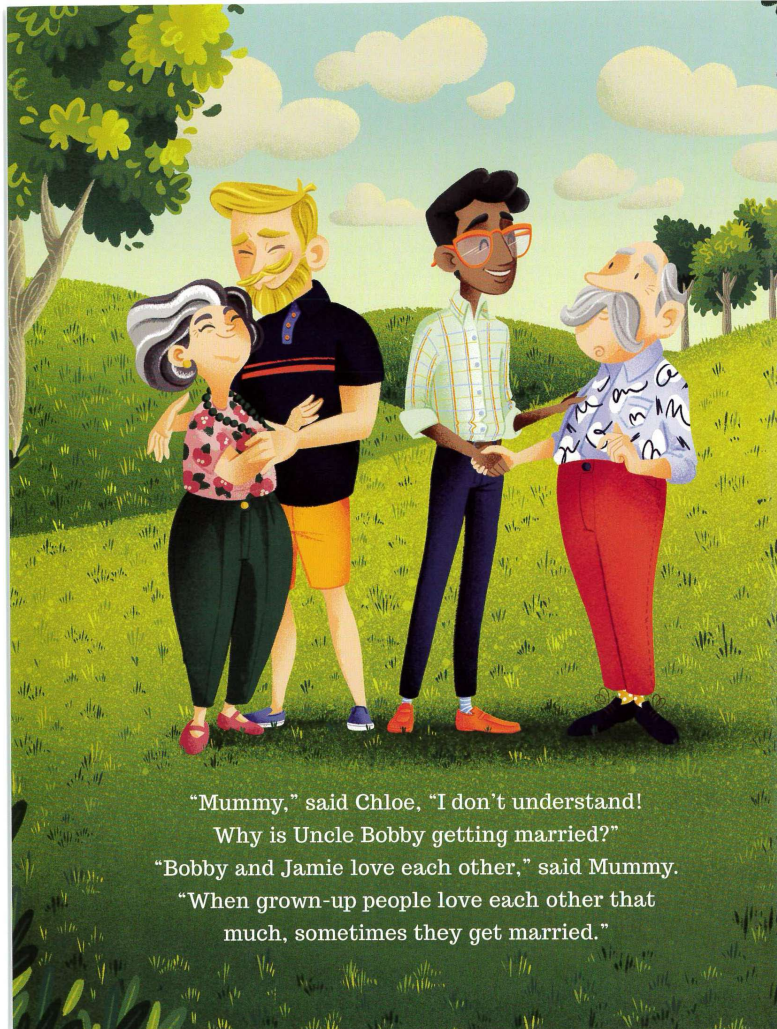
Mummy whooped and hugged him.  
Daddy shook hands with Jamie. Everyone  
was smiling and talking and crying and laughing.

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Everyone except . . . Chloe.



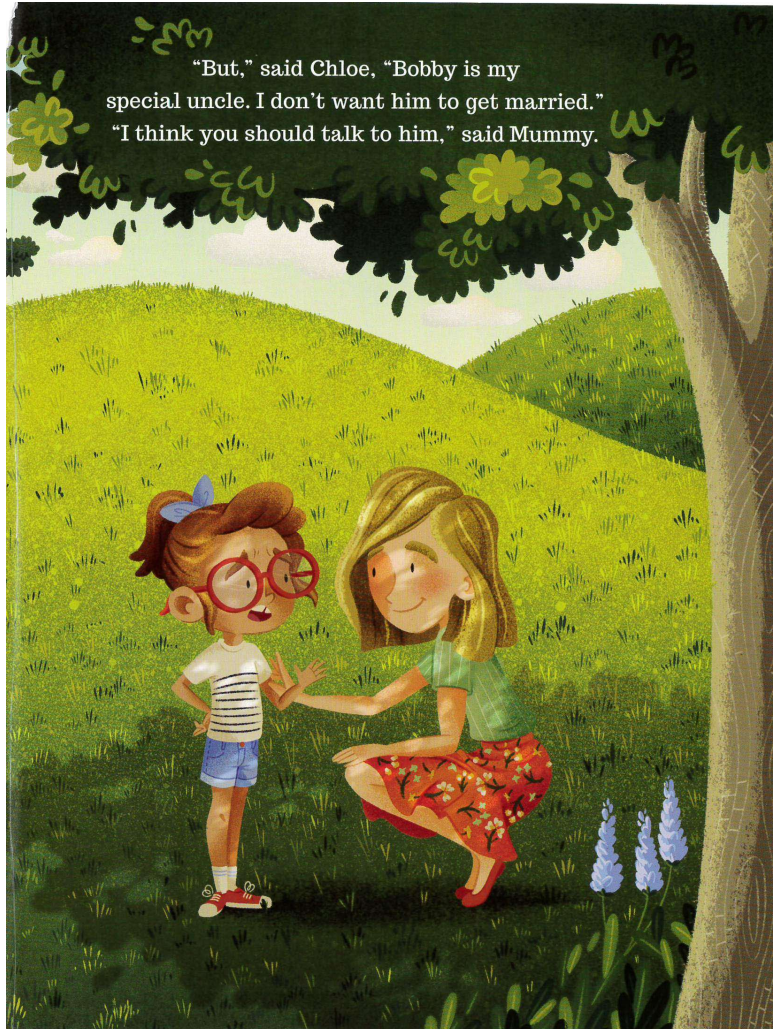


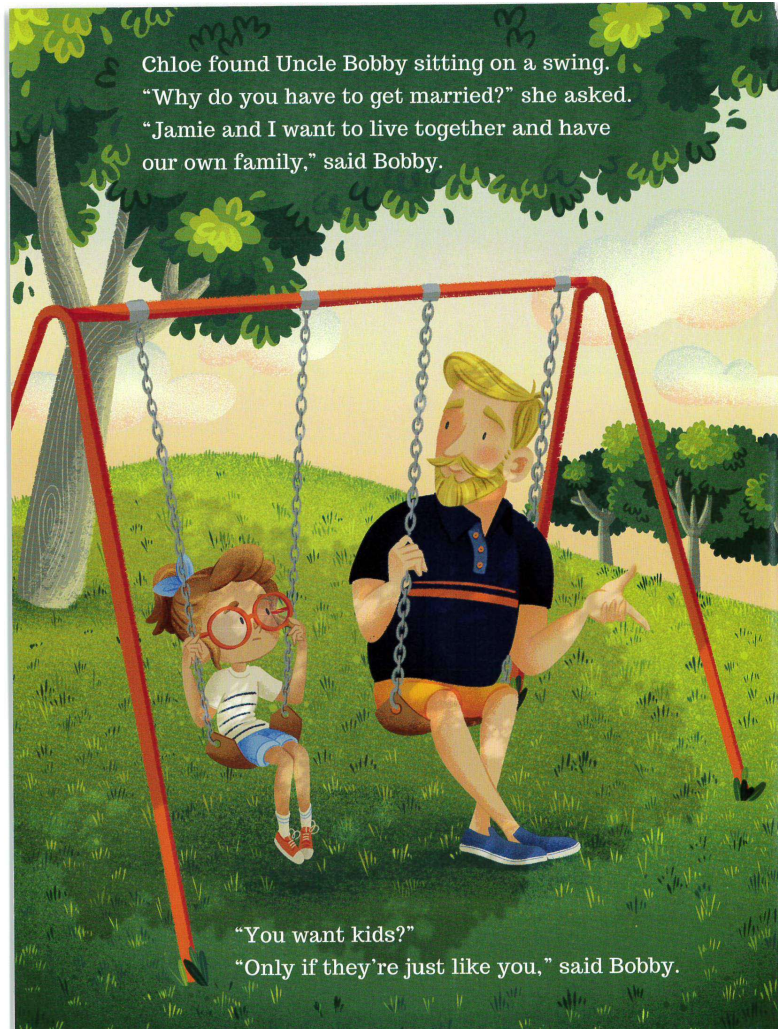
“Mummy,” said Chloe, “I don’t understand!  
Why is Uncle Bobby getting married?”

“Bobby and Jamie love each other,” said Mummy.

“When grown-up people love each other that  
much, sometimes they get married.”

“But,” said Chloe, “Bobby is my special uncle. I don’t want him to get married.”  
“I think you should talk to him,” said Mummy.





Chloe found Uncle Bobby sitting on a swing.  
“Why do you have to get married?” she asked.  
“Jamie and I want to live together and have  
our own family,” said Bobby.

“You want kids?”  
“Only if they’re just like you,” said Bobby.

291a

“That’s a pretty good reason,” said Chloe.



“But—” said Chloe.  
“But what?” asked Uncle Bobby.  
“But I still don’t think you should get married.  
I want us to keep having fun together like always.”



“I promise we’ll still have fun together,” said Bobby.  
“You’ll always be my sweet pea.”

293a



294a



295a

Afterwards, they had milkshakes.

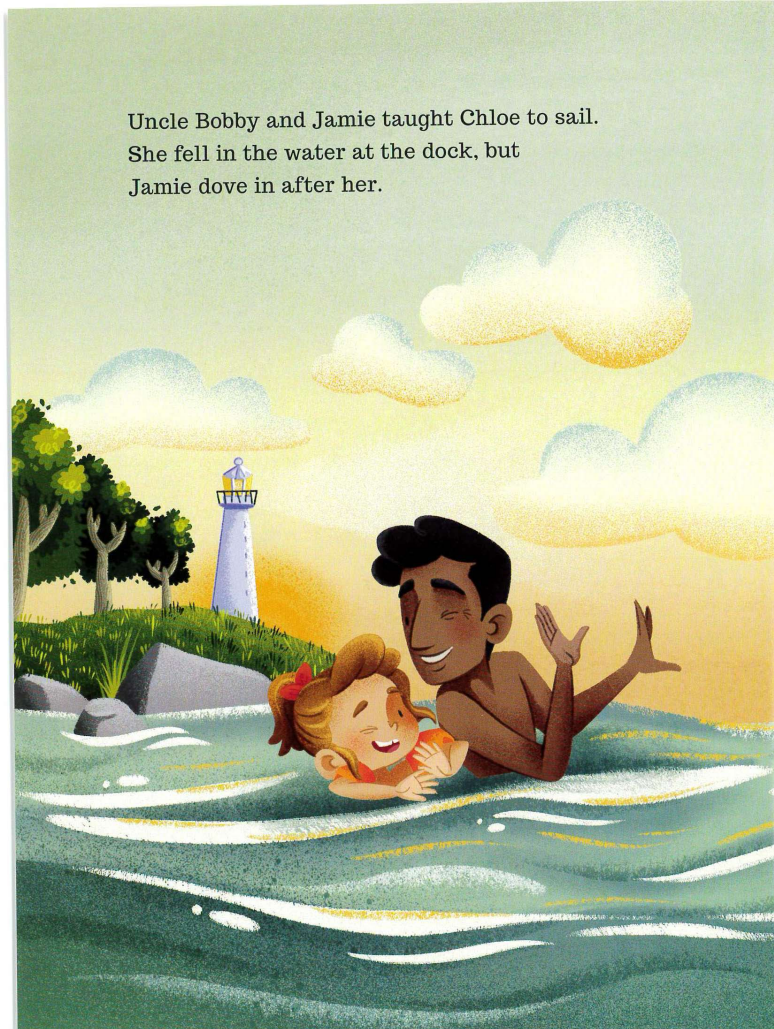


Jamie imitated the ballet dancers and Chloe laughed so hard, her milkshake went up her nose.



296a

Uncle Bobby and Jamie taught Chloe to sail.  
She fell in the water at the dock, but  
Jamie dove in after her.



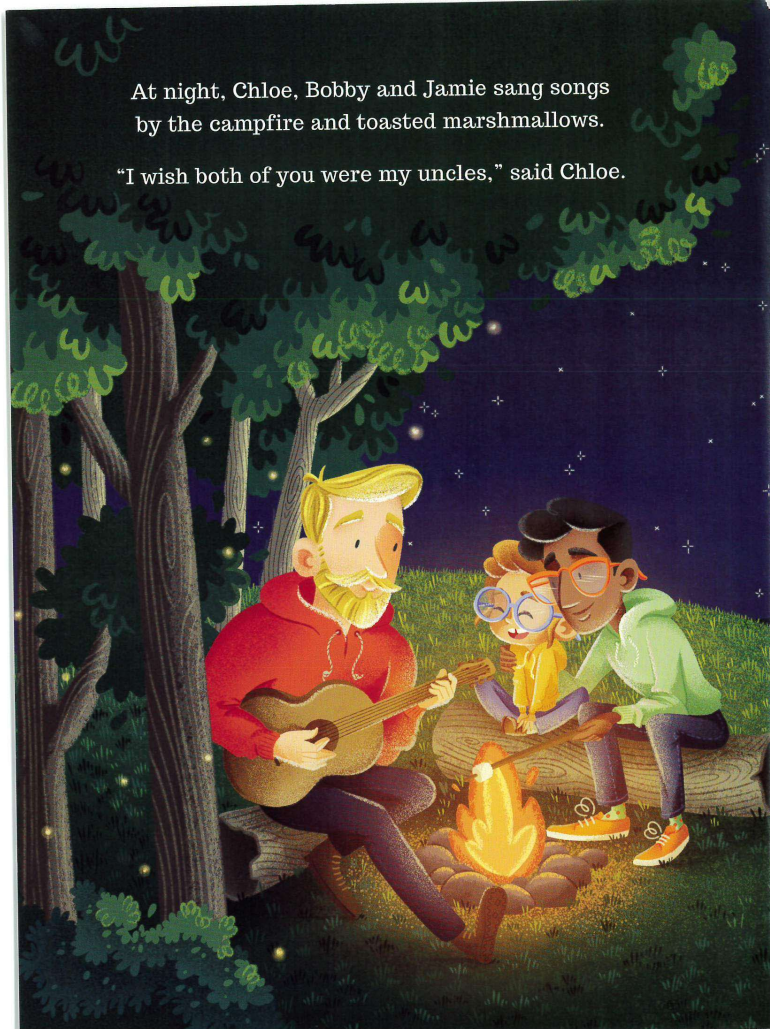
297a



Then Bobby jumped in, too,  
and they all swam until supertime.

At night, Chloe, Bobby and Jamie sang songs  
by the campfire and toasted marshmallows.

“I wish both of you were my uncles,” said Chloe.



299a



“Well, you’re getting your wish,” said Jamie.  
“When we get married, I’ll be your uncle, too.”

On the day of the wedding,  
Chloe put on her new dress.

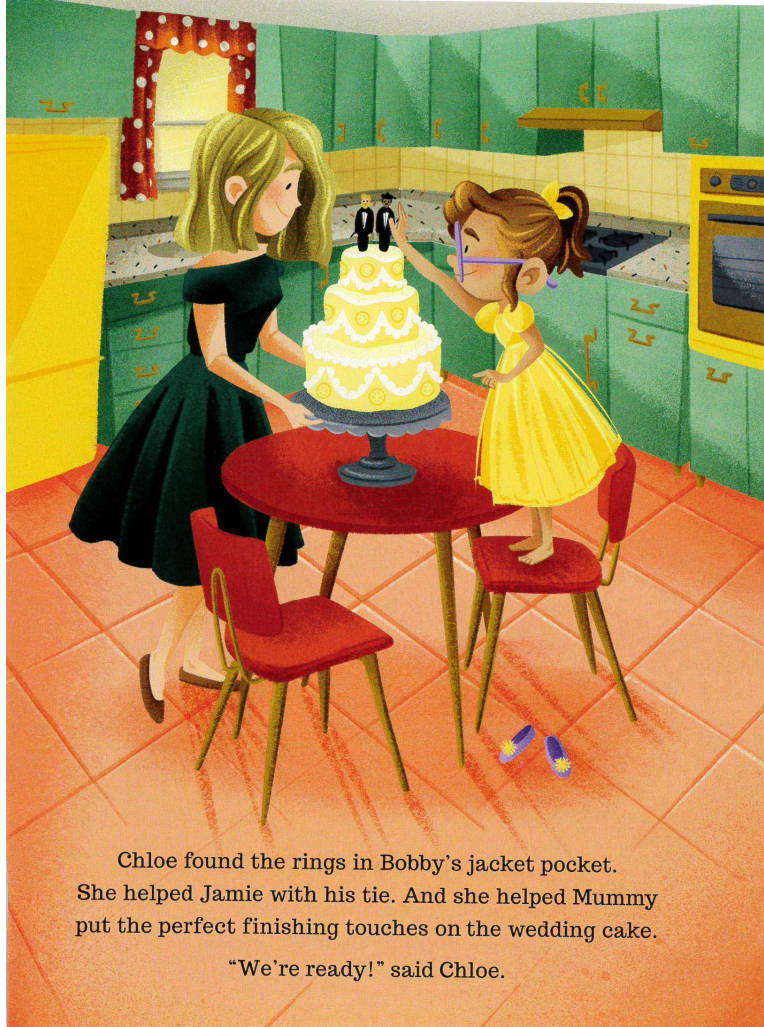
Everyone was excited and busy.



Uncle Bobby lost the rings.



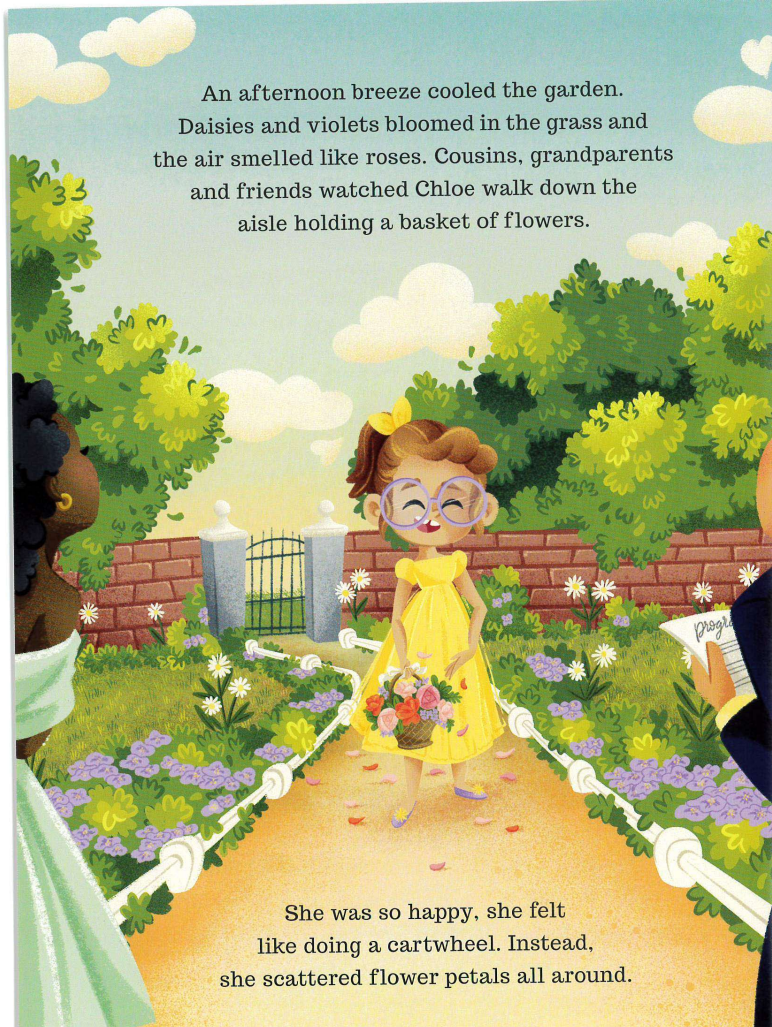
Jamie couldn't tie his bow tie.



Chloe found the rings in Bobby's jacket pocket.  
She helped Jamie with his tie. And she helped Mummy  
put the perfect finishing touches on the wedding cake.

"We're ready!" said Chloe.

An afternoon breeze cooled the garden.  
Daisies and violets bloomed in the grass and  
the air smelled like roses. Cousins, grandparents  
and friends watched Chloe walk down the  
aisle holding a basket of flowers.



She was so happy, she felt  
like doing a cartwheel. Instead,  
she scattered flower petals all around.

303a



And then Bobby and Jamie got married.



“That was the best wedding ever!” said Chloe.  
“I think so, too,” said Uncle Jamie.





The band started to play. Chloe jumped up and grabbed Uncle Bobby's and Uncle Jamie's hands. They danced until the moon rose.

306a



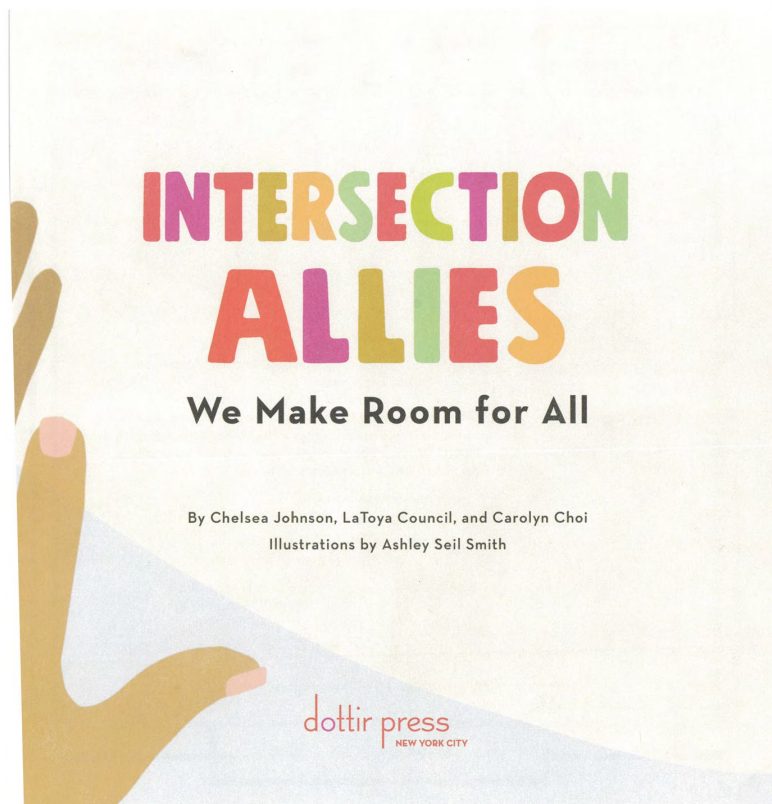


By Chelsea Johnson, LaToya Council, and Carolyn Choi  
Illustrations by Ashley Seil Smith  
Foreword by Dr. Kimberlé Crenshaw  
Letter to Parents by Dr. Ange-Marie Hancock Alfaro

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**To each other—we're better together.**

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## FOREWORD

When we think of childhood and early education, we tend to remember learning things like numbers and letters, colors and shapes, timetables and table manners. What's less often considered is that youth is also an opportunity for planting the seeds of social conscience. The impressions of the world that we gather as children become the foundations for how we understand our places in it as adults. What might the future look like if all children were taught about justice, equity, and solidarity alongside the alphabet and arithmetic?

*IntersectionAllies: We Make Room for All* is an invaluable tool for bringing about such a future. This entertaining and informative book teaches young readers that despite all of the ways we are different from one another, we still have values and common interests that intersect. We can listen to and support each other in ways that unite us across differences.

Thirty years ago, I coined intersectionality as a framework for a social justice agenda that includes all oppressed people. It's humbling and energizing to see the many ways intersectionality continues to inspire and empower social justice advocates today. I'm delighted that *IntersectionAllies: We Make Room for All* will pass the torch to the next generation of youth activists. Like the powerful young people in this book, I believe we are strongest when we build communities that are founded on the understanding that we have a stake in each other.

—Dr. Kimberlé Crenshaw, African American Policy Forum  
Co-Founder and Director of the Columbia Law School Center  
for Intersectionality and Social Policy Studies



## A Letter To Grown-Ups

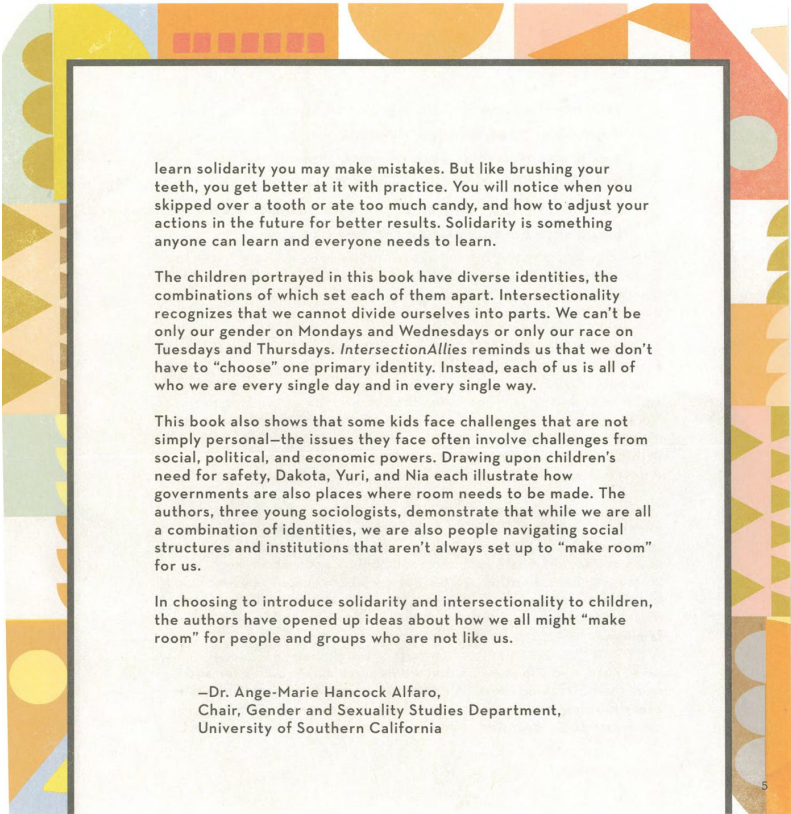
Dear Grown-ups:

It is a classic parenting dilemma: How do we teach children how to treat each other in a world that promotes all the wrong lessons? How do we teach lessons that don't repeat the mistakes we have made ourselves?

*IntersectionAllies: We Make Room for All* answers these questions with empathy and clarity. This book provides an introduction to the concepts of allyship and intersectionality for elementary school-aged children and their families, using the simple idea of "making room." "Making room" goes beyond allowing somebody physical space. It means acknowledging our complex identities as sources of power within classrooms, communities, and cultures rather than treating difference as a threat, vulnerability, or a source of shame.

"Making room" is stronger than ideas like "respect" and "tolerance" because it asks for a positive action from us rather than a minimal response. In order for us to gain an ally, we must be an ally, and do so in a way that combines initiative, solidarity, cooperation, and trustworthiness. In other words, don't wait for someone else to do it! In this book, allies help Gloria and Heejung recognize the value of their translation capabilities rather than feel shame about their families.

Allie, Kate, and Nia show us that we need to make room over and over again. "Making room" is a habit of solidarity, like getting up every morning and brushing your teeth. It is something that is necessary to do over and over again to be healthy. When you first



learn solidarity you may make mistakes. But like brushing your teeth, you get better at it with practice. You will notice when you skipped over a tooth or ate too much candy, and how to adjust your actions in the future for better results. Solidarity is something anyone can learn and everyone needs to learn.

The children portrayed in this book have diverse identities, the combinations of which set each of them apart. Intersectionality recognizes that we cannot divide ourselves into parts. We can't be only our gender on Mondays and Wednesdays or only our race on Tuesdays and Thursdays. *IntersectionAllies* reminds us that we don't have to "choose" one primary identity. Instead, each of us is all of who we are every single day and in every single way.

This book also shows that some kids face challenges that are not simply personal—the issues they face often involve challenges from social, political, and economic powers. Drawing upon children's need for safety, Dakota, Yuri, and Nia each illustrate how governments are also places where room needs to be made. The authors, three young sociologists, demonstrate that while we are all a combination of identities, we are also people navigating social structures and institutions that aren't always set up to "make room" for us.

In choosing to introduce solidarity and intersectionality to children, the authors have opened up ideas about how we all might "make room" for people and groups who are not like us.

—Dr. Ange-Marie Hancock Alfaro,  
Chair, Gender and Sexuality Studies Department,  
University of Southern California

314a

Witness the lives of a bold group of friends.  
If one is in need, another defends.  
Age is one trait that each of them share,  
But kids' lives are unique, as you'll soon be aware.  
Each child has a story and their own point of view  
Filled with passion and power, just like you.



315a



My name is Alejandra, but I go by Allie.  
I use a chair, but it doesn't define me.  
Instead, it allows me to



**ZZZIP**  
**GLIDE**  
and  
**PLAY.**

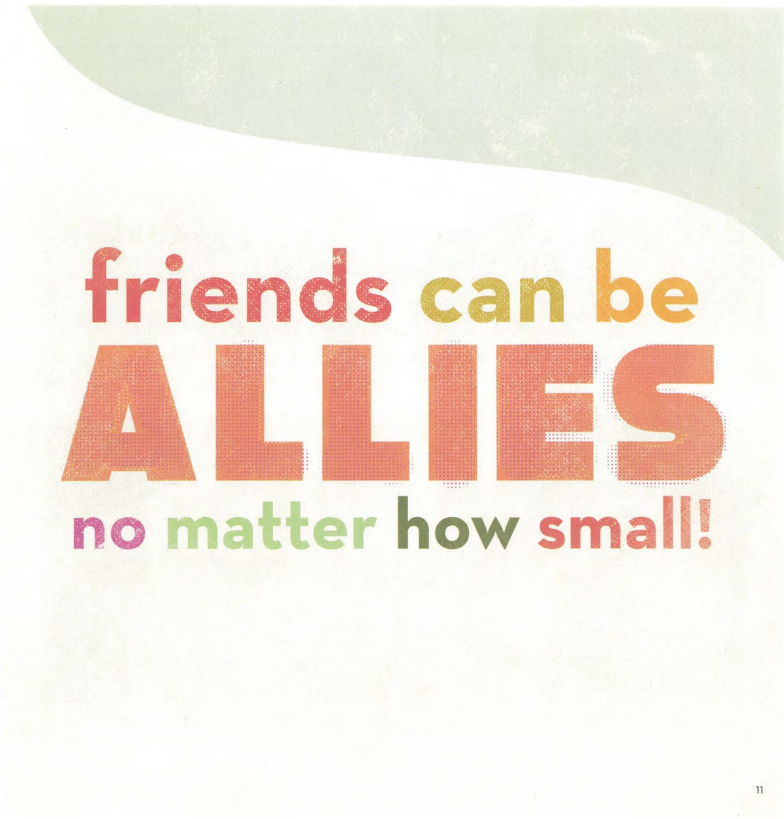
317a



When I need to get through, friends help make a way.

where there's room  
**FOR SOME**  
we make room  
**FOR ALL**

319a



friends can be  
**ALLIES**  
no matter how small!



320a



Hello, I'm Parker! After school every day,  
Allie's family takes care of us both while we play.



My mom works hard to provide for me.  
Her love's the source of our stability.

321a



Not toys or money, nor treasures untold—  
Community care is more precious than gold.

322a

Skirts and frills are cute, I suppose,  
But my superhero cape is more "Kate" than those bows.



323a



Some may be confused that a kid like me  
Can wear what I want and be proud and carefree.  
My friends defend my choices and place.  
A bathroom, like all rooms, should be a safe space.

324a



My name is Adilah, and just like Kate,  
What I wear inspires endless debate.  
Some give, some chant, some sing, some pray,  
My hijab is my choice—you can choose your own way.

325a



326a



327a





328a



My name is Nia, and with what's on the news  
It's easy to be frightened or sing the blues.

329a

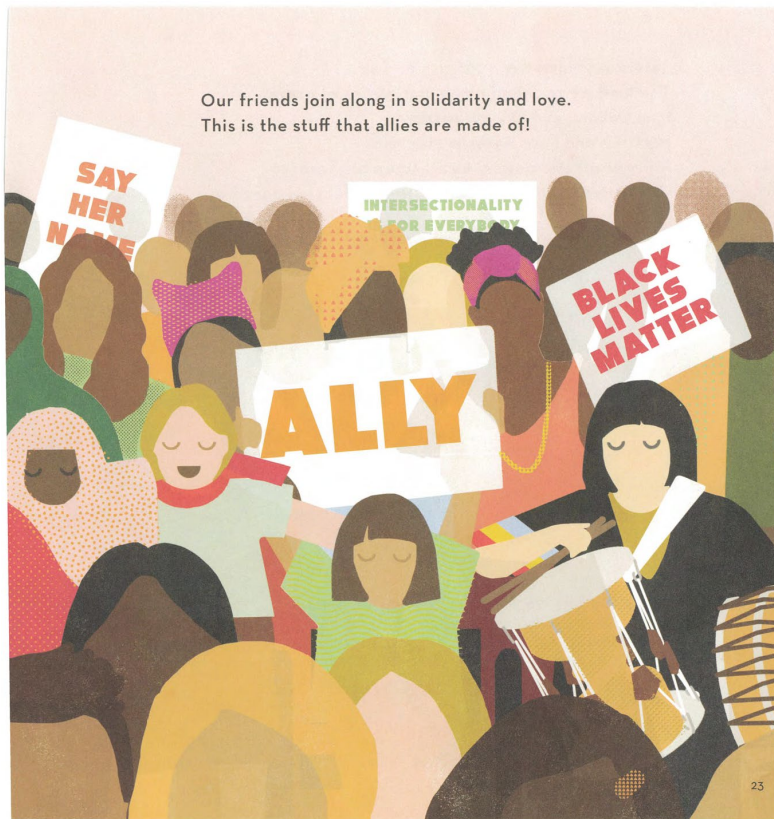


For her, for them, for him, and for me  
We all deserve to breathe and be free.

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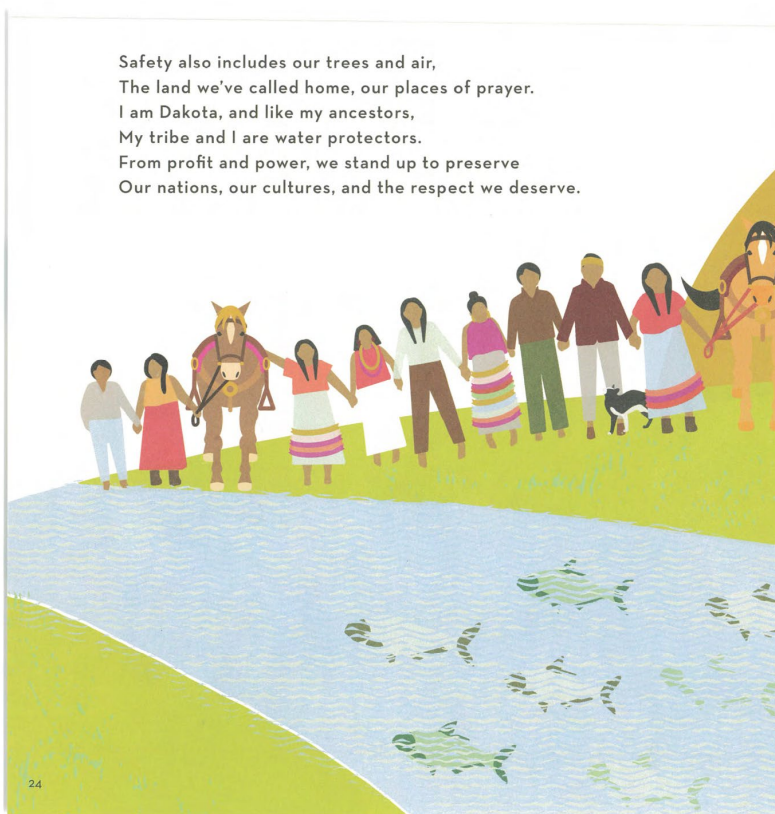


331a



332a

Safety also includes our trees and air,  
The land we've called home, our places of prayer.  
I am Dakota, and like my ancestors,  
My tribe and I are water protectors.  
From profit and power, we stand up to preserve  
Our nations, our cultures, and the respect we deserve.



333a



334a

My name is Gloria, y tengo siete años.  
After school, it's to la frutería I go.  
Trabajo cada día junto a mi madre.  
Vendemos piña dulce y mangos con chile.



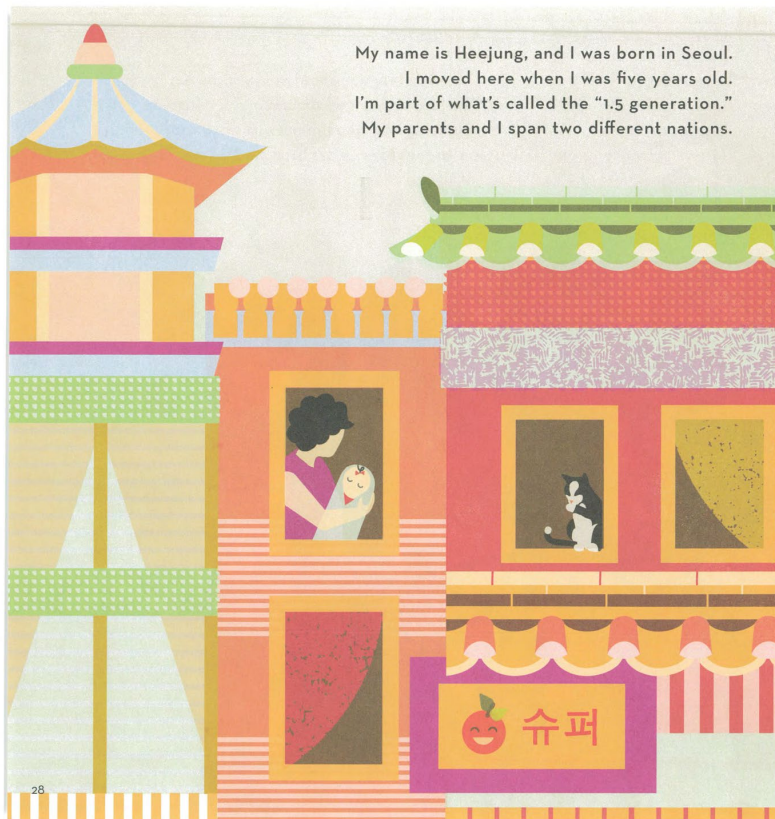
335a

My language and savvy allow us to thrive.  
I've got hopes and dreams and skills and drive!  
Working together makes us both more secure.  
I'm a daughter, a partner, and an entrepreneur.





336a



337a

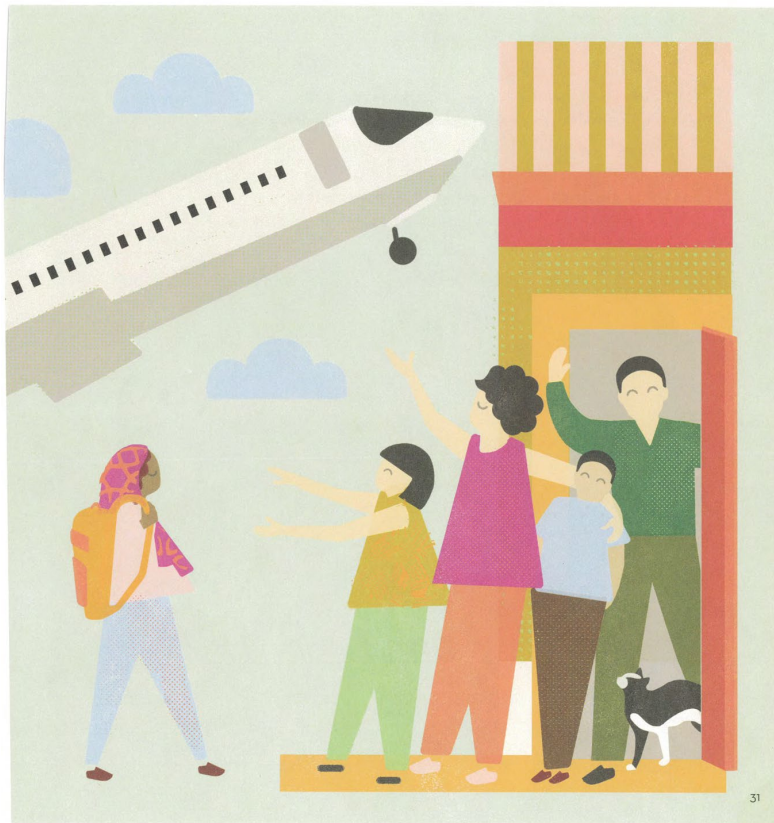
Like Gloria, I am a help to my mother  
By translating for her one word to another.  
When the landlord tells mom, "You can pay me next Friday,"  
I repeat in Korean: "Omma renteu daeum ju geumyoire naedo doendae!"  
We navigate life in our new home together,  
'Cause kids have the skills to make every day better!



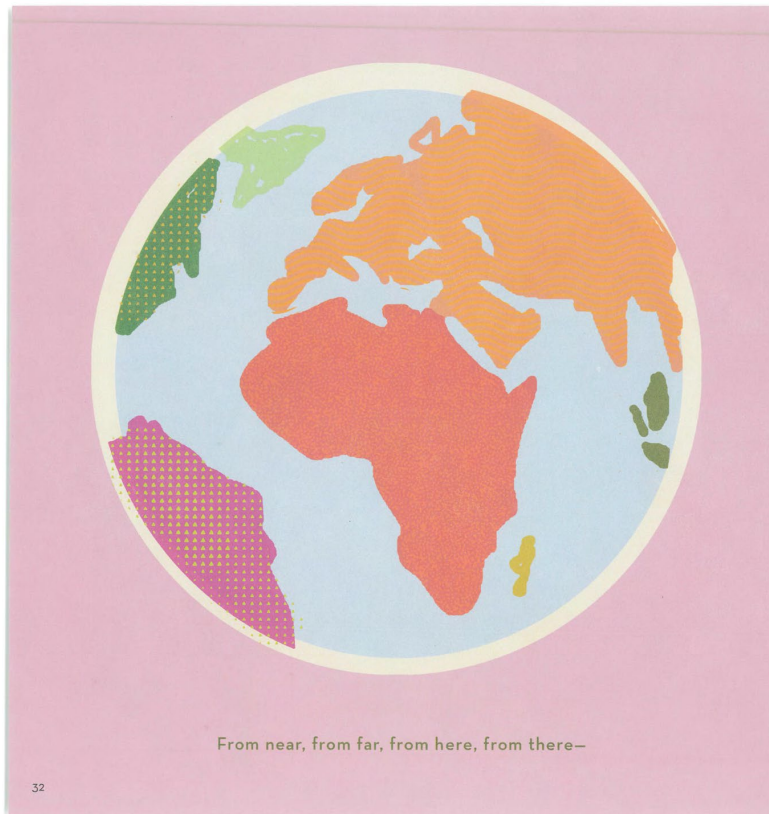
My name is Yuri and I'm new to this place.  
Heejung's family welcomed me with love and with grace.  
Finding refuge meant traveling far from home.  
I sailed, I flew, I rode, and I roamed.  
Escaping violence, war, heartache, and intrusion,  
We came to this nation seeking dreams and inclusion.



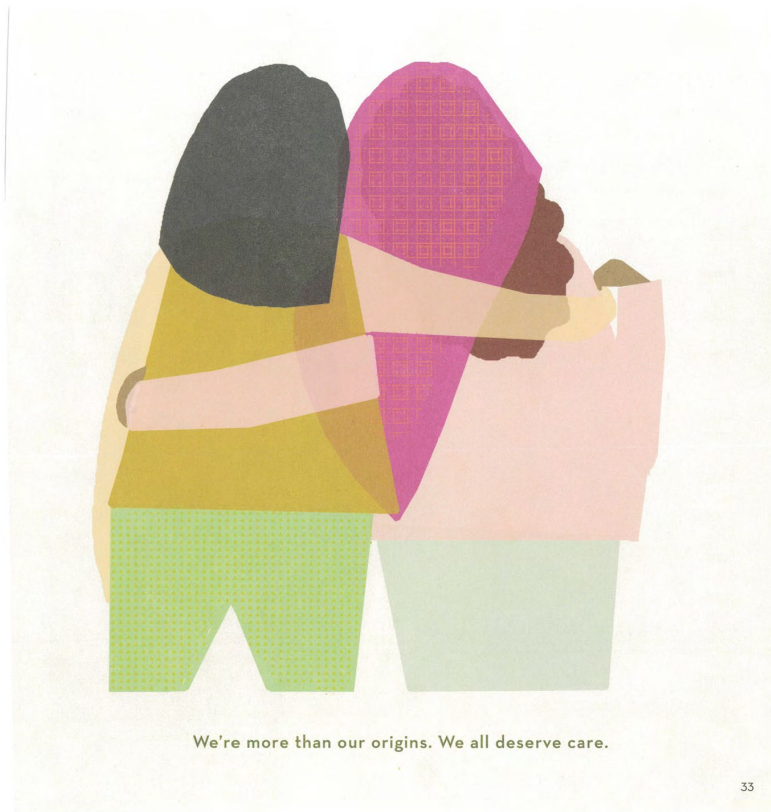
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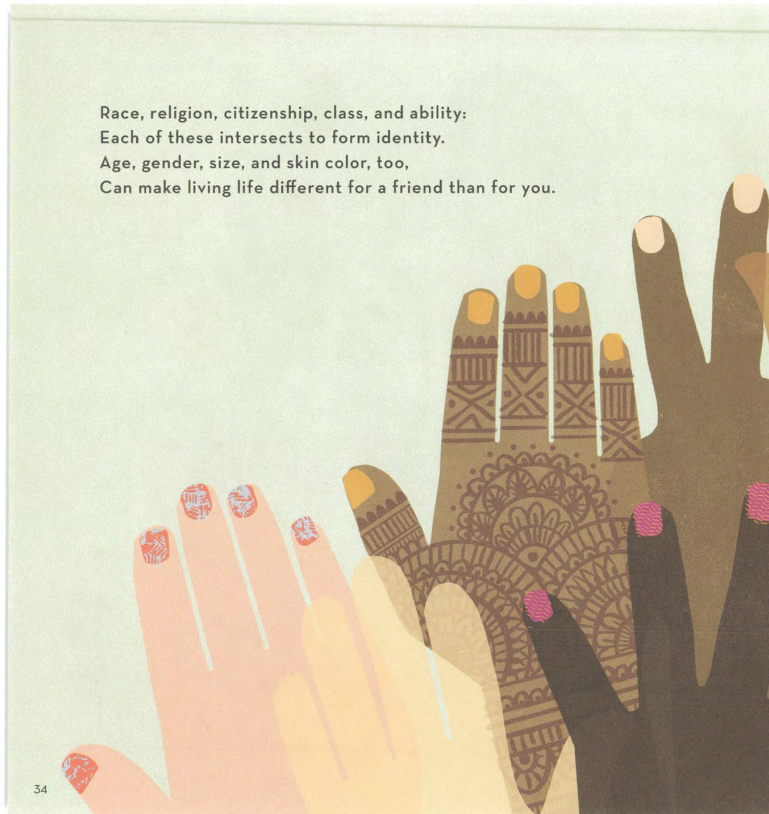


341a



342a

Race, religion, citizenship, class, and ability:  
Each of these intersects to form identity.  
Age, gender, size, and skin color, too,  
Can make living life different for a friend than for you.



343a





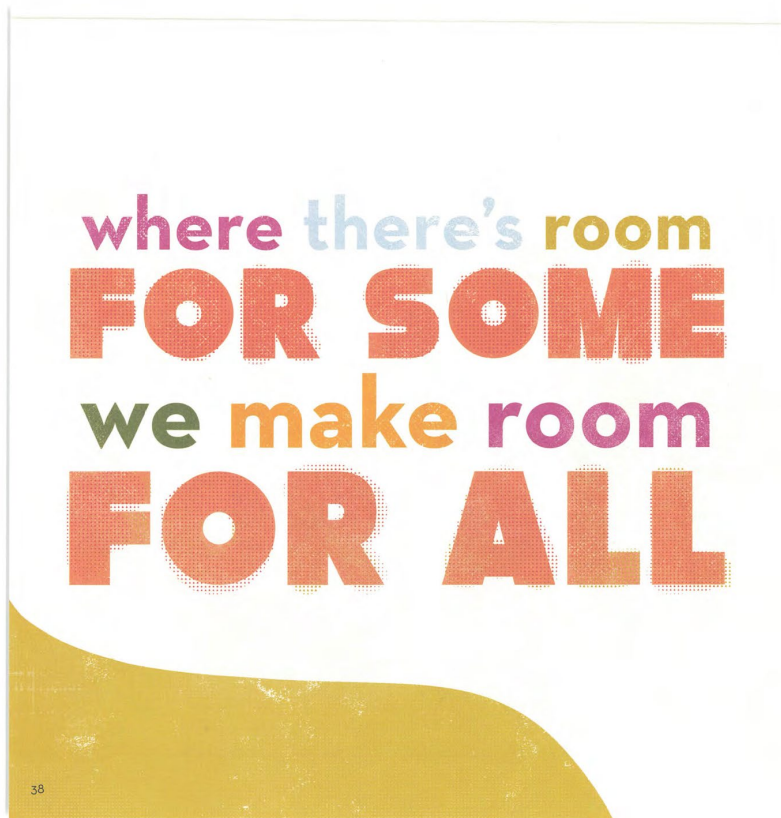
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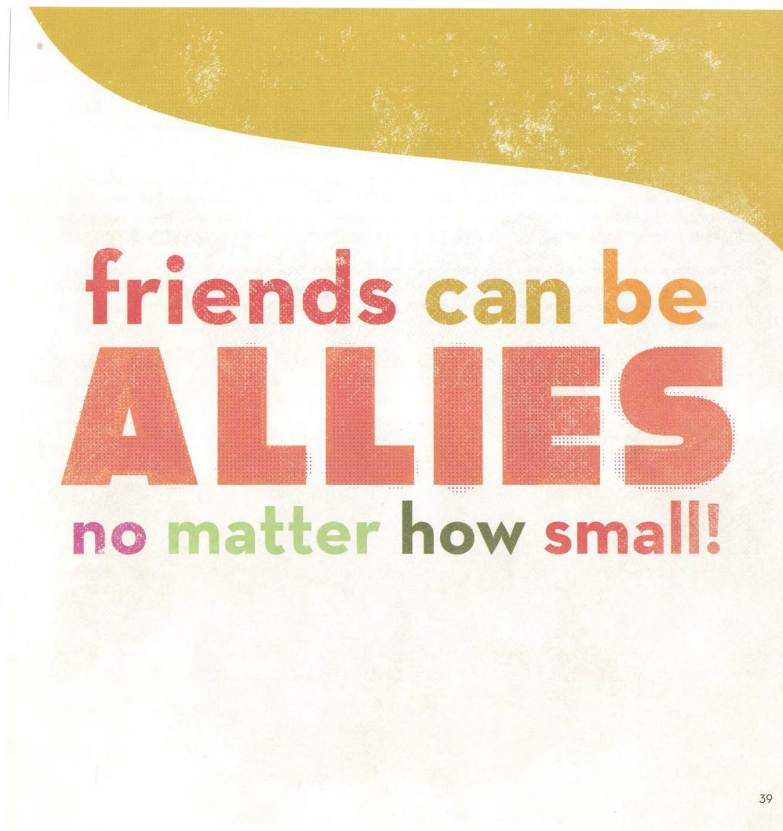
Barriers and biases are often to blame.  
We strive to be equal but not all the same.

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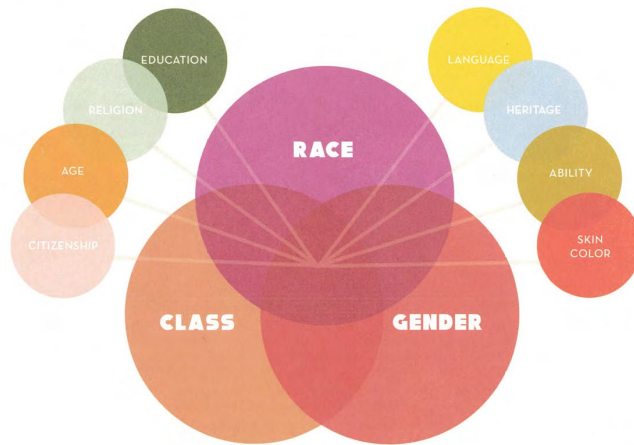


### What Is Intersectionality?

**Intersectionality** is a word that explains how all of the different parts of a person combine to affect their life experiences and personal identity. Age, ability, skin color, religion, citizenship, body size, and culture all make up our personal identity and influence who we are and how we live.

There are things about each character in this book that shape their feelings and experiences. For example, Nia's worries about the criminal justice system (our courts, police, and jails) are shaped by her gender and race, while Adilah's clothing choices are shaped by her gender, culture, and religion. **Take a moment to think about your own experiences and identity. What are some things that make you, you?**

The idea of intersectionality not only helps us understand who we are; it can also help us think about how we relate to other people. Thinking about race, class, gender, citizenship, and other identities together (rather than separately) can help us notice more opportunities for solidarity with people who are different from us.



For instance, even though the legal system in the United States has often discriminated against African American women like Nia and her mother, as American citizens, they do have the right to vote, work, and go to school without special papers saying they can be in the country. Nia's mom can use her voting power to advocate for immigrant rights so that Yuri and Heejung's families can safely chase their dreams. This is what it means to use one's relative privilege (access to advantages) to make room for all. Every person has privileges that they can use to help make life easier, happier, or safer for others. Think back to the parts of who you are that make you, you. Which of those identities come with privilege? How can you use your privileges to be an ally to a friend?

### Let's Learn Together! Page-By-Page Book Discussion Guide



People have different abilities that affect the way they move, see, hear, speak, and learn new things. For example, Allie uses a wheelchair to move about her daily life. Her friends make sure that activities are **accessible** and **available** to people with different abilities and needs so that everyone who wants to join in, can!



On page 16, we see two kinds of work that parents do to make sure children are safe and happy: Allie's mom is cooking, which is **care work** inside the home, and Parker's mom is creating a computer program for her boss, which is **work-for-hire** outside the home. Care work and working outside of the home are two ways that parents show their love. **Community care** or **collective parenting** is when families share care work, like Allie and Parker's moms do on this page. Community care helps Parker's mom manage all the things she has to do at her office and at home after work.

**Communities** are made up of your friends, family, neighbors, classmates, teammates, and anyone else you spend time with. When you're a member of a community, you should do your part to make your community stronger, safer, and more inclusive. When a community is **inclusive**, it makes everyone feel welcome, no matter their skin color, ability, culture, gender, or citizenship. Think about the people you see and spend time with. Who is part of your community? How do they make you feel stronger, safer, and included? What are some ways you can help make your community better for everyone who is a part of it?

### Book Notes Continued



Sex and gender are related, but they are not the same. A person's **sex** refers to having male, female, or intersex (both male and female) body parts.

**Gender** is something people show or do through their clothing, behavior, and what they call themselves. When we are born, our gender is often decided for us based on our sex, and sometimes, this affects what we wear or even the toys we play with. You may be familiar with two major gender categories: masculine and feminine. But at any point in our lives, we can choose to identify with one gender, multiple genders, or neither gender. Some people choose to change genders, which is called being **transgender**. And sometimes, when you feel both masculine and feminine, like Kate in this book, it's called being **non-binary**. Non-binary means not being limited to the two categories of masculinity and femininity.

A person can decide to use gendered pronouns like he/his/him and she/hers/her to describe themselves, or they can use non-binary pronouns like they/their/them or ze/zir/zirs. Kate prefers the pronouns they/their/them. We would respect Kate's choice of pronouns by saying, "Kate's cape makes them feel strong." **What pronouns fit you best?**



A **hijab** is a veil or head covering that some Muslim women and girls wear in public. Hijabs come in a lot of colors and styles. Women wear hijabs for many different reasons, like tradition, fashion, or modesty. Professor Saba Mahmood has written about the multiple meanings behind wearing a hijab within the Egyptian Muslim women's movement, and how it can stand for both female empowerment and respect for religious beliefs.

Every culture and community gives meanings to dress and style. One way to gain respect for different groups of people across the world is to think about why their clothing is important to them and their cultures. **What are some of the things people wear in your culture or community that have a special meaning? Ask an adult if you aren't sure and want to learn more.**

People deserve to be safe, no matter what they wear. Through social movements like #MeToo and Times Up, many women (and some others too!) are using their experiences to explain the importance of having **consent**, or permission, before touching another person.



Pages 22 to 25 feature prominent grassroots social movements. **Social movements** are when groups get together to change an unjust or unfair situation. Social movements are made possible by activists like Nia and Dakota, who are willing to take a stand for what they believe in. Anyone can be an activist and support a social movement, even you! **Ask an adult to help you learn about some of the issues people in your own community have fought for in the past, like civil rights, environmental sustainability, peace, and marriage equality. What is a cause you believe is worth fighting for? What are some ways that you can take a stand?**



Nia is participating in the **#BlackLivesMatter** movement, which was started by Alicia Garza, Patrisse Cullors, and Opal Tometi in 2013 to bring attention to the violence and racism that Black people face in the United States. This is not just a race issue; it's a gender one too. In fact, Kimberlé Crenshaw first made up the word **intersectionality** to describe how the criminal justice system treats Black women and girls like Nia and her mom differently than Black men and white women. That's why Dr. Crenshaw co-founded the African American Policy Forum (AAPF), a group that is working hard to make sure we protect and empower girls of color through initiatives like **#SayHerName**.



Dakota is participating in the **Dakota Access Pipeline protests**, also known as **#NoDAPL**, which began in 2016 to stop the construction of an oil pipeline that threatened the Standing Rock Lakota Sioux tribe's ancient burial grounds and water source. As community members, we have the right to disagree with anyone's decisions, even government decisions. Concerned groups make their opinions heard and known by contacting politicians, creating signs, chanting in unison, or simply standing together. The water protectors of **#NoDAPL** did just that, and the movement became the largest intertribal Native American gathering in modern history! **Are there any rules you think are unfair, or that do not represent the needs of your community? Can you think of ways to make the rule more fair for everybody? Figure out the person or group of people who is responsible for making the rule, and write them a letter explaining what you think should change and why. (Bonus activity: Find allies who agree with you and ask them if they will support your letter by signing their name next to yours.)**



**Solidarity** is when people with different identities and abilities come together to work towards the same goal. During the 2016 Dakota Access Pipeline (**#NoDAPL**) protests, another community was protesting their unclean water supply not too far away in the city of Flint, Michigan. In this book, we see Dakota and Nia come together as **allies** to fight for a need they both share—the right to drink clean water. We're always stronger together! **Think about a time when a friend stood up for you when you needed help. What did they do to support you? How did their act of solidarity make you feel? What are some ways you can be an ally in return by supporting them too? (Hint: It helps to ask them what they need first!)**



Pages 30 to 37 all focus on experiences of migration, or movement from one place to another. The **"1.5 generation"** describes people who move to a new country when they're children. They are in between the **first generation**, who emigrate as adults, and the **second generation**, who are born in a new country and have immigrant parents. In this book, Gloria is a second-generation immigrant, while Heejung and Yuri are both part of the 1.5 generation. **Ask your family members about your family's history. Were your parents, grandparents, or ancestors born in the same place as you? How and why did your family end up living where they do now?**



## Book Notes Continued



Gloria's story features **generational resources**, which are special skills kids can use to help people who are older than them. Gloria's story is based on what Professor Emir Estrada learned when she talked to immigrant children who sell food and other things with their parents. She found out that these children use their savvy with technology like cell phones and computers to make work easier for their parents. When Gloria uses a smartphone in this book, it shows her generational resources in action.



Like many 1.5 generation immigrants, Heejung is **bilingual**. This means she can speak two languages. When Heejung translates conversations from English to Korean for her mother, she is being a **language broker**. Professor Hyeeyoung Kwon talked to many language brokers for her research. She learned that translating for adults is a big responsibility for a kid, because it means knowing more about grown-up responsibilities like paying rent and healthcare than most other children do. Like Gloria and Heejung, we can show people that we care about them by helping them get through difficult situations. **Everybody has skills that can be used to help others.** Think about a special talent or ability that you have. How can you use that skill to assist your parents, grandparents, or guardians?



A **refugee** is a person who has had to leave their home country to be safe from violence, discrimination, or natural disaster. While this book was being written, millions of refugees from the Middle East, North Africa, and Central America were forced to leave their home countries. When so many refugees are forced to leave at the same time like that, families from different countries can help out by volunteering to host people like Yuri and her family in their homes, donating goods, or giving funds to organizations that help refugees. Find out which organizations help people in need in your area. Can you volunteer your time or donate supplies to support one of these groups? If so, see if you can get some friends to join you!



A **norm** is a situation that is usual or typical. Even though it can be easy to take what you see every day for granted, what people think is normal may not always be what is best for everyone, or even most people. When norms are unfair or hurtful, we should do our best to help our communities make a positive change.

#### What Is a Feminist?

A feminist is a person who believes in equality for people of all genders, and that every person should be able to decide what's best for their own life and future.

#### What's in a Name?

Adilah is an Arabic name, meaning "justice." The name Dakota means "friend" or "ally," and it derives from the Lakota Sioux language. The name Nia means "purpose," and it comes from Swahili, which is a language spoken in Kenya. **Where does your name come from? What does your name say about you? If you could change your name, what would you change it to and why?**





**Chelsea Johnson**

As a kid, I was often the only Black girl in my classrooms. Growing up as an "outsider within" my mostly white schools piqued my interest in how race, class, and gender shape social life. I gained the tools to understand my experiences as an undergraduate at Spelman College, a Historically Black College for women in Atlanta, Georgia. It was at Spelman that I became a feminist. After graduating, I began a PhD in sociology at the University of Southern California. My dissertation explored how fashion, politics, and culture relate. I traveled around the world, interviewing women with African roots in South Africa, Brazil, the Netherlands, France, Spain, and the United States about their lives. I now use research to help companies design products with underrepresented groups in mind. When I'm not researching or writing, I enjoy watercolor painting, reading fiction, and eating my way through new cities.



**LaToya Council**

I was raised in a single-parent, mother-headed home. I would often stare at my mother in awe of her super-shero abilities to manage so many family demands while holding multiple jobs to make ends meet. These memories inspired my vision for a more inclusive world and drove me toward studying sociology at Spelman College, where I first learned about the concept of intersectionality. After graduating from Spelman, I studied the inequalities in love and how race, gender, and class intersect to inform relationship experiences for my master's at the University of Colorado - Colorado Springs. I am currently working on my dissertation at the University of Southern California, which examines time use and self-care among Black middle-class couples. Intersectionality and the power of love frame how I do allyship and research. When not researching, I enjoy practicing meditation, cooking, and hanging with my cat Mimi.



**Carolyn Choi**

The Los Angeles Riots were a defining moment in my childhood that shaped my identity as a second generation Korean American woman. My personal experiences with race, immigration, and gender led me to study sociology and Korean literature at UCLA. After graduating from college, I began community-based organizing at a local non-profit civil rights organization in Los Angeles, which served as my first exposure to intersectional issues facing women in the immigrant community. After earning a master's degree from the London School of Economics and Political Science, I entered doctoral study in sociology at the University of Southern California, where I study the issues of migrant labor, human trafficking, and international education. My research has taken me across the United States, South Korea, the Philippines, and Australia. In my spare time, I enjoy spreading greater awareness about the Korean arts through performing pansori, a form of traditional folk music.



**Ashley Seil Smith**

I grew up one of five girls (and a twin!) in Southern California and Texas. My conservative roots prompted questions about privilege and feminism, which led me to study cultural anthropology as an undergraduate, including ethnographic research on women's health in South India. I eventually moved to New York City and helped launch The Period Store as a vehicle to educate women about all of their options for period management, while also earning my MFA from the School of Visual Arts. I now focus solely on art, exploring both figuration (drawings that represent things in the real world) and abstraction (drawings from imagination that don't look exactly like things from the real world) to express ideas and tell stories. I embrace all artistic tools and frequently use a variety of media. When I'm not drawing, painting, or print making, you can find me outside being active or caring for my menagerie of adopted senior animals with the help of my husband, Nate.

## WE MAKE ROOM FOR ALL!

*IntersectionAllies isn't just a book. It's a mirror in which kids of all genders, races, sexualities, abilities, cultures, and origins can see their whole selves reflected, respected, and celebrated.*

"The concept of intersectionality . . . is broken down with ease and clarity . . . cheerful, vibrant."

—BOOKLIST

"A joyous affirmation of how we are all connected."

—TIME Magazine

"Offers a memorable refrain caregivers and educators will be eager to integrate into daily mantras. Highly recommended."

—SCHOOL LIBRARY JOURNAL (starred review)

"If ever a book belonged in every pediatrician's office, clinic, daycare, shelter, classroom and home, this is it . . . valuable for all ages."

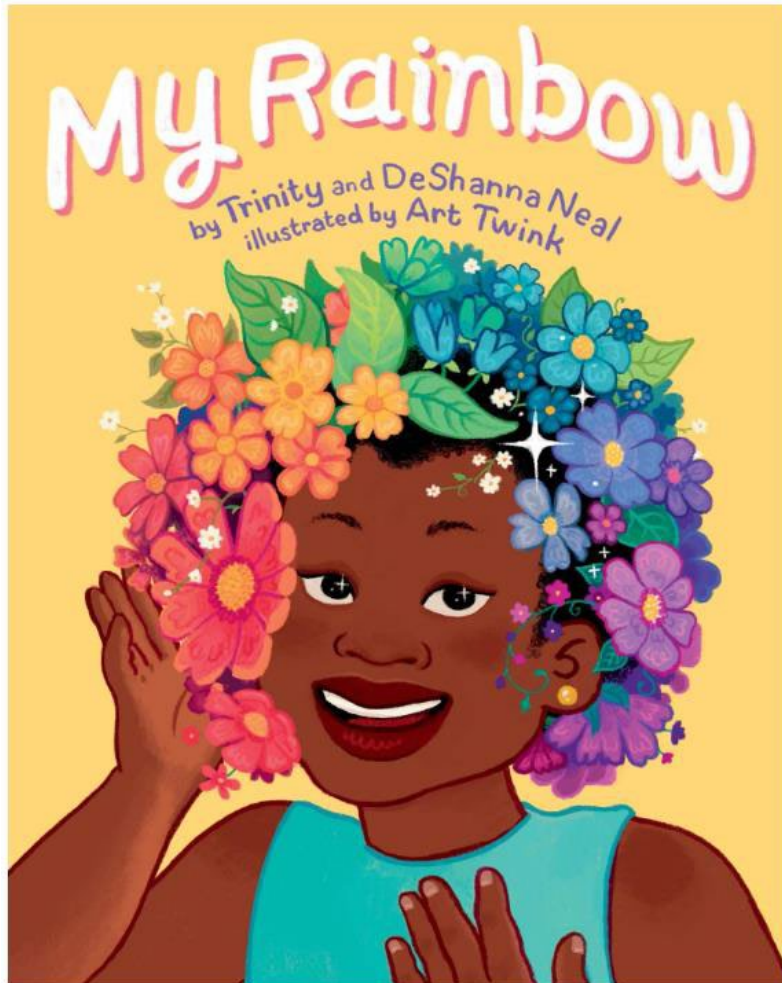
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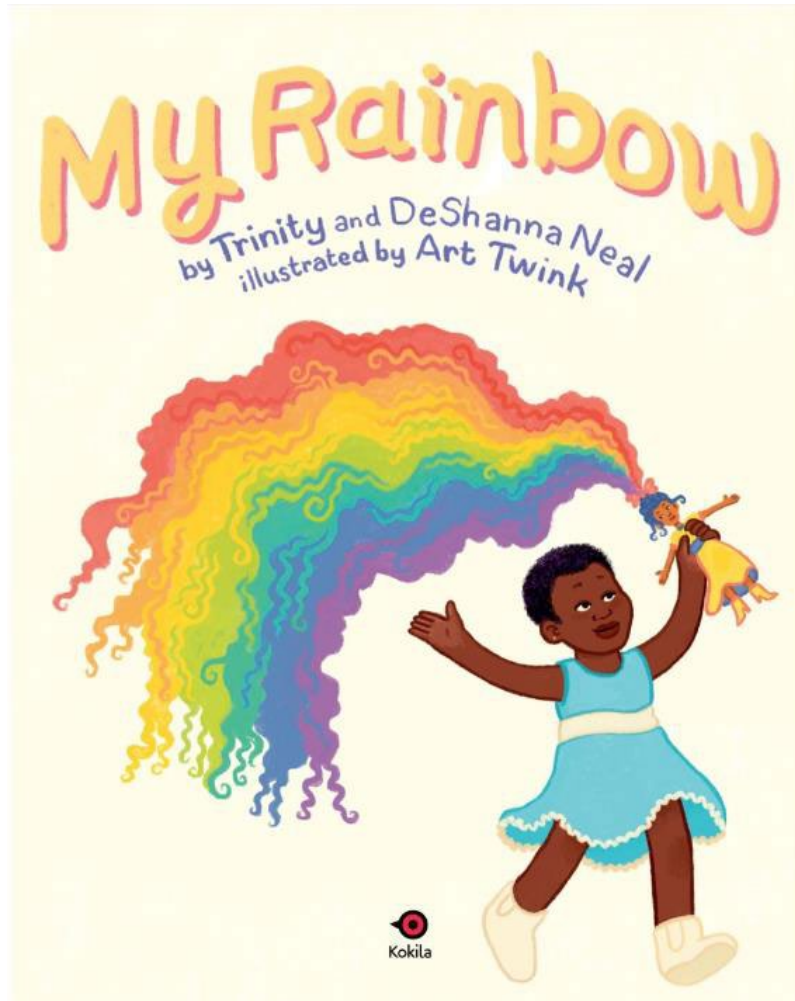
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357a



358a



359a



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The art for this book was created digitally.



360a

To grandpop, the one who loved me and my rainbow.  
I'll miss you.  
-T. N. and D. N.

Thank you to all Black women, who make the world a more  
beautiful place to live.  
-A. T.



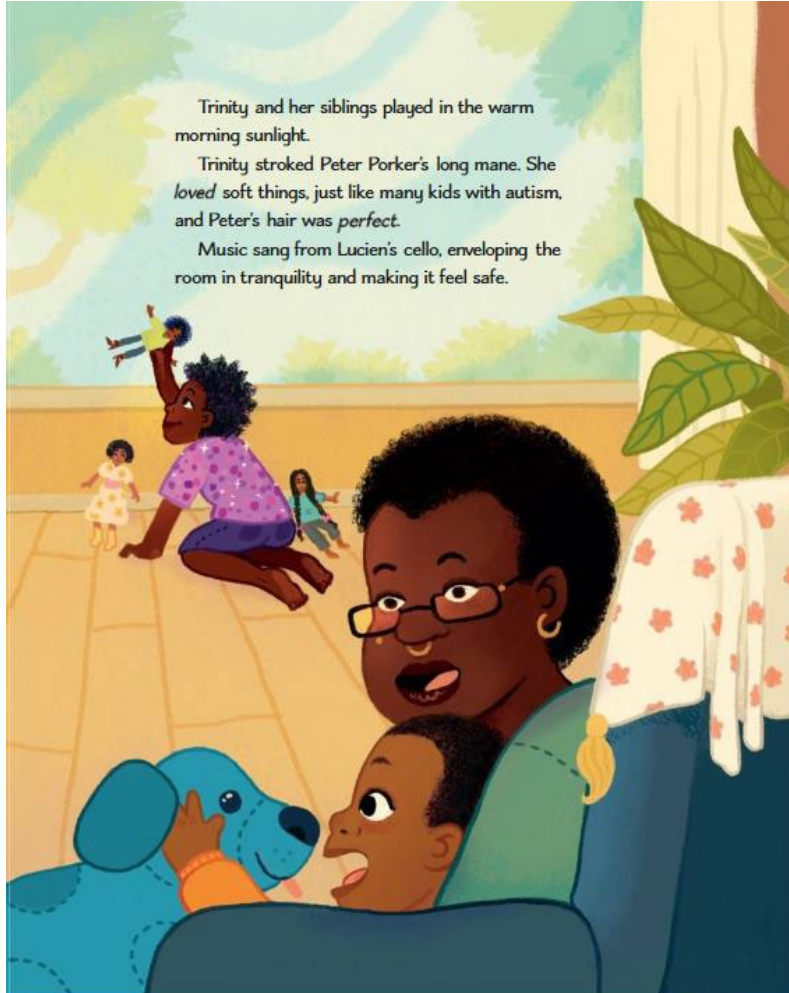
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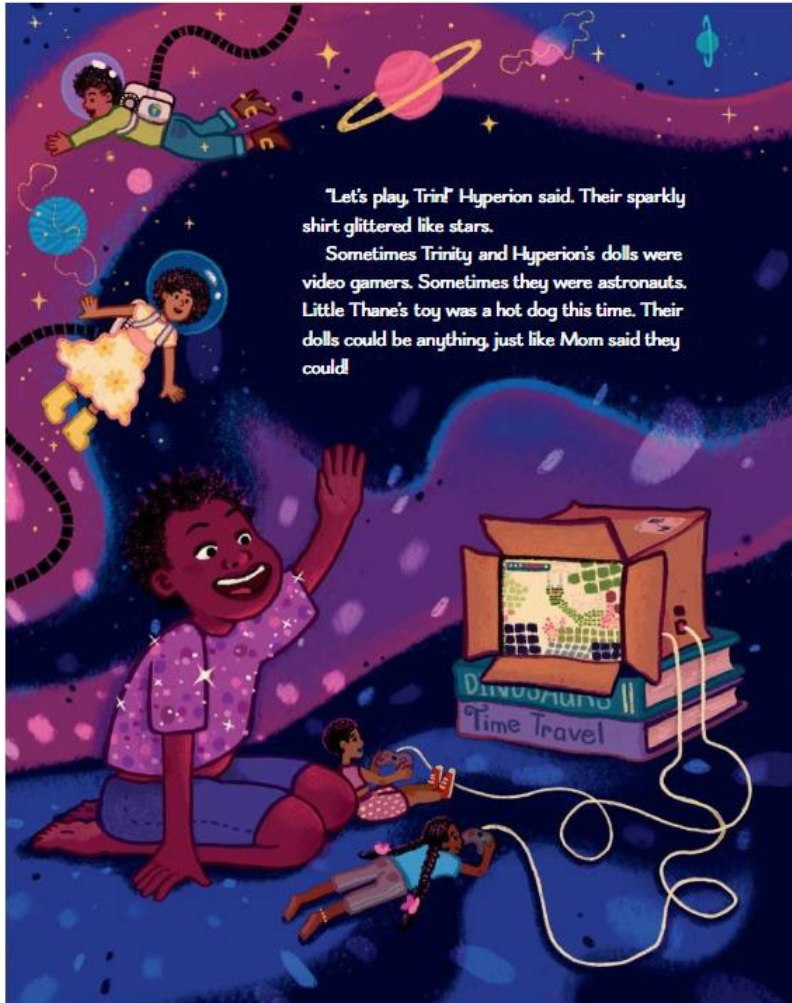


Trinity and her siblings played in the warm morning sunlight.

Trinity stroked Peter Porker's long mane. She *loved* soft things, just like many kids with autism, and Peter's hair was *perfect*.

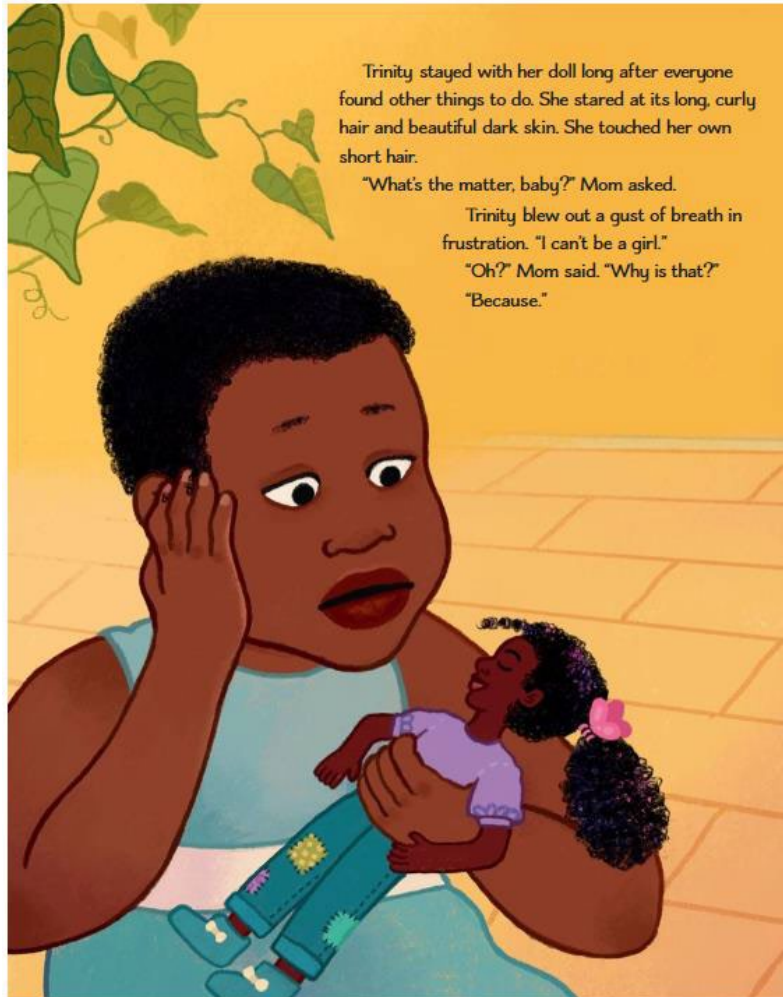
Music sang from Lucien's cello, enveloping the room in tranquility and making it feel safe.





364a





Trinity stayed with her doll long after everyone found other things to do. She stared at its long, curly hair and beautiful dark skin. She touched her own short hair.

"What's the matter, baby?" Mom asked.

Trinity blew out a gust of breath in frustration. "I can't be a girl."

"Oh?" Mom said. "Why is that?"

"Because."

366a

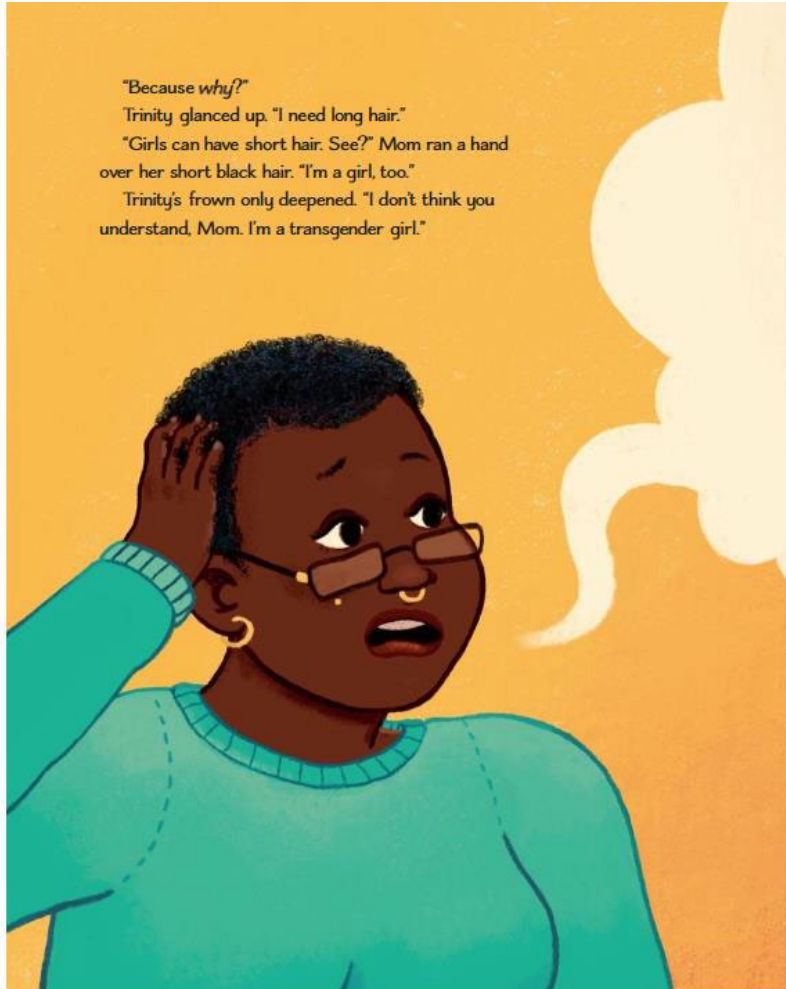


"Because *why?*"

Trinity glanced up. "I need long hair."

"Girls can have short hair. *See?*" Mom ran a hand over her short black hair. "I'm a girl, too."

Trinity's frown only deepened. "I don't think you understand, Mom. I'm a transgender girl."





368a



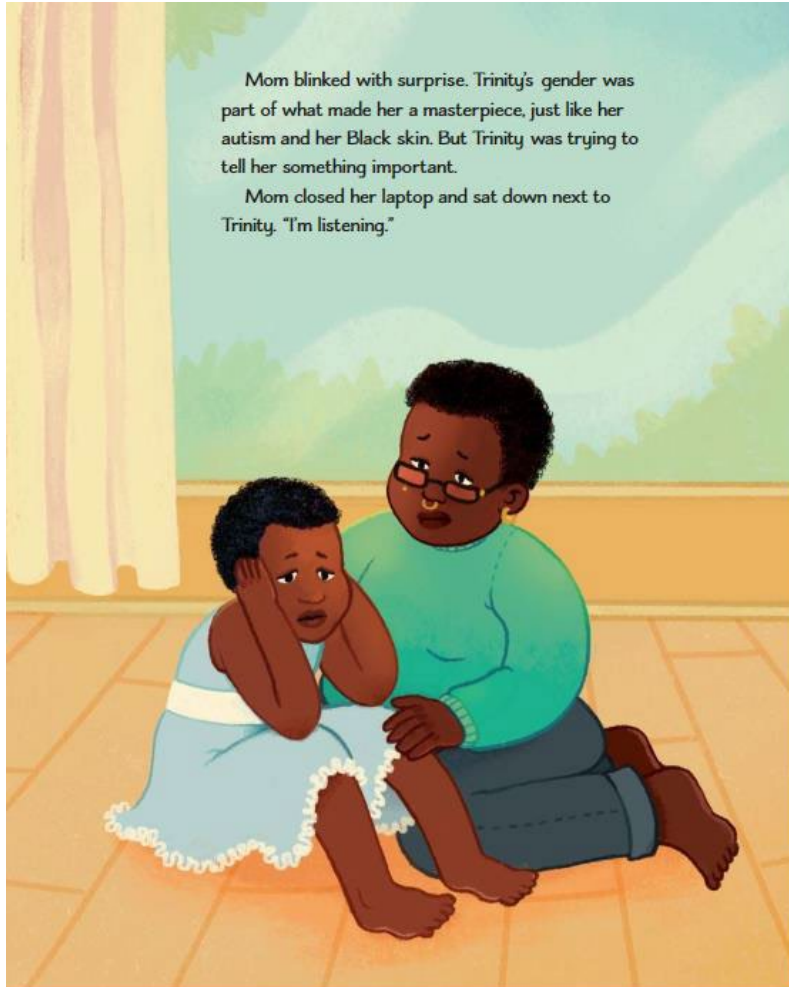
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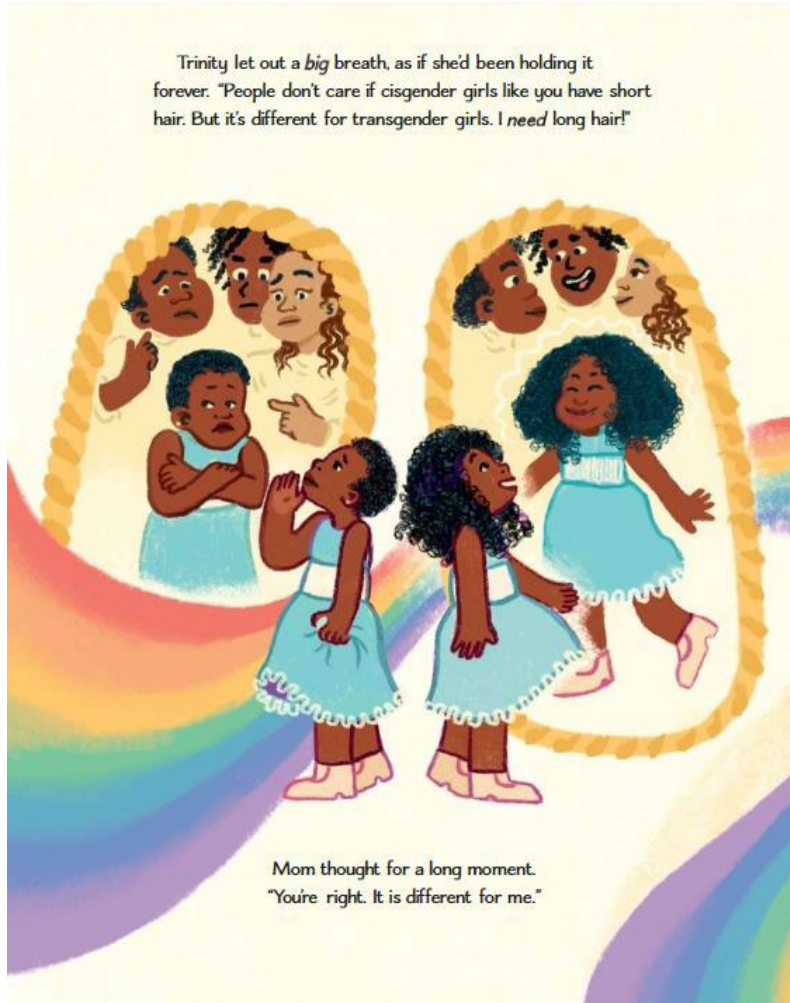
Mom blinked with surprise. Trinity's gender was part of what made her a masterpiece, just like her autism and her Black skin. But Trinity was trying to tell her something important.

Mom closed her laptop and sat down next to Trinity. "I'm listening."



371a

Trinity let out a *big* breath, as if she'd been holding it forever. "People don't care if cisgender girls like you have short hair. But it's different for transgender girls. I *need* long hair!"



Mom thought for a long moment.  
"You're right. It is different for me."

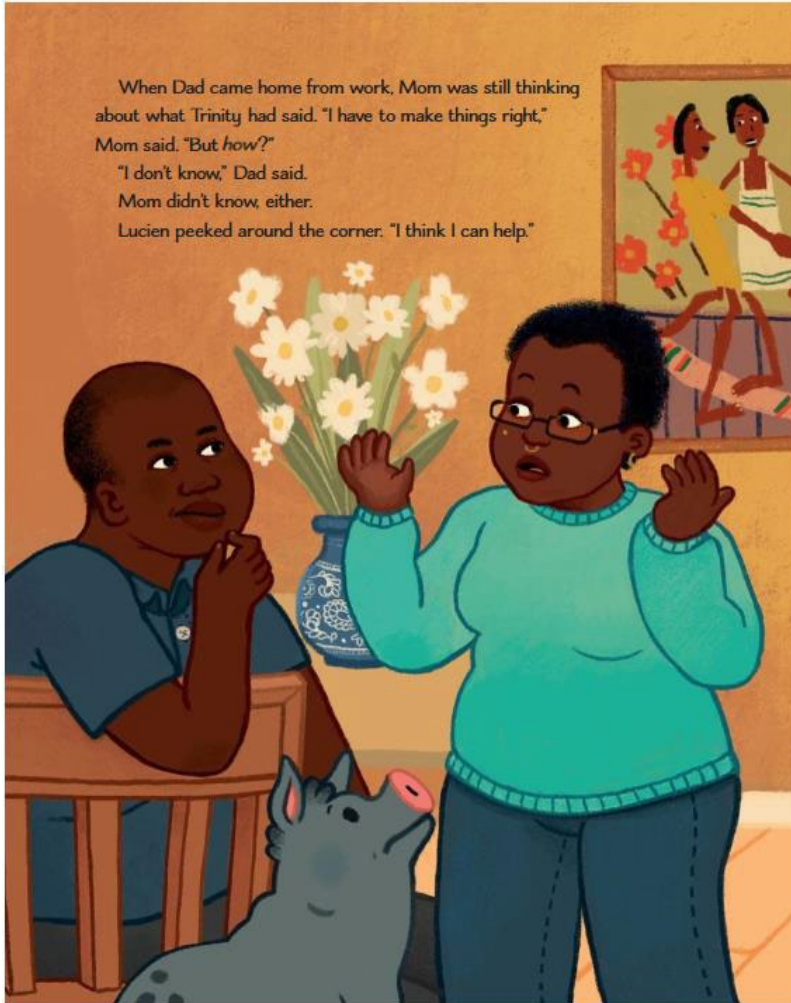
She peered at each of her children. "We are all a little different from one another. You're a beautiful rainbow, Trinity."

"I don't feel like a rainbow right now."

Mom knew Trinity struggled to grow her hair long. She hated how it made her itchy when it was growing out. But Trinity knew herself best of all. And if she said she needed long hair, she NEEDED long hair! With a sigh, Trinity picked up a pink comb and began smoothing her doll's hair.



When Dad came home from work, Mom was still thinking about what Trinity had said. "I have to make things right," Mom said. "But *how*?" "I don't know," Dad said. Mom didn't know, either. Lucien peeked around the corner. "I think I can help."



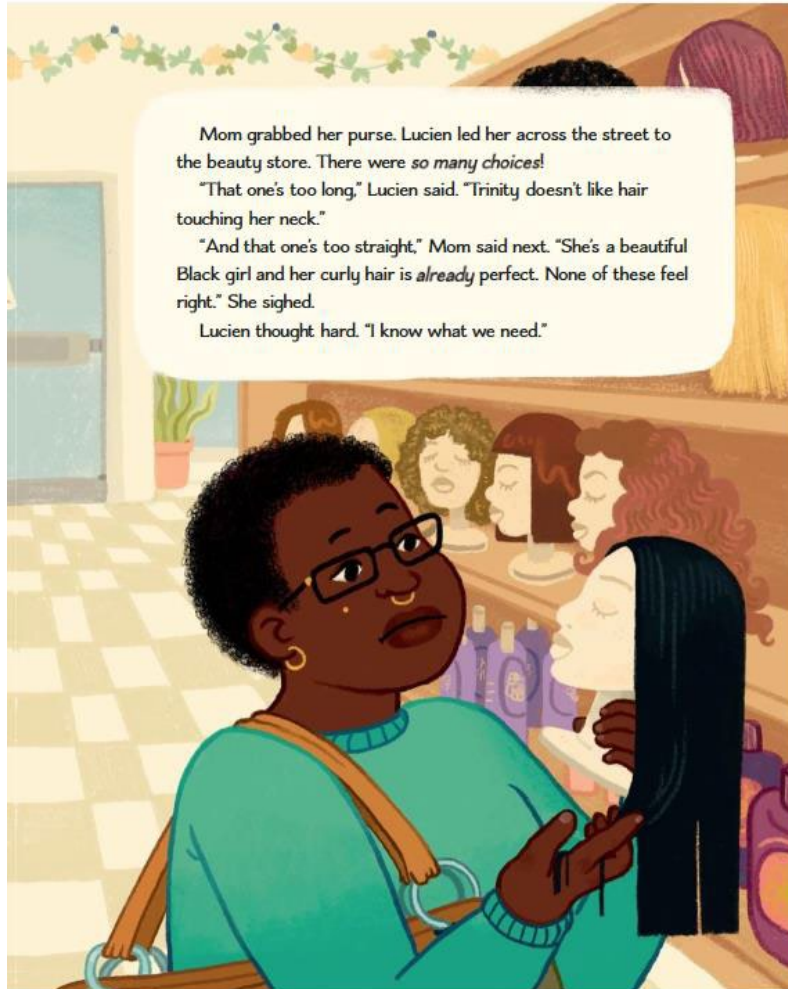
374a



375a







Mom grabbed her purse. Lucien led her across the street to the beauty store. There were *so many choices!*  
"That one's too long," Lucien said. "Trinity doesn't like hair touching her neck."  
"And that one's too straight," Mom said next. "She's a beautiful Black girl and her curly hair is *already* perfect. None of these feel right." She sighed.  
Lucien thought hard. "I know what we need."

377a



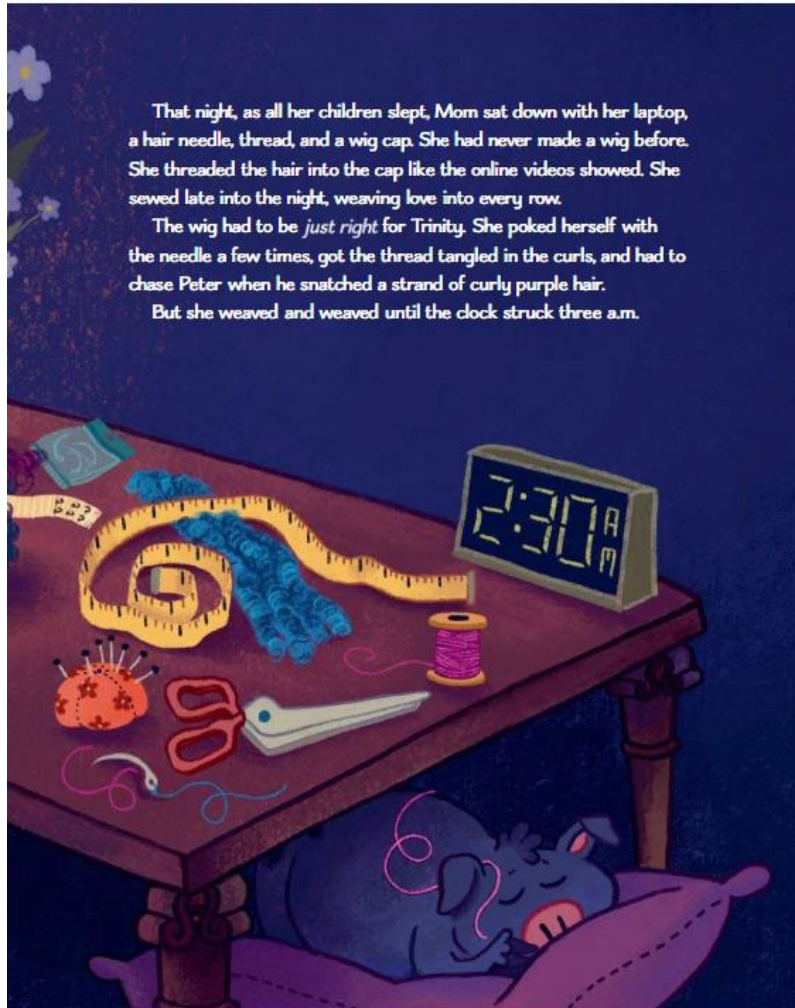
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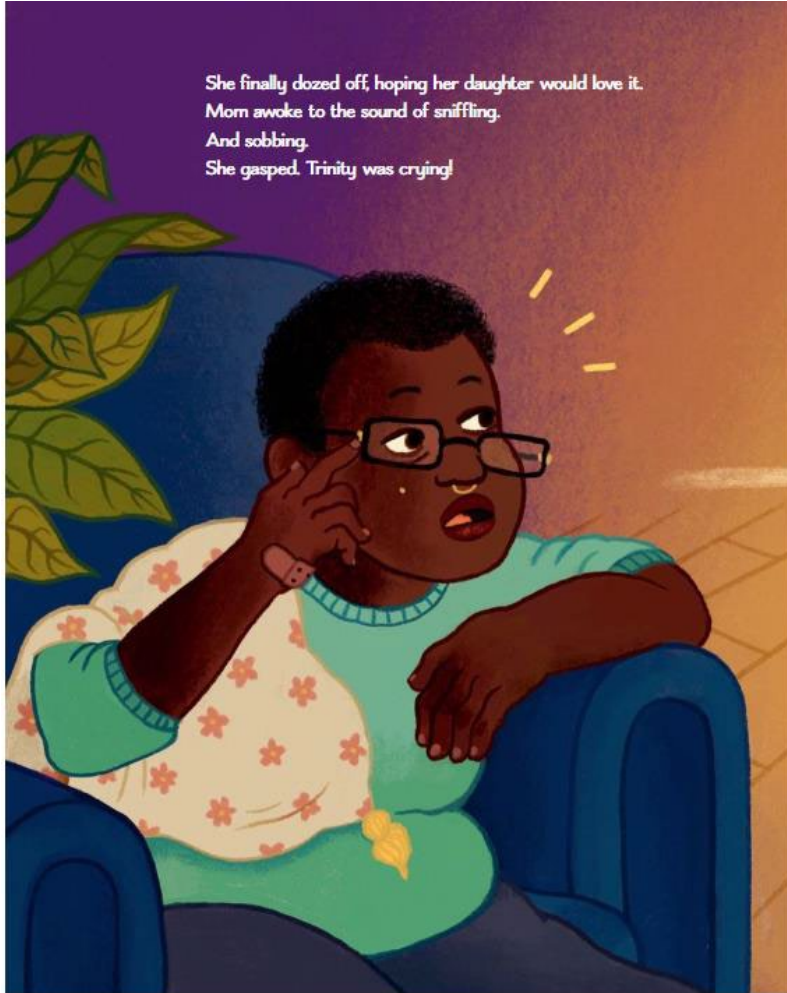
That night, as all her children slept, Mom sat down with her laptop, a hair needle, thread, and a wig cap. She had never made a wig before. She threaded the hair into the cap like the online videos showed. She sewed late into the night, weaving love into every row.

The wig had to be *just right* for Trinity. She poked herself with the needle a few times, got the thread tangled in the curls, and had to chase Peter when he snatched a strand of curly purple hair.

But she weaved and weaved until the clock struck three a.m.



She finally dozed off, hoping her daughter would love it.  
Mom awoke to the sound of sniffing.  
And sobbing.  
She gasped. Trinity was crying!



381a





Mom dashed to the bathroom. The wig was big and fluffy on Trinity's head. The springy, curly teal blue, dark pink, and purple hair that Lucien had chosen lit up the whole room.

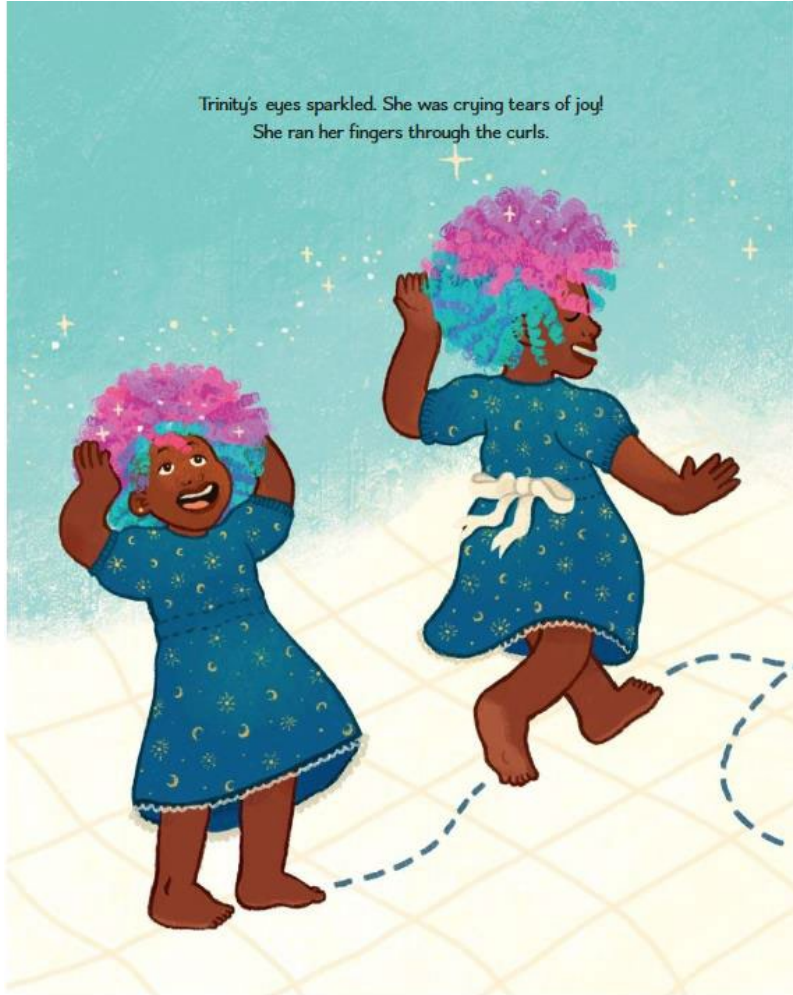
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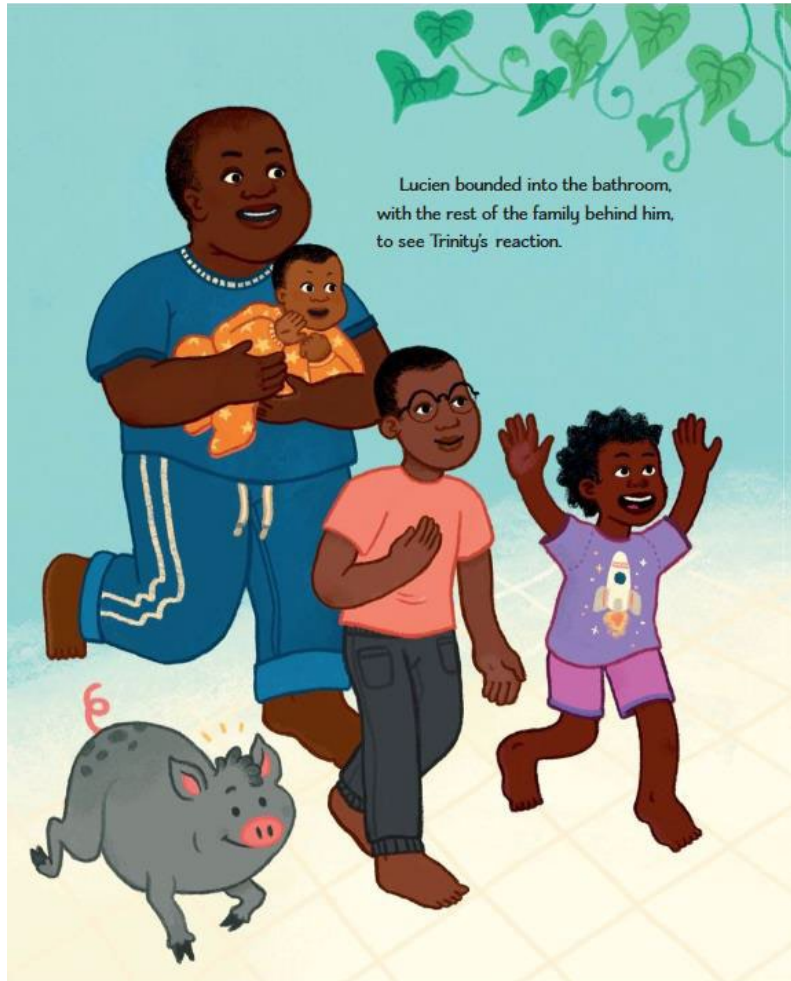
384a

Trinity's eyes sparkled. She was crying tears of joy!  
She ran her fingers through the curls.



385a



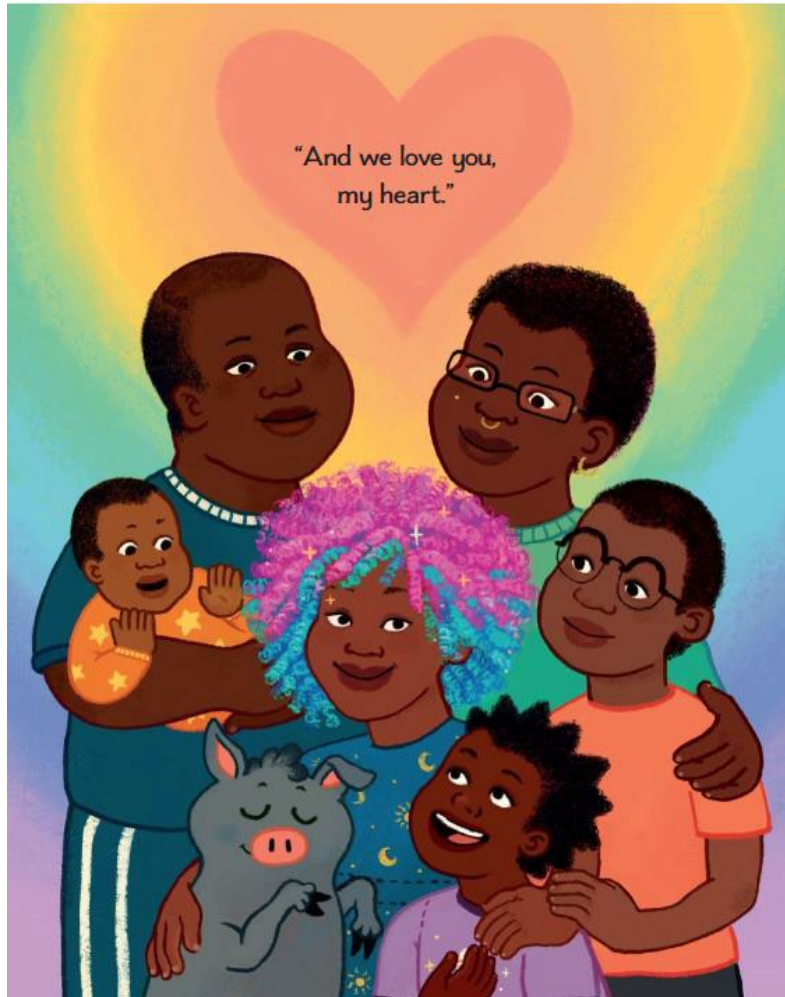


Lucien bounded into the bathroom,  
with the rest of the family behind him,  
to see Trinity's reaction.

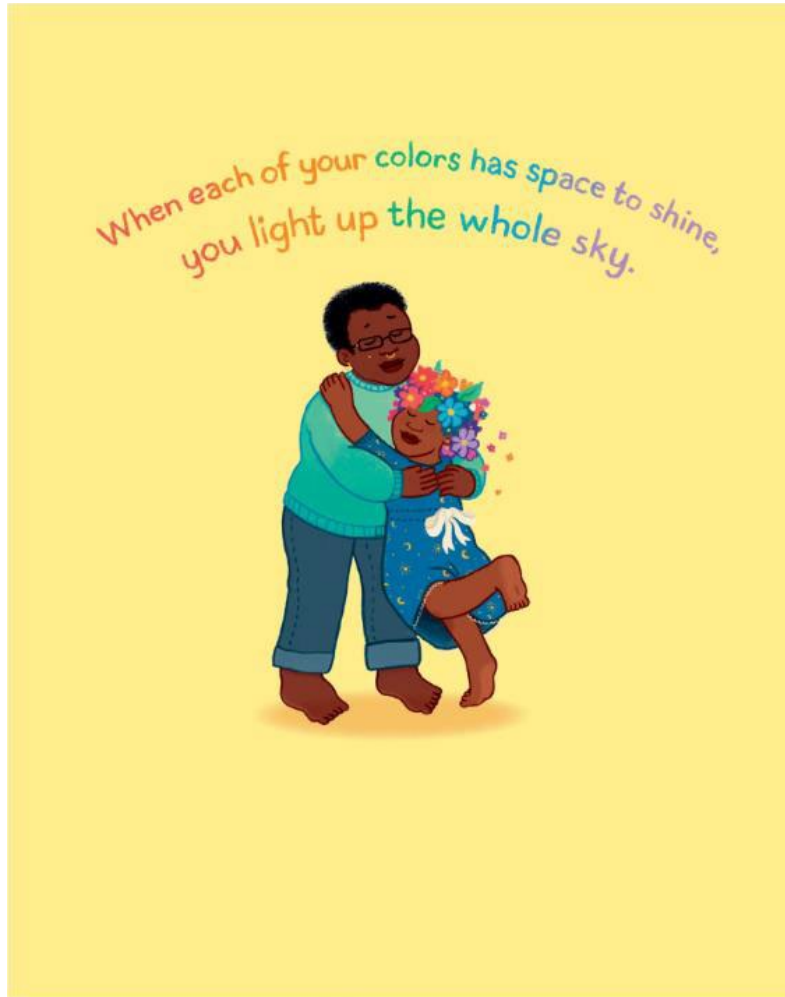
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388a



389a



390a



words by Daniel Haack  
pictures by Stevie Lewis

391a

Prince  
&  
Knight





393a



394a



395a



lived a charming prince  
who was handsome and sincere.

396a



His parents knew that soon, it would be time he took the throne.  
But with a kingdom so grand, the prince could not rule alone.

397a



So the three of them set out and travelled far and wide,  
on a quest to find the prince a kind and worthy bride.



The prince met many ladies  
(and made the maidens swoon!).

399a



but soon it was clear  
he was singing a different tune.





400a



401a



402a



But while the royals were away,  
their land faced quite a scare  
from a dragon fast approaching,  
breathing fire everywhere!

403a



404a



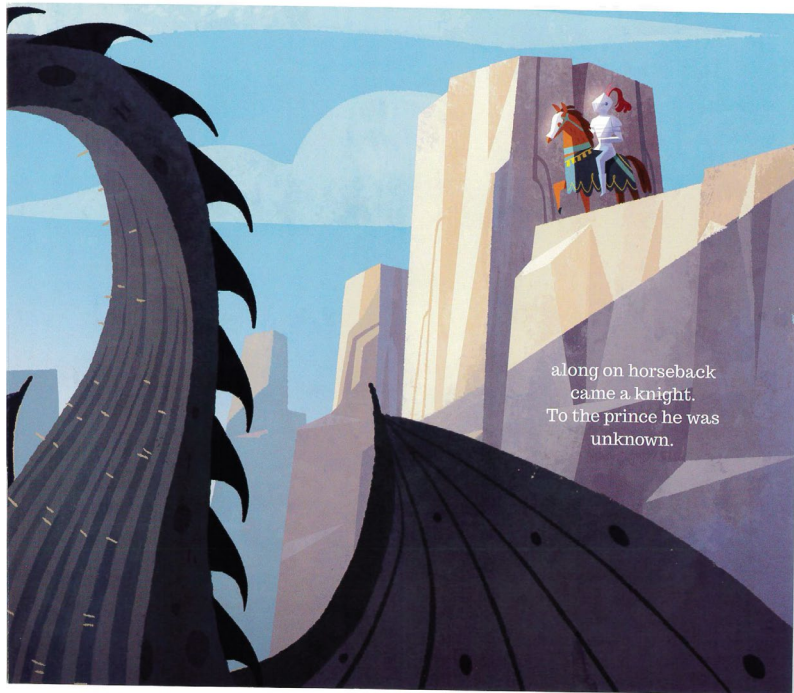
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406a



407a



along on horseback  
came a knight.  
To the prince he was  
unknown.

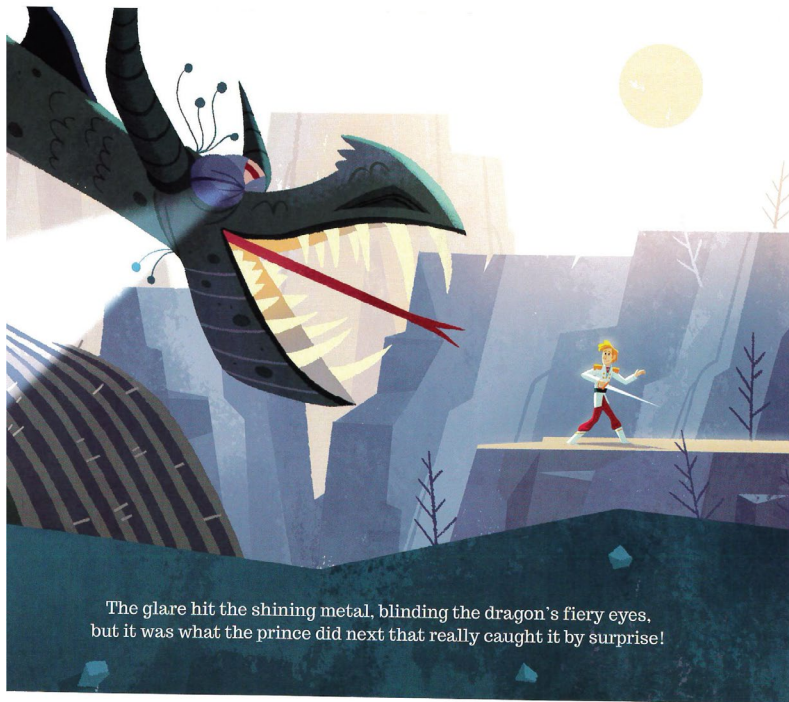


408a

The dragon charged upon our heroes,  
thinking it had already won,  
but the knight had a bold idea,  
and raised his shield to face the sun.



409a



The glare hit the shining metal, blinding the dragon's fiery eyes,  
but it was what the prince did next that really caught it by surprise!

410a



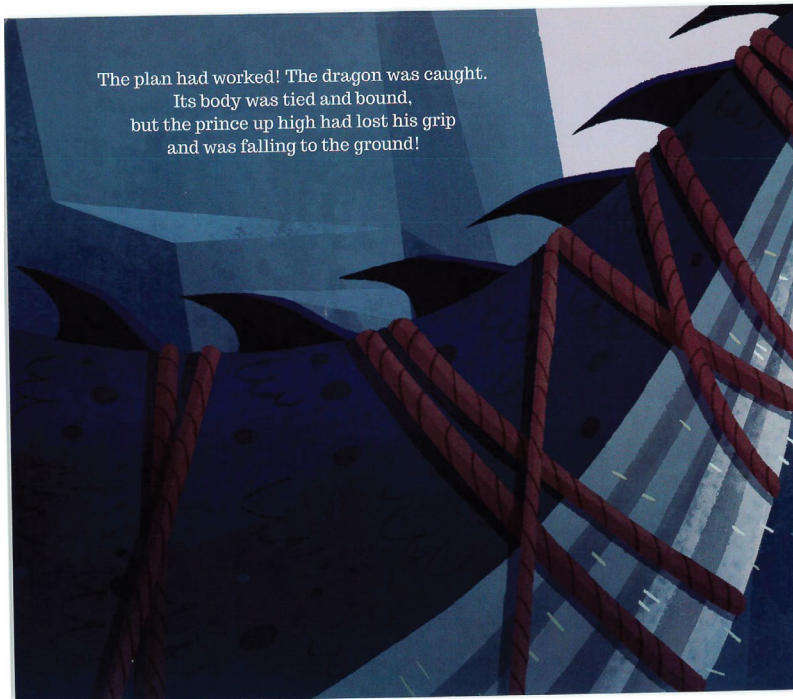
The prince had climbed atop the dragon  
and tied a rope around its head.

411a



412a

The plan had worked! The dragon was caught.  
Its body was tied and bound,  
but the prince up high had lost his grip  
and was falling to the ground!



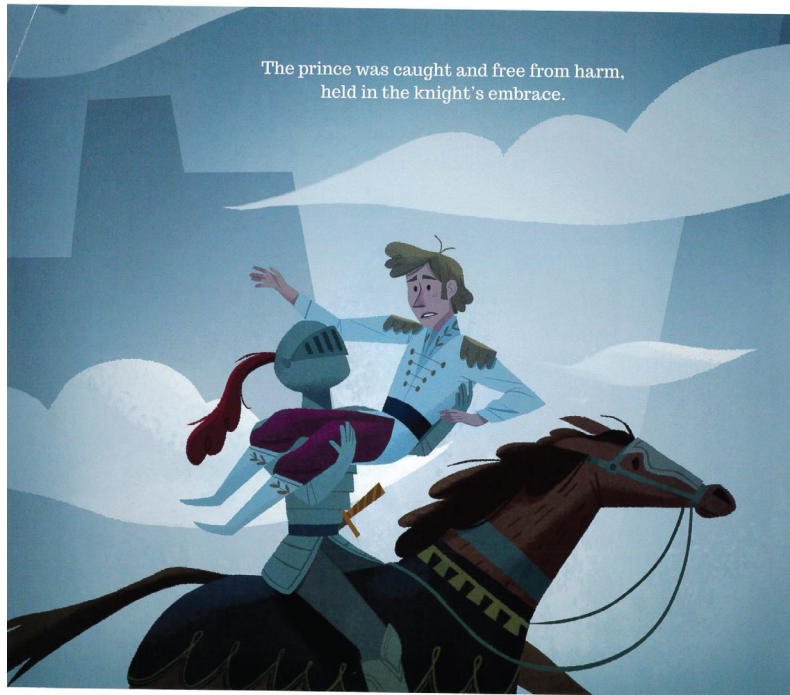
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414a



415a





416a



417a



And in a flash, to each it felt  
there simply was no other.

418a

The knight took off his helmet  
to reveal his handsome face.



419a



and as they gazed  
into each other's eyes,  
their hearts  
began to race.

420a

As the villagers returned,  
it became clear to those around  
that the prince's one true love  
had at last been surely found.



421a



422a



423a





424a



425a

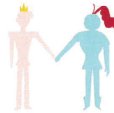


**DANIEL HAACK** began writing at a young age, although much of his earliest work centred exclusively around his desire to be a swashbuckling hero. Like the Prince and the Knight, he just wants to save the day and get the boy, too. He has since written for various publications and collections, and *Prince & Knight* is his debut children's book. He graduated from Ithaca College and now works in children's educational media, for which he won a Daytime Emmy Award. Originally from Mount Horeb, Wisconsin, and formerly a New Yorker, Daniel now lives in Los Angeles, California, USA.

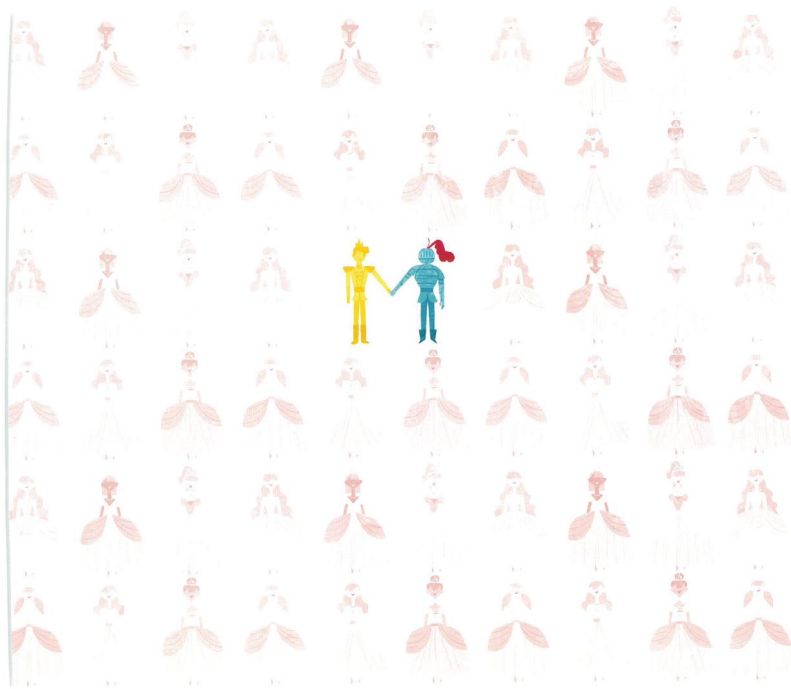
[danielhaack.com](http://danielhaack.com)

**STEVIE LEWIS** has been living on the road for the past two years, furthering her passion for climbing, art and the outdoors. Striving to live simply and tread lightly on the earth, she gathers inspiration from a variety of adventures, be it climbing in the high desert in central Oregon, hiking through the wilderness of Alaska, or sharing laughs with fellow travellers around a campfire. After working for years in animation, she now illustrates children's books and creates art based on her travels.

[chocoweete.com](http://chocoweete.com)



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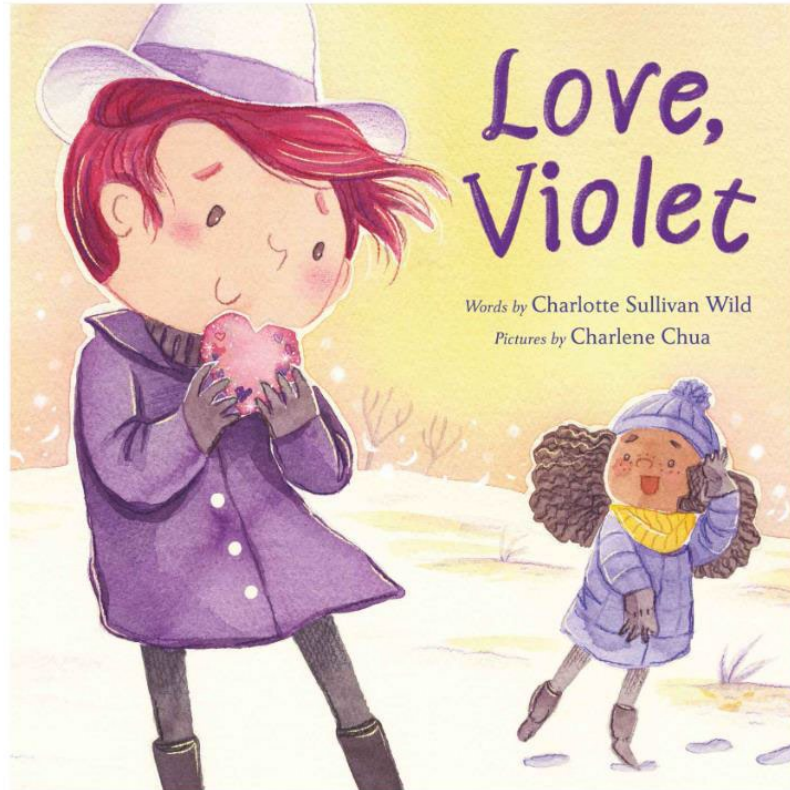


## Once upon a time.

in a kingdom far from here, there was a prince who would soon take the throne. His parents took him on a search for a bride. They travelled the land far and wide, but the prince was looking for something different in a partner...

Published in partnership with GLAAD. A portion of the proceeds from the sale of this book will be donated to accelerating LGBTQ acceptance. [glad.org](http://glad.org)





429a

*For Tara, wearer of adorable hats, who wooed me with handmade valentines.  
Cara mia, I still have a crush on you!  
Also for Melissa, Isabel, Benji and Brian, Jodi and Ro, David, Annie, Melody, Chelsea,  
Sandy, and everyone at Thrive Youth Center. For all of us who have longed for a story of  
our own. Love, Charlotte*

*For J. N. and H. Y., even though you'll never know —C. C.*

# Love, Violet



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Words by Charlotte Sullivan Wild

Pictures by Charlene Chua

Farrar Straus Giroux  
New York

430a

As far as Violet was concerned,  
only one person in her class raced like the wind.  
Only one had a leaping laugh.  
Only one made Violet's heart skip.



Mira.





Every day, Violet dreamed  
of astounding Mira with heroic feats  
and bringing her treasures  
and galloping off together on adventures!

But whenever Mira came near . . .



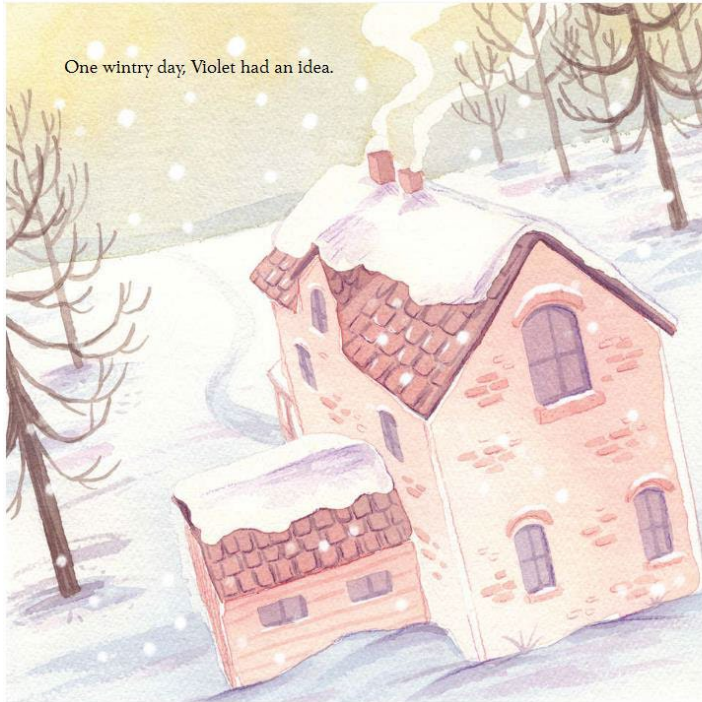
"What are you drawing, Violet?"

"Want to play horses, Violet?"



"Where's Violet? We're line buddies today."





One wintry day, Violet had an idea.



When it was just right,  
she signed her valentine,  
*Love, Violet.*



An idea with crayons and  
scissors, glitter and glue.



Maybe tomorrow their  
adventures would begin!



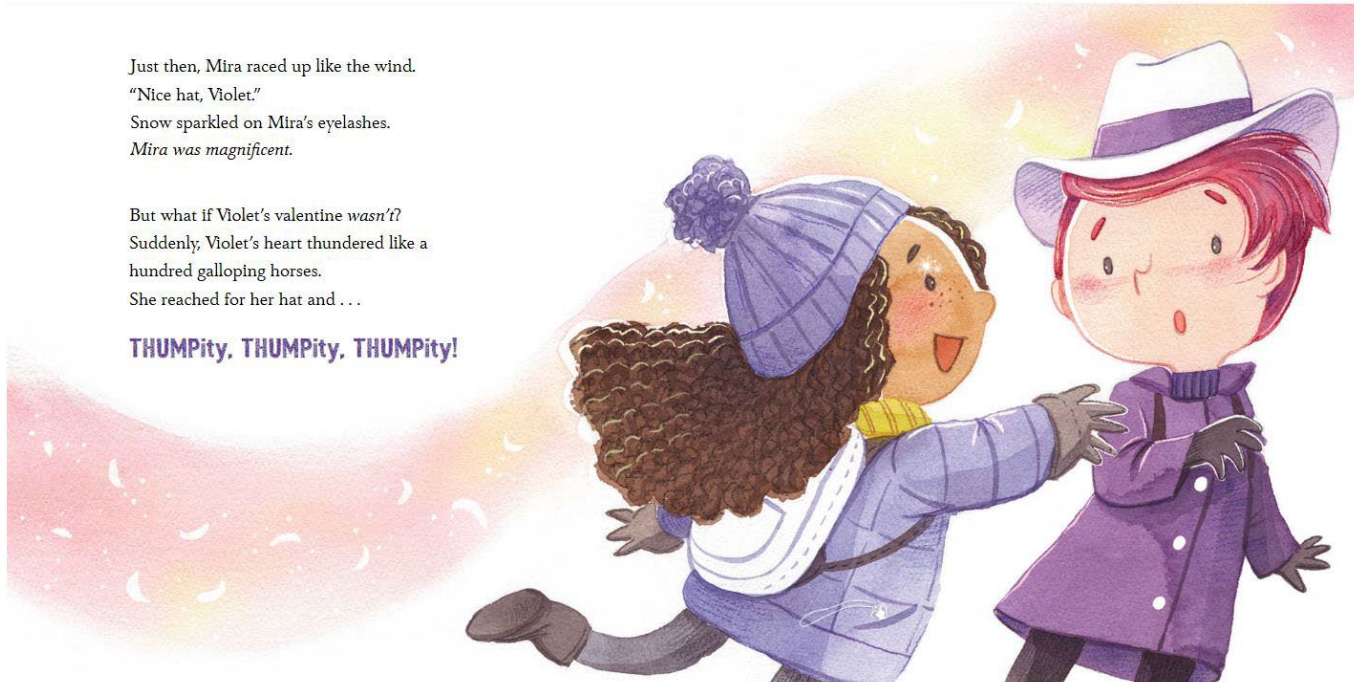
On Valentine's Day, Violet woke to shimmering snow.  
On went her boots and lucky cowgirl hat.  
And under that hat went Violet's surprise!

As Violet kicked through snow to school,  
Carlos asked, "Did everybody bring valentines?"  
"I bet you made a SPECIAL one for somebody!"  
teased Jade.  
"Ewww! Did not!" cried Carlos. "Violet, did YOU?"  
Violet blushed hot. "I gotta go." She darted through  
the wintry gust with her hat pulled low.

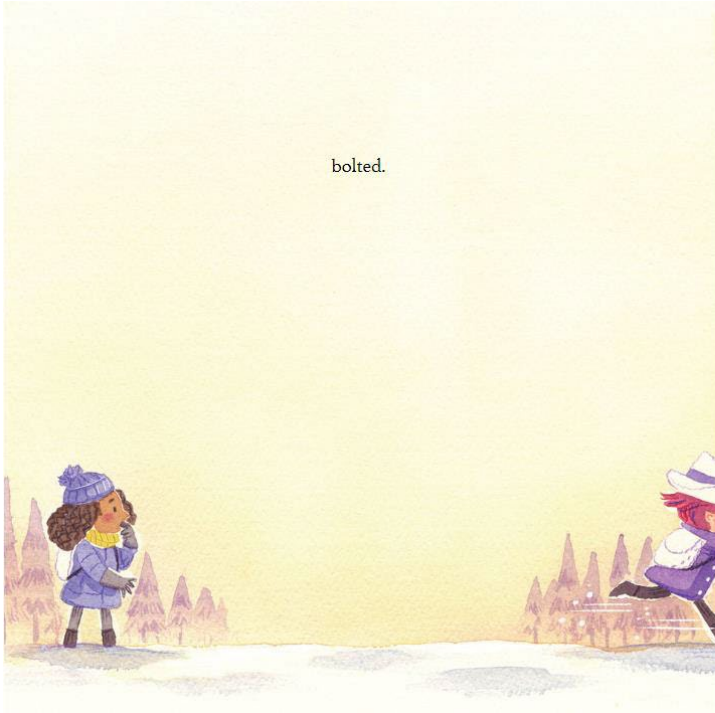
Just then, Mira raced up like the wind.  
“Nice hat, Violet.”  
Snow sparkled on Mira’s eyelashes.  
*Mira was magnificent.*

But what if Violet’s valentine *wasn’t*?  
Suddenly, Violet’s heart thundered like a  
hundred galloping horses.  
She reached for her hat and . . .

**THUMPity. THUMPity. THUMPity!**



bolted.



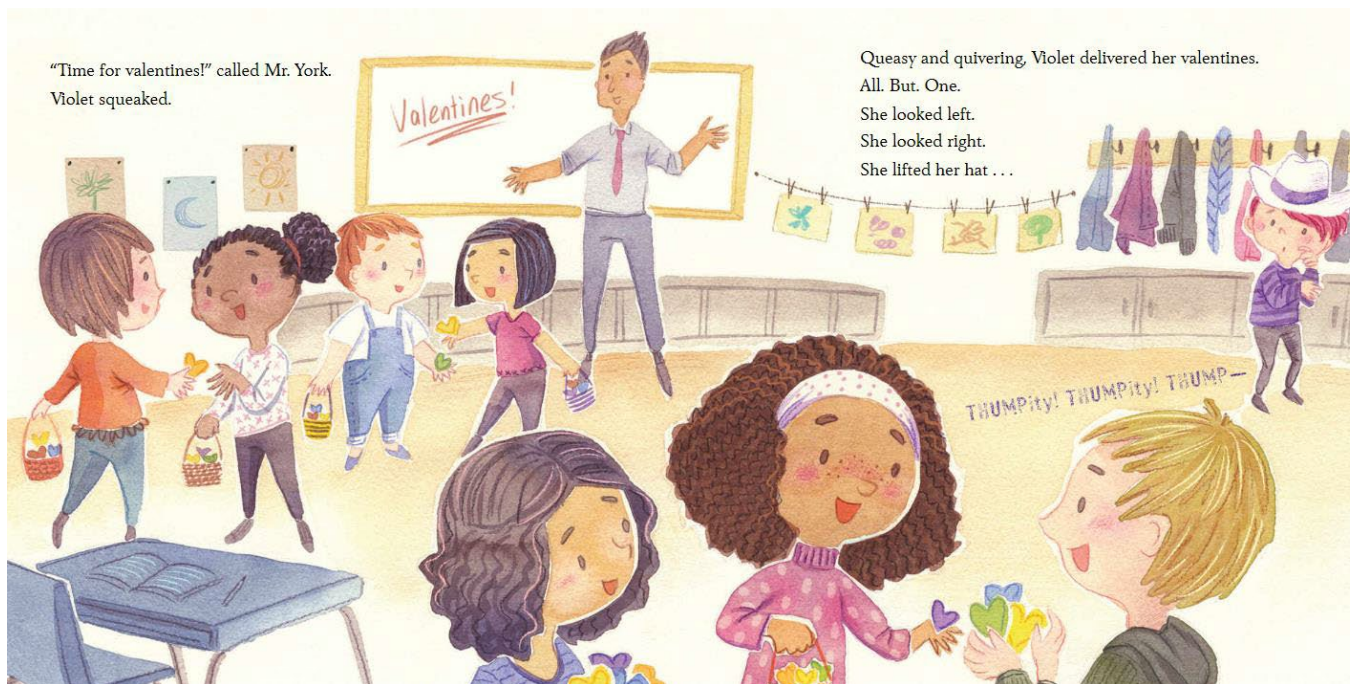
All day long, Violet's stomach lurched.  
What if Violet couldn't give her valentine?  
What if Mira didn't *want* her valentine?  
What if . . . they never adventured?



"Time for valentines!" called Mr. York.  
Violet squeaked.



Queasy and quivering, Violet delivered her valentines.  
All. But. One.  
She looked left.  
She looked right.  
She lifted her hat . . .







At recess, Violet made a lonely angel in the snow.  
How could she ever face Mira now?



Then laughter lassoed across the playground.  
A laugh like leaping horses.  
A laugh that warmed Violet down into her boots.

Violet sprang up.  
Only one person had praised her hat.  
Only one hadn't laughed when she fell.  
Only one had ever asked her to play horses.  
Could it be Mira *wanted* to be her valentine?



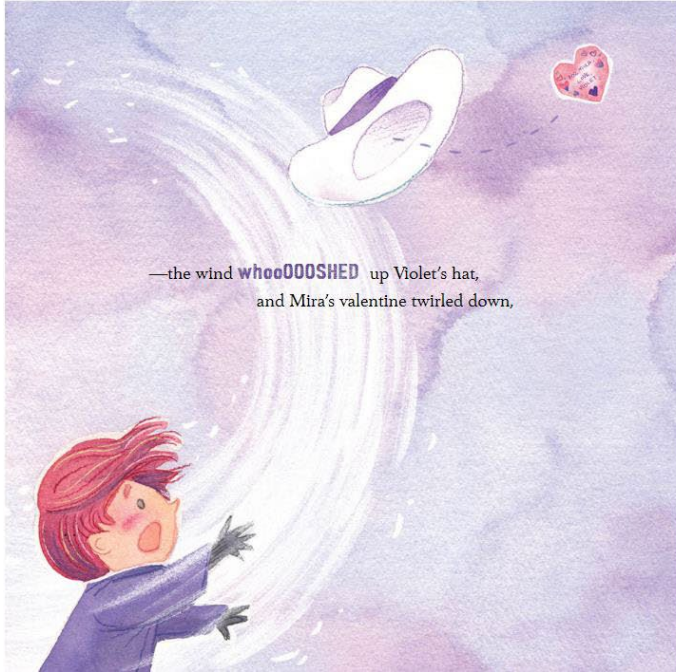


"MIRA!" cried Violet. "I have something for you!"  
Violet flew through the snow.

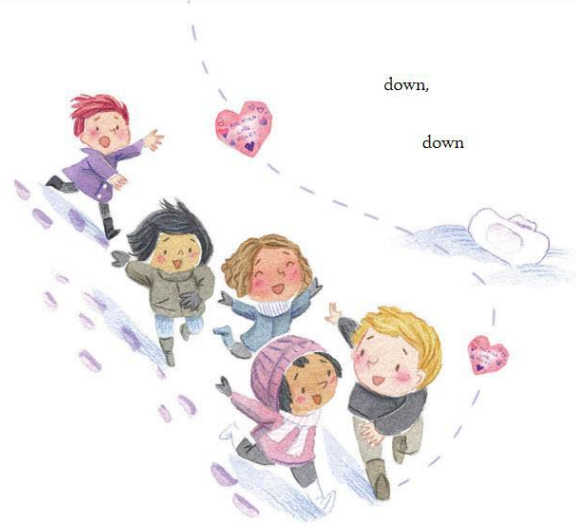
She scaled drifts!

Slid across ice!

She even dodged a barrage of snowballs  
under the jungle gym WHEN—



—the wind **whoOOOSHED** up Violet's hat,  
and Mira's valentine twirled down,



down,  
down

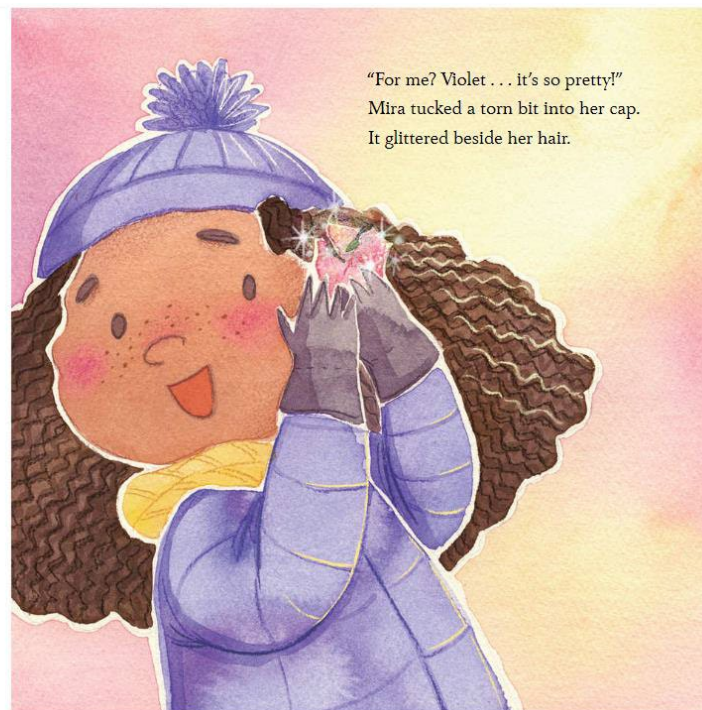
beneath stampeding feet.

“NOOOOOOO!”

Mira raced like the wind. "Violet! What's wrong?"  
Violet sniffed. "This was for you. But it's *ruined*."



"For me? Violet . . . it's so pretty!"  
Mira tucked a torn bit into her cap.  
It glittered beside her hair.





Then, with a shy smile, Mira reached into her pocket and pulled out a locket.  
"For you," said Mira.





And they were off,  
galloping over snowy drifts  
to see what they might find.

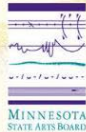
"Want to go on an adventure?" asked Violet.  
"Yes!" cried Mira.

Together.

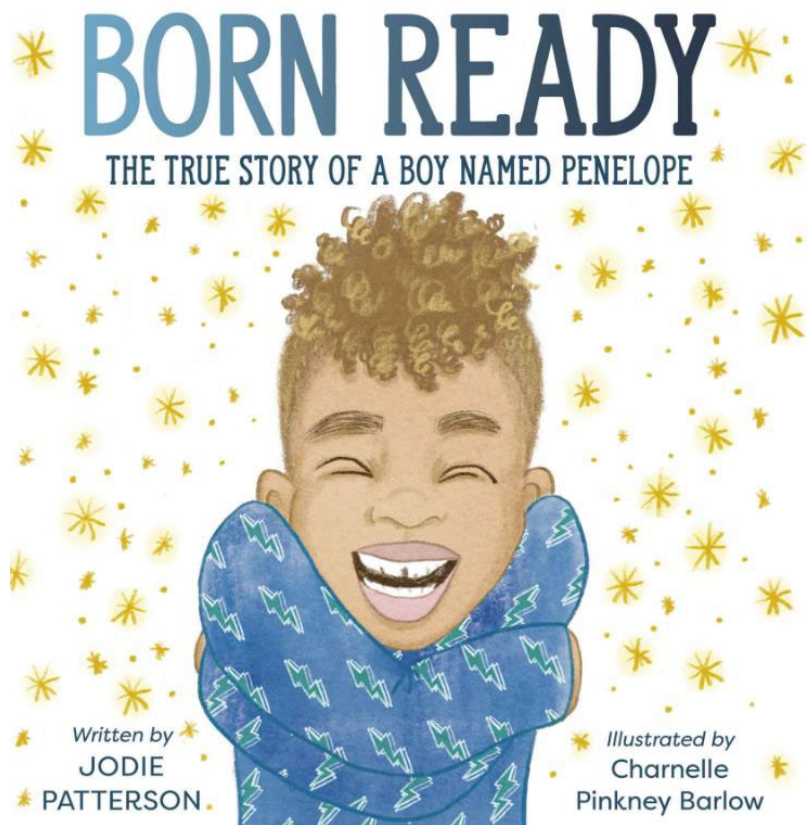
*Author's Note*

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Charlotte Sullivan Wild was a fiscal year 2015 recipient of an Artist Initiative grant from the Minnesota State Arts Board. The creation of this book was supported by the voters of Minnesota through a grant from the Minnesota State Arts Board, thanks to a legislative appropriation from the arts and cultural heritage fund.







# BORN READY

THE TRUE STORY OF A BOY NAMED PENELOPE

Written by  
**JODIE  
PATTERSON**

Illustrated by  
**Charnelle  
Pinkney Barlow**

This story is dedicated to my five children—my stars.  
We all have an opportunity to be flexible, to expand our vision, and to put love first.  
Thank you for helping me see more, do more, and love more.  
—J.P.

To my Dadda Ladda Mylee C. Pinkney  
—C.P.B.



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Illustrations and characters, for a variety of teaching tools,  
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Summary: Just before his fifth birthday, Penelope is born to his mother and his father.  
Description: 1st and 2nd ed. (New York : Crown Books for Young Readers, 2021). [Laurier et Agne. v. 1.] (Audience Grades K-1.)  
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Book design by ACES, Inc.

Random House Children's Books supports the First Amendment and celebrates the right to read.

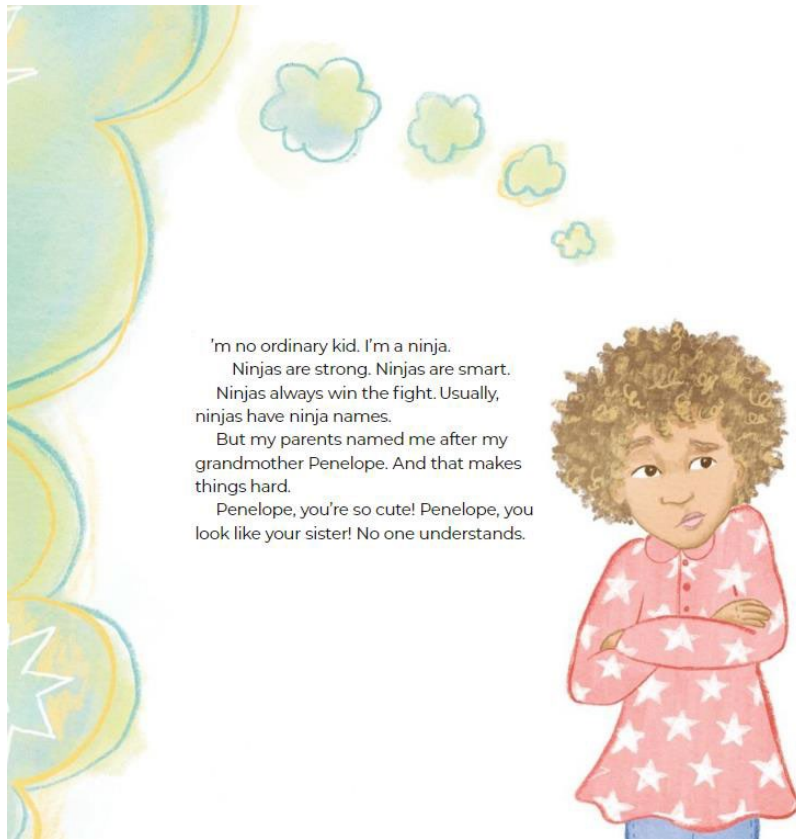
# BORN READY

## THE TRUE STORY OF A BOY NAMED PENELOPE

Written by  
JODIE PATTERSON  
Illustrated by  
Charnelle Pinkney Barlow



Crown Books for Young Readers  New York



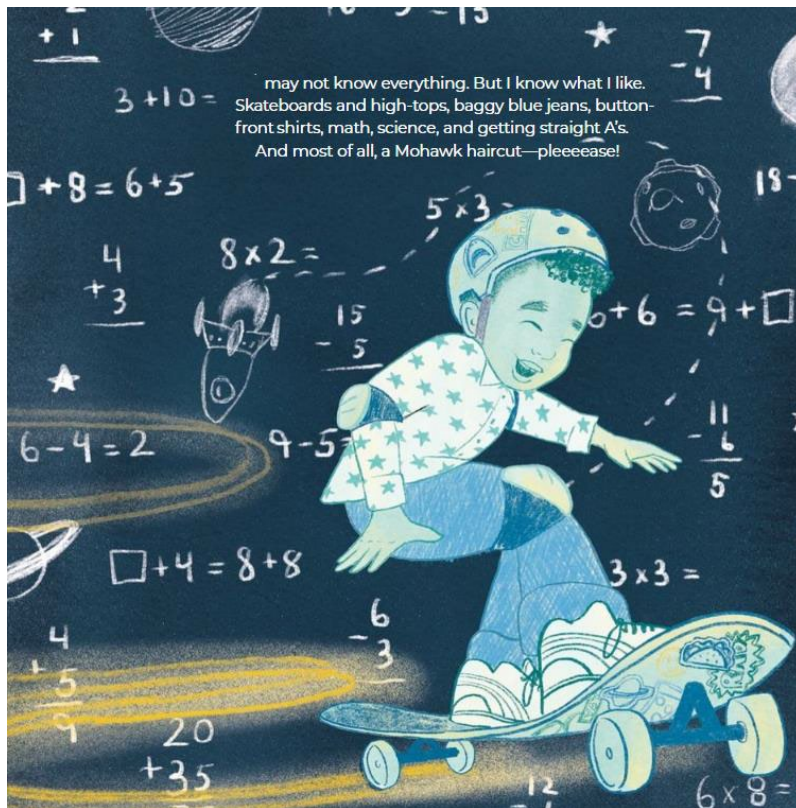
I'm no ordinary kid. I'm a ninja.  
Ninjas are strong. Ninjas are smart.  
Ninjas always win the fight. Usually,  
ninjas have ninja names.  
But my parents named me after my  
grandmother Penelope. And that makes  
things hard.  
Penelope, you're so cute! Penelope, you  
look like your sister! No one understands.

451a

Big Brother acts like he knows everything.  
"Penelope, do you know that the air around a lightning bolt  
is hotter than the sun?"  
"Nope."  
"Do you know that everything has a scientific explanation?"  
"Nope."



452a



453a



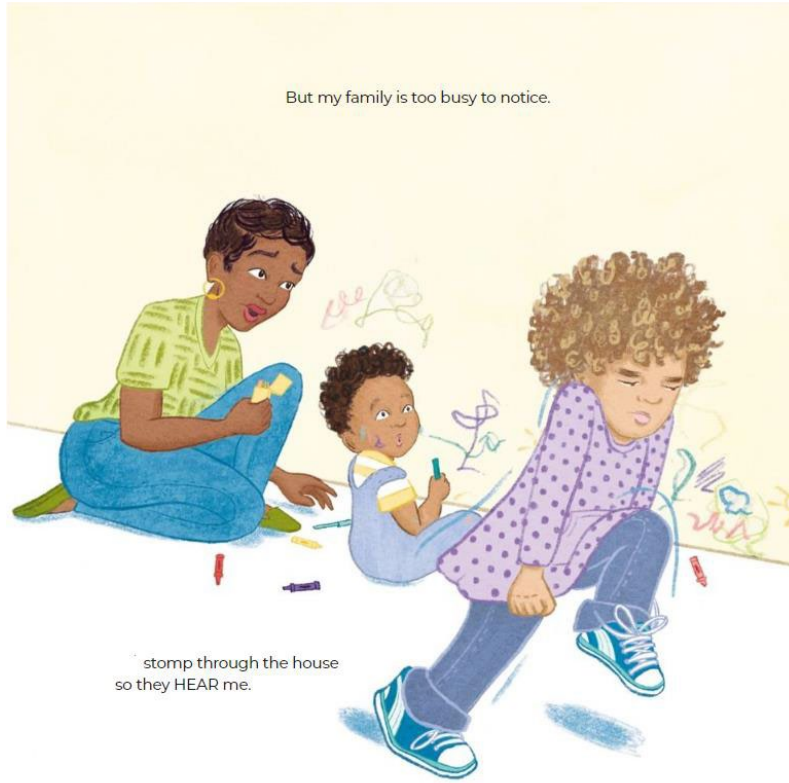
Mama is the busiest person I know.  
Papa is the strongest person I know.  
Big Brother is the smartest.  
Big Sister is the bossiest.  
And Baby, he's the happiest—he can  
make anyone smile.

454a



455a

But my family is too busy to notice.

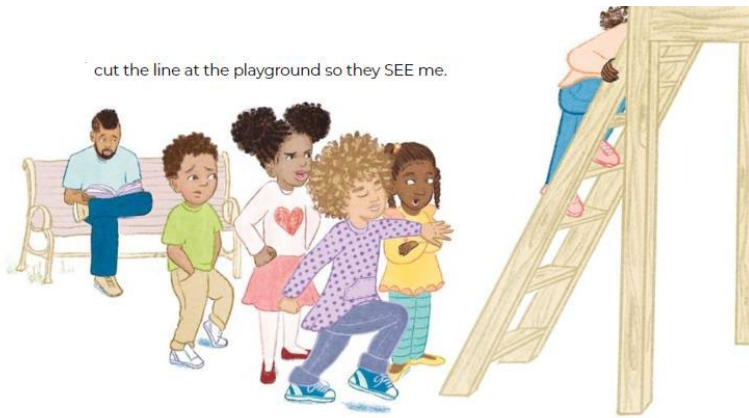


I stomp through the house  
so they HEAR me.



456a

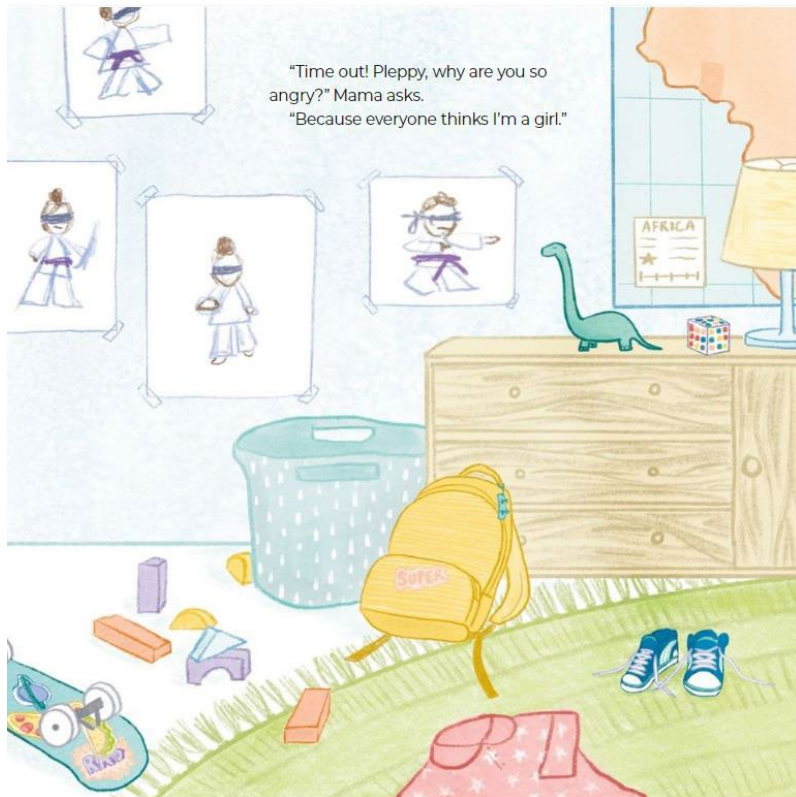
cut the line at the playground so they SEE me.



pound my fists hard so they FEEL me.



457a





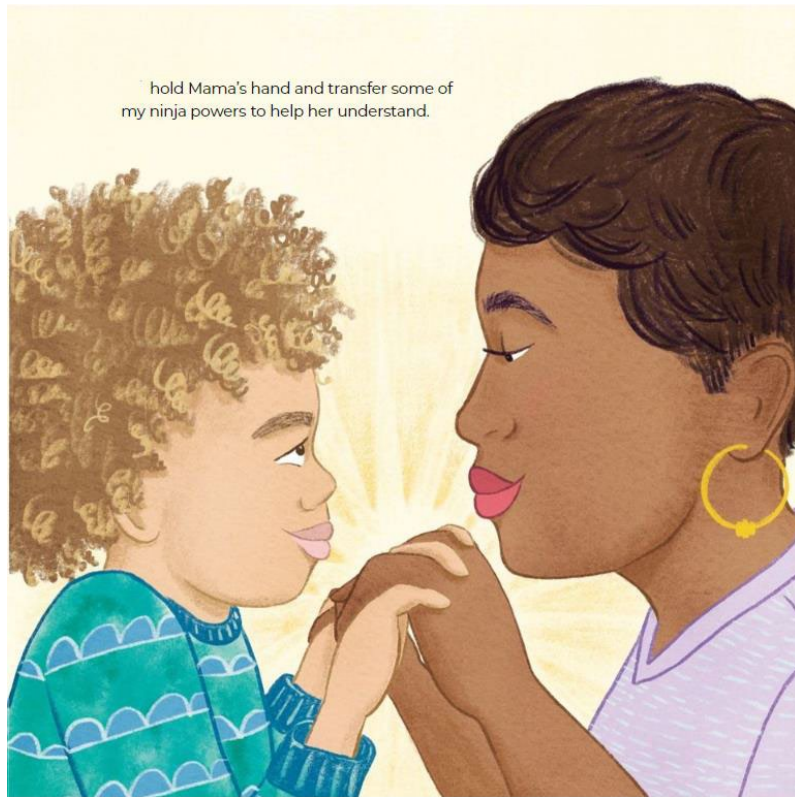
"Oh?"

Mama gets quiet.

"I love you, Mama, but I don't want to be you.  
I want to be Papa. I don't want tomorrow to come  
because tomorrow I'll look like you. Please help me,  
Mama. Help me be a boy."



460a

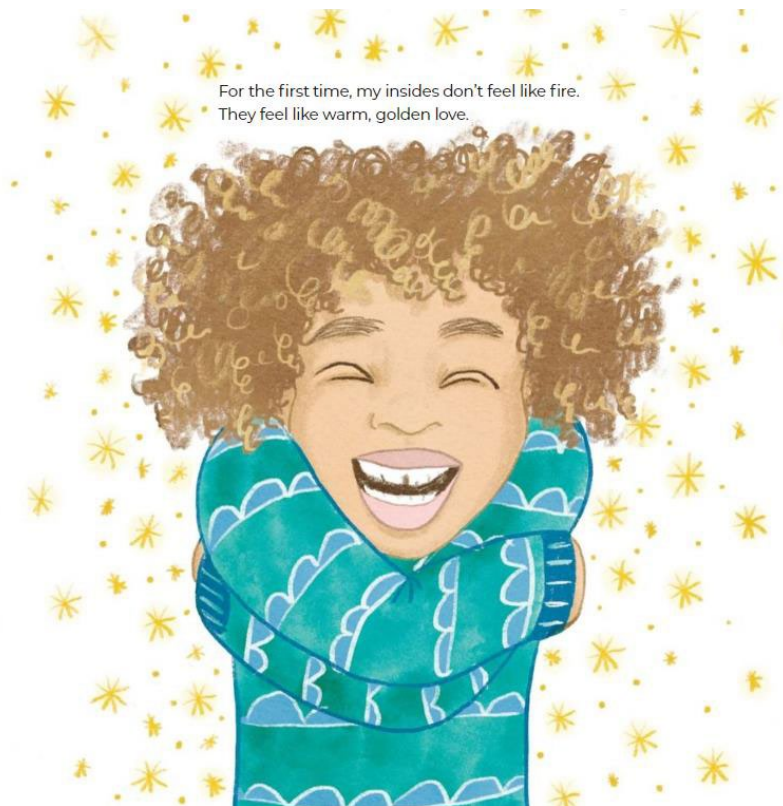


461a

Then Mama says the best word I've ever heard.  
"Yes."  
She says, "We will make a plan to tell everyone we love  
what we know."  
"What's that?"  
"You are a boy."



462a



For the first time, my insides don't feel like fire.  
They feel like warm, golden love.

463a

Our family is from all over the world, and Mama says that  
makes us wise.  
Grandpa G flies from Ghana for my birthday.  
Mama bakes a cake.  
We gather around the table.  
"Akwaaba!" says Mama. "Penelope is not a pretend boy or a  
tomboy. He is our five-year-old big boy."  
All eyes are stuck on me.





464a

Grandpa G slams his hand down on the table. "Ah! Chale! In my language of Twi, gender isn't such a big deal. We don't use gender pronouns."  
I don't understand everything, but I do know Grandpa G is smiling.

Good! Let's eat cake.



But Big Brother isn't smiling. He looks mad.  
"This doesn't make sense. You can't *become* a boy.  
You have to be born one."  
Mama puts her arms around both of us and pulls us  
in tight. "Not everything *needs* to make sense. *This is  
about love,*" she whispers.



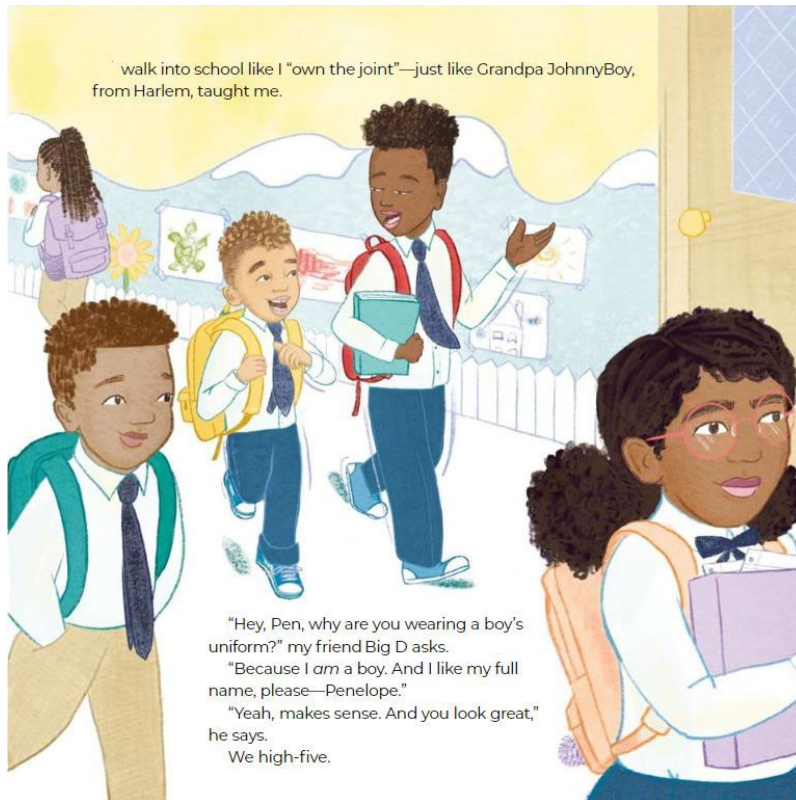
Papa stands up tall.  
"Well, P, if you want *me* to call you a  
boy, you'll have to tell me yourself."  
stand up tall, too. "I *am* a boy."



467a

It's Monday, and Mama says school is my responsibility.  
I'm going to show my friends all of me.





walk into school like I "own the joint"—just like Grandpa JohnnyBoy, from Harlem, taught me.

"Hey, Pen, why are you wearing a boy's uniform?" my friend Big D asks.  
"Because I *am* a boy. And I like my full name, please—Penelope."  
"Yeah, makes sense. And you look great," he says.  
We high-five.

Principal asks to see me.  
"Penelope, I heard your classmates were asking about  
your uniform," she says. "Were you embarrassed?"  
I want to tell Principal that ninjas don't get  
embarrassed—we "get busy." But I just shake  
my head no.



470a

"Your parents told me you are a boy. Is that true?"  
"I think like a boy. I feel like a boy. I might look different from other boys, but yes, I'm sure I'm a boy."

"Well, Penelope . . . today you're my teacher!"



471a

Mama says ninjas need to be powerful, so I study karate.  
"Lil P, you ready for this?" Master Bill asks.  
He's the loudest man I know. And I like it! He teaches me how to  
fight and train hard with my team.  
"Lil P, give me a left foot roundhouse kick!" Master Bill says.





472a

try my best, but it's confusing.  
"Nooooo. Your LEFT foot! Left!"  
Master Bill says: If you don't *do*, you can't *become*.  
Mama says: Winners are losers who get back up.  
say: Ninjas don't quit.



473a

practice every day.  
Breathing and stretching.  
Blocking and punching.



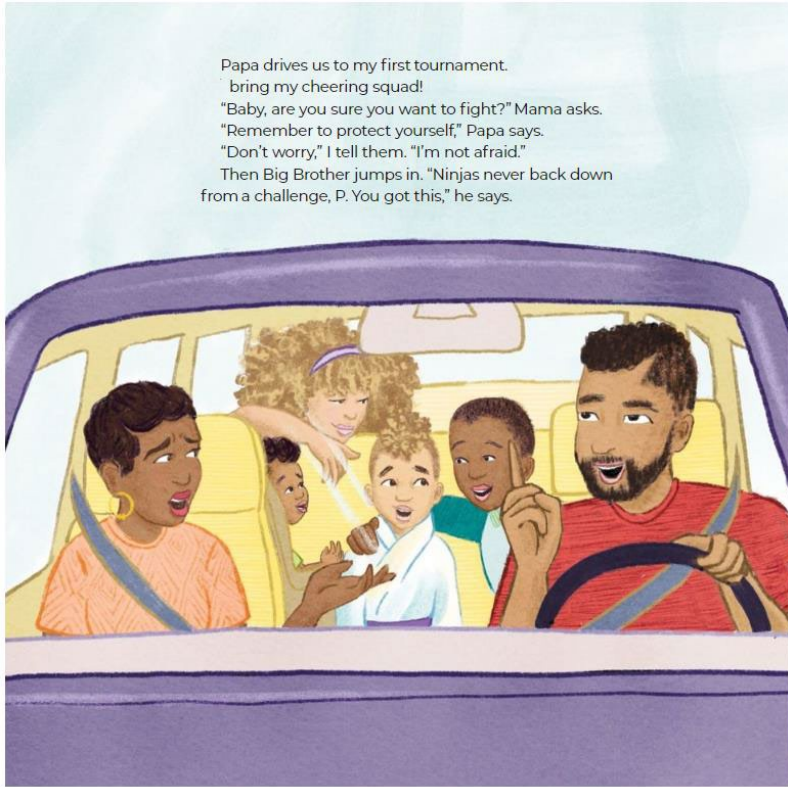
474a

Most important, I learn to get back up.  
Master Bill says I'm ready.



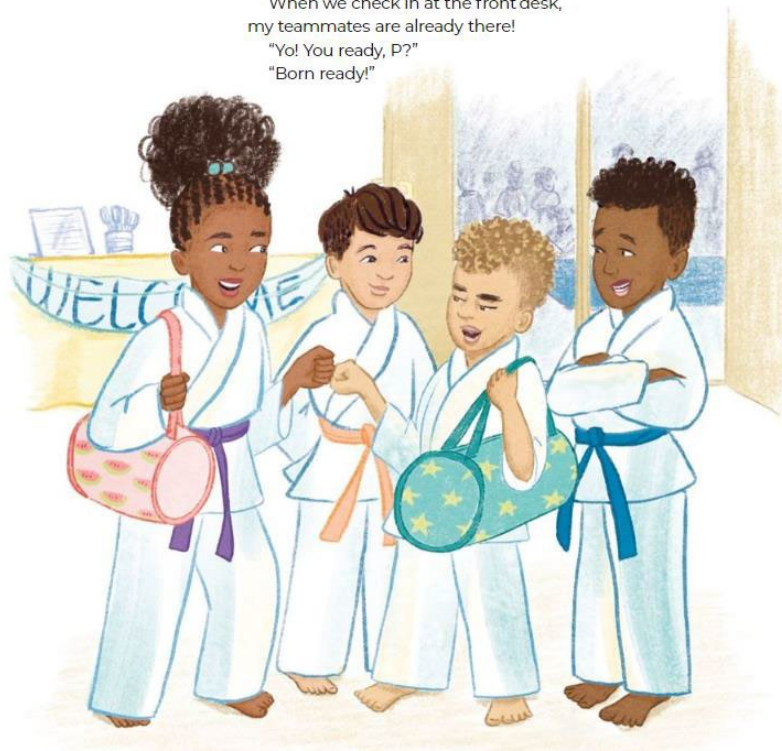
475a

Papa drives us to my first tournament.  
bring my cheering squad!  
"Baby, are you sure you want to fight?" Mama asks.  
"Remember to protect yourself," Papa says.  
"Don't worry," I tell them. "I'm not afraid."  
Then Big Brother jumps in. "Ninjas never back down  
from a challenge, P. You got this," he says.



476a

When we check in at the front desk,  
my teammates are already there!  
"Yo! You ready, P?"  
"Born ready!"



477a

My opponent is tall.  
My opponent is fast.  
We've both come to win.

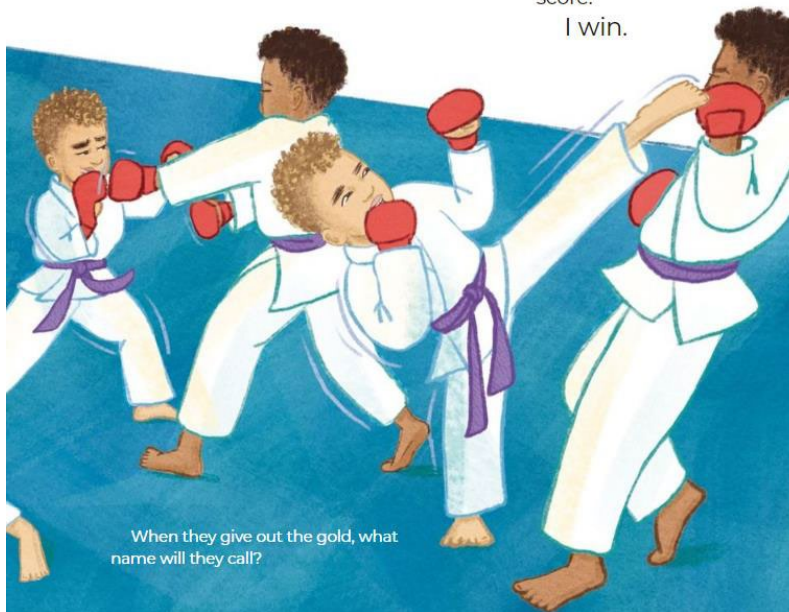
This won't be easy.



478a

shuffle my feet.  
I bob from side to side.  
Boom! Roundhouse kick to the head.

score.  
I win.



When they give out the gold, what  
name will they call?

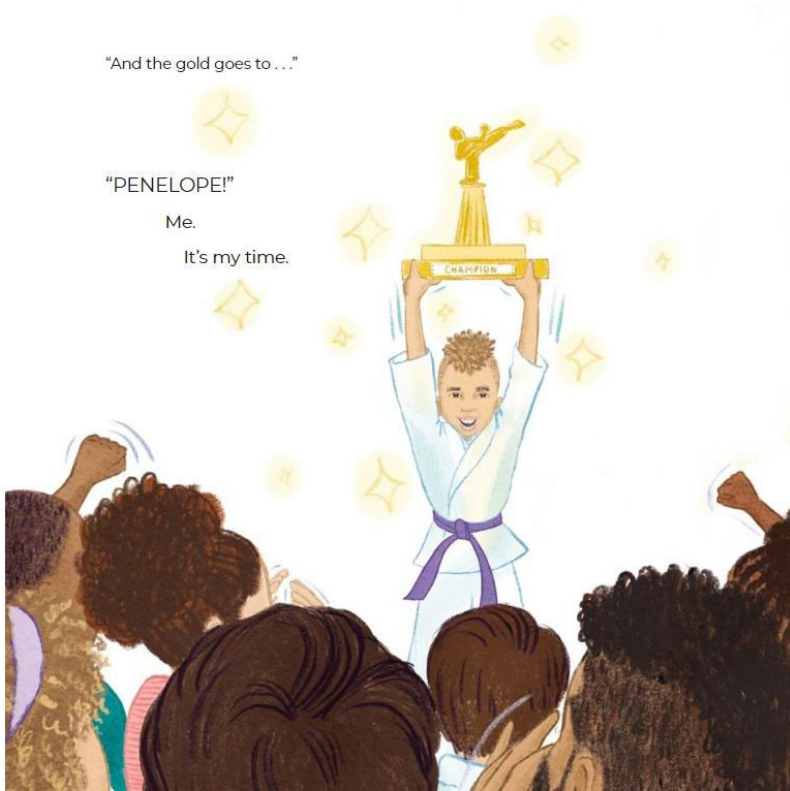
479a

"And the gold goes to..."

"PENELOPE!"

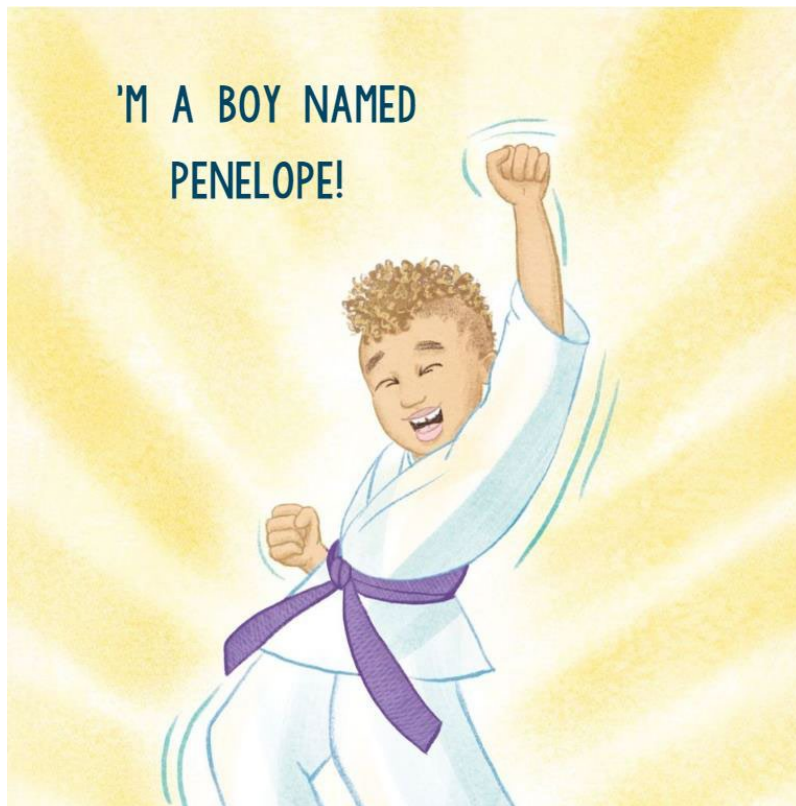
Me.

It's my time.





480a



481a

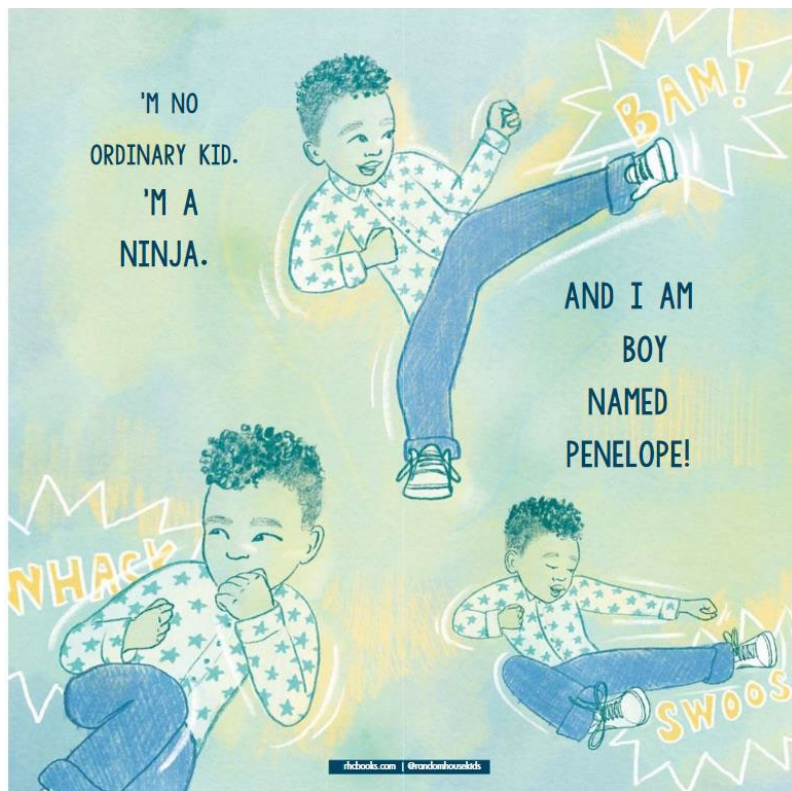


**JODIE PATTERSON**

is the author of *The Bold World: A Memoir of Family and Transformation* and was *Family Circle* magazine's Most Influential Mom in 2018. Jodie is also the chair of the Human Rights Campaign Foundation Board. She is the mother of five children, two of whom are self-proclaimed gender nonconformists—one transgender and another genderqueer. Jodie raises her family in Brooklyn, New York. [georgiary.com](http://georgiary.com)

**Charnelle Pinkney Barlow**

is an illustrator, an expert tea drinker, and a lover of all things doughnuts. She discovered a love for drawing and painting during her childhood in Poughkeepsie, New York, which led her to the world of children's book illustration. She now lives in Indianapolis, Indiana, with her husband, Jukabiea. [callmechartreuse.com](http://callmechartreuse.com)



---

From: Dina Brewer **REDACTED**  
To: **REDACTED** Elementary Recipients **REDACTED**  
Sent: Tue, Jan 24, 2023 1:05 pm  
Subject: Jan. 23 Donuts/Dialogue Follow up

Good Morning Sherwood Families,

I am writing this morning to share the slide deck, as well as the Q&A from yesterday's parent meeting regarding the use of books with LGBTQ+ characters.

You can find the slide deck [here](#).

You can find the questions/comments (and corresponding answers) from the parents who attended here.

In developing the Q&A document, the first question that was asked yesterday was, *"Is this a school to school option? If so, what is Dr. Brewers thoughts on how this will benefit the kids? Why did she choose yes for **REDACTED**?"*

I wanted to take the opportunity to give all our **REDACTED** families an answer to this question. While this is not a "school to school" option, but a systemwide initiative, I would like to share my thoughts with you. I would like to start with sharing how sad I was after the meeting. In my 13 years as principal of **REDACTED** was one of the most difficult meetings I have facilitated. As I shared at the meeting, what matters most to me is that all students and their families feel welcome, accepted and most importantly safe when they walk through our doors.

I'm disheartened to share that after that meeting, several people (both staff and parents) expressed to me that they felt less safe as a result of some of the comments made by their community members.

The one overwhelming take away for me was that everyone in that room was afraid of something. Afraid for very different reasons, but afraid nonetheless. The fear is understandable – especially when we fear for our children. But acting on that fear in a way that marginalizes others, to the point that they become either villainized or invisible is not the example we want to set for our children.

Fear is a powerful motivator and can make people say and do things that they might not otherwise. To accommodate those fears, the county is considering an “opt out” for parents who do not want their children to hear the books with LGBTQ+ characters in them. I disagree with this decision unequivocally. Personally, I would liken this to allowing families to opt out of books with characters from marginalized groups (for example, Jewish characters, Muslim characters, African-American characters to name just a few).

While I am sad at the tone of yesterday's meeting, I remain hopeful because of the many voices I heard from after the meeting.

For example, I received this email last night after the meeting from a parent who attended:

*Woah! That was intense. I really just wanted to say thank you for having the donuts and dialogue conversation this evening. After initially hearing about the curriculum, I was not in support of including these books into lessons primarily due to an age appropriate concern.*

*However, I want to say that I really appreciated you defending this roll out as a preventive method of creating inclusion and acceptance before the kids get to the middle school level, where we as parents really hear about the struggles with kids in the pre-adolescent stages. This makes a lot of sense in supporting our growing kids! If educators can support kids and develop empathy at this young age, the inclusion and acceptance will only grow as the kids get older! Duh. I am ashamed I didn't even think of that. And so, again, I appreciate the conversation that we had, despite some shocking turns it may have taken.*

My hope remains that if we are open to continuing the dialogue, we can teach children to better understand those who may not think exactly the way they think, but to accept them anyway.

Sincerely,  
Dina Brewer, Ed.D  
Principal

\* \* \*

---

**From:** Svitlana Roman [REDACTED]  
**Date:** Sat, Feb 25, 2023 at 8:39 AM  
**Subject:** Re: [EXTERNAL] Re: Follow Up  
**To:** Logan, Kisha [REDACTED]  
**CC:** Campbell, Tamitha E [REDACTED], Jeff Roman [REDACTED], Swerdzewski, Laura M [REDACTED]

Good morning Dr. Logan,

Allow me to summarize our discussions and outcome of the conversation, which I will be taking to the BOE for further

consideration:

1. These books are approved as supplemental materials.
2. These books are voluntary for teachers to be used and parents are able to out their children.
3. [REDACTED] Elementary is insisting that all teachers use at least one of these books to support efforts in this fight for inclusivity.

I will now further address these questions with the PTA, the Board of Education, etc.

I don't understand how such simple questions as ours can not be addressed in a simple, straightforward and respectful manner.

Please feel free to let me know if you disagree with any of my summary points, otherwise, thank you for your time and I will be continuing to pursue this via other channels.

Thank you,

Svitlana Roman.

487a

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On Fri, Feb 24, 2023 at 10:48 AM Logan, Kisha  
**REDACTED** wrote:

Dear Mr. Roman,

I apologize for the delay in my response. Thank you for your patience. We have communicated that as with all curriculum resources, there is an expectation that teachers utilize the texts as part of our district-wide efforts to create more inclusive classrooms. These texts exist as options available to be used during Unit 6 of the elementary ELA curriculum.

As you've noted, these books are new to our elementary teachers, and we have asked school leaders to ensure they have the coaching and professional learning they need to incorporate the texts with care. As the principal, Ms. Swerdzewski can work with her staff to implement a schoolwide plan to introduce these texts to students.

As far as documentation, I have previously shared with Mrs. Roman the MCPS messaging sent on January 12. If you would like to email/contact the Board of Education, more information can be found here: <https://www2.montgomeryschoolsmd.org/boe/>.

Thank you,

Kisha Logan, Ed.D.

Director

Department of Pre-K-12 Curriculum

& Districtwide Programs

Office of Curriculum & Instructional Programs (OCIP)

**REDACTED**



---

**From:** Jeff Roman [REDACTED]  
**Sent:** Thursday, February 16, 2023 9:26 PM  
**To:** Logan, Kisha [REDACTED]  
**Cc:** Svitlana Roman [REDACTED]; Cambell, Tamitha E [REDACTED]; Swerdzewski, Laura M [REDACTED]  
**Subject:** Re: [EXTERNAL] Re: Follow Up

Dr. Logan,

We have repeatedly asked that communication be provided to all teachers and parents that this newly introduced LGBTQ material is optional and not mandatory.

At this point, Ms. Swerdzewski appears to be contravening the guidance as stipulated by the MCPS Board. We keep getting convoluted responses about inclusive instruction and cultural relevance, but we're not getting a clear response to our straightforward request that communicate to its staff and parents that these materials are optional.

My wife and I are asking one more time if Ms. Swerdzewski will communicate that this material is optional in the classroom to her teachers. If she will not, please provide supporting documentation that Ms. Swerdzewski has the authority to ignore the MCPS guidance as written.

If no documentation is provided, please offer contact information for MCPS Board members so that we may bring to their attention our simple request.

Thank you,

Jeffrey Roman

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On Thu, Feb 16, 2023, 16:21 Logan, Kisha  
**REDACTED** wrote:

Good evening, Mrs. Roman,

I apologize for the delay in my response. I have been in contact with Ms. Swerdzewski and we are in complete agreement that it is not optional for teachers to incorporate culturally relevant and inclusive instructional materials into instruction. As with all curriculum resources, there is an expectation that teachers utilize the texts as a part of instruction. It is important to note that the newly introduced LGBTQ inclusive texts are supplemental and therefore their use is determined by the classroom teacher. It is standard practice that teachers have a choice regarding which materials to use.

MCPS is committed to ensuring our curriculum is inclusive of all and represents the diversity of our community. The materials are part of what makes the curriculum inclusive. Support will be provided to assist teachers that are not yet comfortable with incorporating these texts as part of instruction.

We will provide additional clarity to principals who will then work with their staff members prior to the inclusion of the texts in instruction.

If you have further questions, please let me know and I can set up a time for a phone call.

Thank you,

Kisha Logan, Ed.D.

Director, Department of Pre-K-12 Curriculum  
& Districtwide Programs

Office of Curriculum & Instructional Programs (OCIP)  
(240) 740-3930

490a

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**From:** Svitlana Roman [REDACTED]  
**Sent:** Wednesday, February 15, 2023 9:54 PM  
**To:** Logan, Kisha [REDACTED]  
**Cc:** Campbell, Tamitha E [REDACTED]; Jeff Roman [REDACTED]; Swerdzewski, Laura M [REDACTED]  
**Subject:** Re: [EXTERNAL] Re: Follow Up

Good evening, Dr. Logan,

I am following up on my previous e-mail. Given that students at Elementary are going over Unit 6, which is when these texts are set to be introduced, I believe it would be negligent and unethical to allow for this clear miscommunication to remain unaddressed in a timely manner.

Thank you for your attention to this matter.

Svitlana Roman.

---

On Fri, Feb 10, 2023 at 9:20 AM Svitlana Roman [REDACTED] wrote:

Dr. Logan,

That is not the response I received from Ms.Swerdzewski when we met in person the other day. [REDACTED] teacher I reached out to first, also was unaware that the use of these books is voluntary.

It makes me believe that the messaging of MCPS is confusing and inconsistent.

I would like to request that clarification be distributed to all the teachers clearly outlining that using these materials is voluntary. In addition, I would like to request that parents receive a form making it easy to opt out of these texts being presented to their children.

491a

Please let me know when this clarification will go out to the teachers, staff, and parents at **REDACTED** Elementary.

Thank you,  
Svitlana

---

On Fri, Feb 10, 2023 at 5:10 PM Logan, Kisha **REDACTED** wrote:

Good afternoon, Mrs. Roman,

Yes, teachers can choose to not use new, inclusive texts as they work with their teams and plan instruction. Here is the message MCPS shared with the community:

As a reflection of our ongoing commitment to ensure our curriculum is inclusive and affirming of all students, MCPS has approved a selection of LGBTQ+-inclusive texts for use in the classroom. Reading stories that reflect the diversity of our school community and world encourages respect and empathy for all. As with all curriculum resources, there is an expectation that teachers utilize the texts as a part of instruction. **It is important to note that using the materials is optional as it is standard practice that teachers have a choice regarding which materials to use.**

If you need further clarification, please let me know and I can schedule a time to give you a call next week.

Thank you.

Kisha Logan, Ed.D.  
Director

492a

Department of Pre-K-12 Curriculum  
& Districtwide Programs  
Office of Curriculum & Instructional Programs (OCIP)  
**REDACTED**

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**From:** Svitlana Roman **REDACTED**  
**Sent:** Wednesday, February 8, 2023 9:01 PM  
**To:** Logan Kisha **REDACTED**  
**Cc:** Cambell, Tamita E **REDACTED**; Jeff Roman  
**REDACTED**; Swerdzewski, Laura M **REDACTED**  
**Subject:** Re: [EXTERNAL] Re: Follow Up

Dr. Logan,

With all the respect, I don't believe you answered my question:

Does that mean that teachers can chose to not use the LGBTQ+ approved texts?

Thank you,

---

On Wed, Feb 8, 2023 at 7:52 PM Logan, Kisha **REDACTED** wrote:

Good evening, Mrs. Roman,

As is standard practice, teachers are provided with a variety of approved texts to choose from as they plan instruction and use their knowledge and expertise to identify the best selection for their students. This does mean teachers use their knowledge of their students and the curriculum to choose an approved text to support instruction.

Thank you.

Kisha Logan, Ed.D.

493a

Director  
Department of Pre-K-12 Curriculum  
& Districtwide Programs  
Office of Curriculum & Instructional Programs (OCIP)  
**REDACTED**

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**From:** Svitlana Roman **REDACTED**  
**Sent:** Monday, February 6, 2023 9:23 PM  
**To:** Logan Kisha **REDACTED**  
**Cc:** Cambell, Tamita E **REDACTED**; Jeff Roman **REDACTED**; Swerdzewski, Laura M **REDACTED**  
**Subject:** Re: [EXTERNAL] Re: Follow Up

Dr. Logan,

Does that mean that teachers can chose to not use the LGBTQ+ approved texts, since it appears there are multiple other approved texts.

I would ask you to be specific and support your response with documentation.

Thank you for your attention to this matter.

Svitlana Roman

---

On Mon, Feb 6, 2023 at 7:48 PM Logan, Kisha **REDACTED** wrote:

Hello, Mrs. Roman,

Thank you for your question. The Office of Curriculum and Instructional Programs provides teachers with instructional materials and resources to support instruction. As is standard practice, teachers are provided with a variety of approved texts to choose from as they plan instruction and use their knowledge

494a

and expertise to identify the best selection for their students.

Please let me know if you have further questions.

Thank you.

Kisha Logan, Ed.D.

Director

Department of Pre-K-12 Curriculum

& Districtwide Programs

Office of Curriculum & Instructional Programs (OCIP)

**REDACTED**

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**From:** Svitlana Roman **REDACTED**

**Sent:** Sunday, February 5, 2023 7:34 PM

**To:** Swerdzewski, Laura M **REDACTED**

**Cc:** Cambell, Tamita E **REDACTED**; Jeff Roman

**REDACTED**; Logan, Kisha **REDACTED**

**Subject:** [EXTERNAL] Re: Follow Up

\* \* \*

Dear Ms. Swerdzewski,

I would like to start by saying thank you for your time and attention.

Could you please acknowledge the letter (attached) and honor my written request to opt out from such materials.

Further, I would like to direct my next question to Dr. Logan:

Please interpret the highlighted statement below:

As a reflection of our ongoing commitment to ensure our curriculum is inclusive and affirming of all students, MCPS has approved a selection of LGBTQ+-inclusive texts for use in the classroom. Reading

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stories that reflect the diversity of our school community and world encourages respect and empathy for all. As with all curriculum resources, there is an expectation that teachers utilize the texts as a part of instruction. **It is important to note that using the materials is optional as it is standard practice that teachers have a choice regarding which materials to use.**

Please provide any documentation to support your interpretation.

Thank you and I look forward to the on-going discussion.

Svitlana Roman.

BFE – Letter.pdf

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On Wed, Feb 1, 2023 at 4:55 PM Swerdzewski, Laura M **REDACTED** wrote:

Good Afternoon Mr. and Mrs. Roman,

Following our meeting on Monday, I reached out to Dr. Kisha Logan, Director Department of Pre-K-12 Curriculum & Districtwide Programs, as well as Dr. Tamitha Campbell, Director, School Support and Well-being (I have cc'd them on this email). In terms of your question regarding the materials being optional for teachers to use and for me to send a letter stating it, what I had shared at our meeting is correct that the inclusion of these books is not optional for schools and therefore, as a principal I cannot direct teachers not to use them. As these texts are newly added supplemental texts, teachers have choice/option with them when they are used during the unit of study. The teachers are **REDACTED** Elementary



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School will be using them during Unit 6 of the Benchmark Advance Curriculum. As I had shared with you it is your right to ask that **REDACTED** not be present when this book is read to the class and if any other parents reach out I will meet with them to have the same discussion we engaged in and they can make a decision for their family. Teachers will be including the day that the book will be read to the class in their newsletter, which will help you plan accordingly.

I know that a lot of our conversation and your concerns reach beyond **REDACTED** Elementary School and I am hoping if you need more information Dr. Logan can help or direct you further.

Best Regards,

Laura Swerdzewski  
Principal  
**REDACTED**

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**From:** Enas Barakat [REDACTED]  
**Date:** March 20, 2023 at 1:03:54 PM EDT  
**To:** "Johnson, Matthew W" [REDACTED]  
**Cc:** Tamer Mahmoud [REDACTED]; "Levin, Amanda M" [REDACTED]; "Levin, Valerie M" [REDACTED]  
**Subject:** Re: [EXTERNAL] Re: LGBTQ Reading

Thank you for the accommodation.

Best Regards,  
Ena Barakat

---

On Mar 20, 2023, at 12:50 PM, Johnson, Matthew W [REDACTED] wrote:

No problem and Ms. Levin will have the student sit outside the classroom during the activity.

---

**From:** Tamer Mahmoud [REDACTED]  
**Sent:** Monday, March 20, 2023 12:16 PM  
**To:** Johnson, Matthew W [REDACTED]  
**Cc:** Enas Barakat [REDACTED]  
**Subject:** [EXTERNAL] Re: LGBTQ Reading

\* \* \*

Hi Mr. Johnson,

Over the weekend, my wife and I read the book *Prince and Knight*. Our decision to opt out [REDACTED] is still the same. Please confirm that [REDACTED] will leave the classroom and work on an alternative activity when the book is being read.

Best regards,  
Tamer Mahmoud

---

On Mar 17, 2023, at 9:40 AM, Johnson, Matthew W  
**REDACTED** wrote:

Good morning,

Thanks for reaching out regarding your concerns over the book *Prince and Knight* which the grade 2 team has selected to read. The book is very much about understanding that there are many differences between people and being accepting is the goal.

I have put the book in the main office if you would like to take a look at it to see if it is something you could support having your child read.

MCPS is not supporting parents opting out of the LGBTQ readings and teachers are not required to provide alternative assignments.

I encourage you to look over the selected book before making a final decision.

Matt Johnson  
Acting Principal  
**REDACTED**

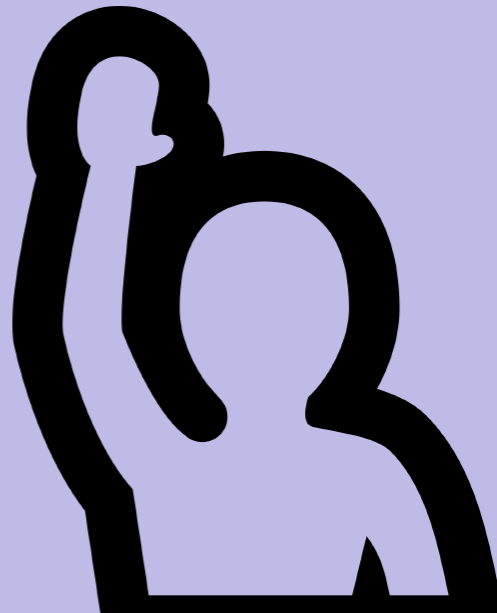


# LGBTQ+ Inclusive Picture Books



## WHO IS HERE TONIGHT?

- PEP
- KINDERGARTEN
- GRADE 1
- GRADE 2
- GRADE 3
- GRADE 4
- GRADE 5
- DISCRETE



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## **INTRO SLIDE - MCPS STAFF INTRO**

***Margaret B. Gaudino***  
***Coordinator, Evaluation and Selection of Instructional***  
***Materials and Library Books***  
***School Library Media Programs***

***Eugenia (Jeanie) Dawson, Ed.D.***  
***Director, School Support and Well-Being***

***Kisha Logan, Ed.D.***  
***Director***  
***Department of PreK-12 Curriculum & Districtwide***  
***Programs***  
***Office of Curriculum & Instructional Programs (OCIP)***

## GROUND RULES

1. Engage in civil discourse
2. Assume good intentions
3. Accept non-closure

## PROCESS

- Whole Group Presentation
- Index Cards for questions
- Q&A from cards

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# QUESTIONS FROM THE RSVP FORM

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Case 2:14-cv-01130-PJS Document 1-1 Filed 05/01/15 Page 6 of 30

## Questions I have about books:

- Are these required reading, will they be read in story time?
- How do you take into account the religious and personal beliefs of Sherwood families who do not believe this is appropriate content for 5-11 year olds? Please address how a Halloween parade was cancelled because of religious or personal beliefs of 25-30 students and how do you compare these topics to that?
- How is this appropriate?

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### Questions I have about books:

- Is there a way to make sure my child doesn't check out these books. We believe these are topics for parents to address at home--not in school. Curious how "front and center" these are in the library.
- Will there be permanent display or are these books filed on shelf?
- Will they be part of their daily reading in class? Will there be discussions or education about LGBTQ in class?
- Is there an opt out option?
- None
- None. Excited to see them!

Case 1:15-cv-00017-16 Document 1-1 Filed 05/20/17 Page 9 of 30

## Questions I have about books: (cont)

- What are the themes of the books that make them appropriate for the school curriculum? Folktales?
- What do these books have to do with education? How are you going to answer questions that comes up? If a kid says they feel like a girl and they have been born a boy, what's your response and next steps?
- When will the be introduced? When is the curriculum that has the books as a resource slated to be started?
- While I respect others opinions and choices, this may not be appropriate topics for elementary school kids. Why are these being added to the library?

**Something I would like added to the agenda for discussion:**

- How can parents have access to the new curriculum resources?
- How can parents regulate what the children are exposed to?
- This is not a one size fits all topic. Some students will not be ready in ELEMENTARY school to have these important conversations and that is appropriate. Likewise, some religions have not supported these topics as well. Maybe an easier start to these conversations would be from the counselor, as needed.

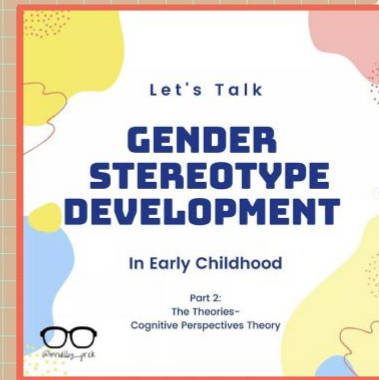
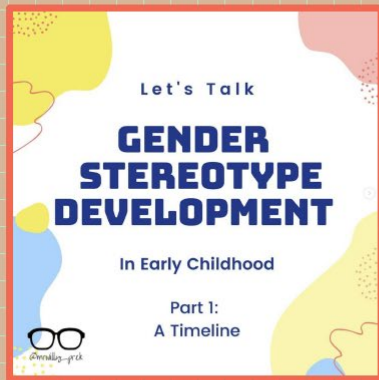
**Something I would like added to the agenda for discussion:**

- What are the perimeters in place for those of us who don't want our kids exposed to this in school?
- We would like to know what Montgomery County's Elementary schools Reading and Math scores compared to other counties in the state and the rest of the country.
- Nothing
- rainbow books
- Thankful for the ability to be a part of the dialogue.

**Something I would like added to the agenda for discussion:**

- What are teachers going to be asked to present to the classroom students? What is being taken away from the curriculum to add this? What data/research is there to suggest that this should be discussed in a school setting versus a home setting? What research/data is there to suggest that elementary school aged children are all capable of understanding different ideas in human sexuality? What data/research suggests elementary age students should be taught about human sexuality in school? If parents need to give signed consent for their 5th graders to learn about their own bodies will parents/caregivers be asked to consent to their children being taught about different sexualities? Is the new curriculum already approved or is there room for more discussion with MCPS before it is rolled out in the classroom?

# Some Research (click [HERE](#))



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## MCPS's Commitments to This Work

### From Board Policy ACA: Nondiscrimination, Equity, and Cultural Proficiency:

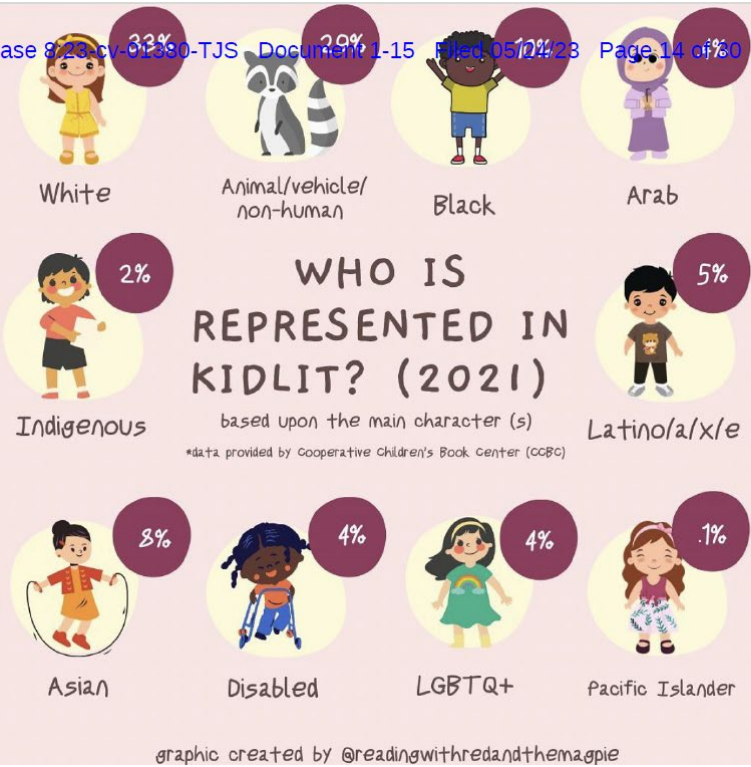
Instructional materials used in MCPS schools will reflect the diversity of the global community, the aspirations, issues, and achievements of women, persons with disabilities, persons from diverse racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation.

### From the Gender Identity Guidelines:

- ◆ Reduce stigmatization and marginalization of transgender and gender nonconforming students.
- ◆ Foster social integration and cultural inclusiveness of transgender and gender nonconforming students.



# WHO IS CURRENTLY REPRESENTED IN OUR MATERIALS?





**GROUNDING QUOTE**

**I really need people to stop saying kids shouldn't learn about "gender and sexuality" when they really just mean certain genders and certain sexualities.**

©mr\_lyon\_4th

We teach--implicitly and explicitly--about gender and sexuality identity all the time in school. We teach the gender binary--you're either a boy or a girl and we teach that people are heterosexual.

For example, it is more likely than not that staff who have pictures of families up are teaching this. The texts we read, language we use, and images we have up are likely reinforcing this as well.

## Anchoring in Our Why

When books are removed or flagged as inappropriate, it sends the message that the people in them are somehow inappropriate. It is a dehumanizing form of erasure. Every reader deserves to see themselves and their families positively represented in the books in their schools. These books are important for all children. [Reading stories that reflect the diversity of our world builds empathy and respect for everyone's humanity.](#) At a time when our country is experiencing an alarming rise in hate crimes, we should be searching for ways to increase empathy and compassion at every turn.

[~Kid Lit Authors Send Letter to Congress to Speak Out Against Book Banning](#)

## IMPACT OF THIS WORK

Compared to students in schools without an LGBTQ+ inclusive curriculum, LGBTQ+ students in schools with an LGBTQ+ inclusive curriculum:

- Were less likely to hear homophobic remarks
- Were less likely to hear negative remarks about gender expression often or frequently
- Were less likely to hear negative remarks about transgender people often or frequently
- Felt greater belonging to their school community, performed better academically in school and were more likely to plan on pursuing postsecondary education
- Were more likely to report that their classmates were somewhat or very accepting of LGBTQ+ people

**Windows, Mirrors &  
Sliding Glass  
Doors:  
Reflections on the  
Seminal Metaphor**

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## **Everyone Needs These Books**

When we mostly provide mirrors for students whose identities align with dominant culture, we contribute to them internalizing a sense of dominance, superiority and entitlement.

Paraphrased from [Anti-Bias Education Education For Young Children and Ourselves](#)



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# Exploring the Texts

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## Communicating with our Community

This work is part of MCPS's commitment to equity. As part of that commitment to equity, we are working towards cultivating inclusive environments for all of our students and their families. Part of how we do this is through diversifying representation in the curriculum; expanding our representation shows our LGBTQ+ community members that this is a place where they are welcome and included. All students deserve to see themselves in their school and classroom, including students who identify as LGBTQ+ and come from LGBTQ+ headed families and have family members that are a part of the LGBTQ+ community. ***There are no planned explicit lessons related to gender and sexuality***, but these books do mean that LGBTQ+ identities will be made visible. Inclusive curricula support a student's ability to empathize, connect, and collaborate with a diverse group of peers, and encourage respect for all. No child, or adult, who does not agree with or understand another student's gender identity or expression or their sexuality identity is asked to change how they feel about it.

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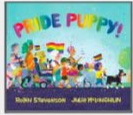


# Grade Level Specific Books

click on the image to access the guide



Paired Texts For Use With Unit 4 and/or Unit 6

## LGBTQ+ Picture Books

Read Aloud Texts and Their Curricular Connections		
Grade Level	Text / Link	<u>FLA Reading Anchor Standards Alignment</u>
PK		<ul style="list-style-type: none"><li>I will be able to answer questions about characters.</li><li>I will be able to share what I know about why authors tell stories.</li></ul>
K		<ul style="list-style-type: none"><li>I will be able to describe story characters.</li><li>I will retell key events about characters in a story.</li></ul>
1		<ul style="list-style-type: none"><li>I will be able to answer questions about characters.</li><li>I will use text evidence to answer questions about story characters.</li><li>I will draw inferences about story characters based on their actions.</li></ul>

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# Evaluation and Selection

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As part of MCPS' mission to equity, "instructional materials and library books are chosen to reflect the diversity of our global community, the aspirations, issues and achievements of women, persons with disabilities, persons from diverse, racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation."

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## MCPS Regulation IIB-RA Evaluation and Selection of Instructional Materials and Library Books drives the evaluation work.

- Instructional materials shall be **directly aligned to the MCPS curriculum** and **relevant to and reflective of the multicultural society and global community.**
- As appropriate, the materials **shall offer opportunities to better understand** and appreciate the issues, aspirations, and achievements of women and persons from diverse racial, ethnic, and cultural backgrounds
- As appropriate, the materials shall provide students with the opportunity to investigate, analyze, and evaluate social issues.

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## LIBRARY BOOKS

Your library media specialist ensures that the the school library serves everyone - that students can find a range of materials to meeting their information needs and reading interests. Although, not every book will be for every child:

- All books are shelved in their respective Dewey category (Everybody, Fiction, Nonfiction)
- Inclusive books may be part of a natural display in the library – For example: *Love, Violet* might be placed in a “Friendship” display.
- Work with your own child to select books:
  - Look in [Destiny Library Catalog](#) - discuss what books you deem appropriate
- If you do not like a library book return it so your child can select a new one (even if it is not your child’s library day).

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## **IMPACT OF THIS WORK**

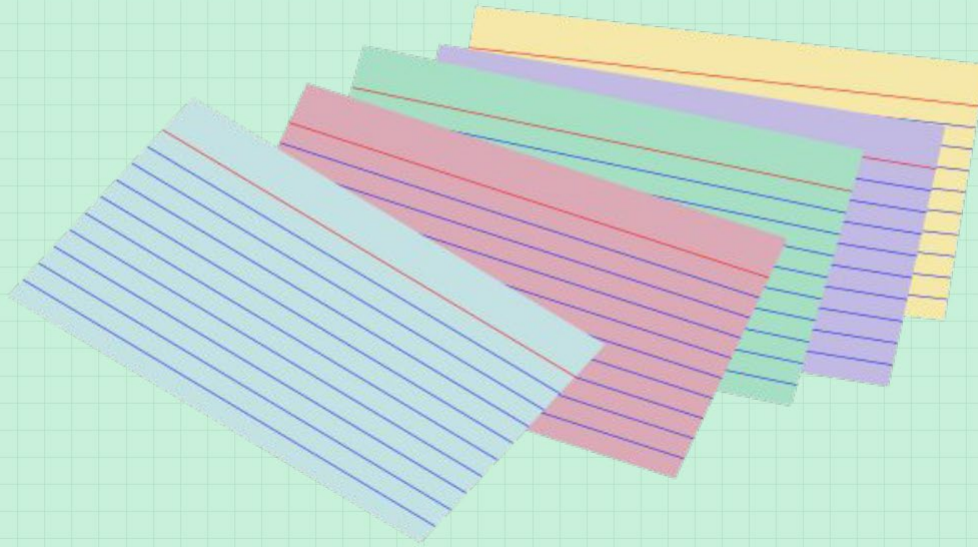
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# QUESTIONS FROM YOUR CARDS



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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
et al.,

*Plaintiffs,*

v.

MONIFA B. MCKNIGHT,  
in her official capacity as  
Superintendent of the  
Montgomery Board of  
Education, et al.,

*Defendants.*

Case No. 8:23-CV-  
01380-TJS

**DECLARATION OF  
TAMER MAHMOUD  
and ENAS  
BARAKAT IN  
SUPPORT OF  
PLAINTIFFS'  
MOTION FOR A  
PRELIMINARY  
INJUNCTION**

We, Tamer Mahmoud and Enas Barakat, declare and state as follows:

1. Our names are Tamer Mahmoud and Enas Barakat. We are over the age of 18 and are capable of making this declaration pursuant to 28 U.S.C. § 1746. We have personal knowledge of all of the contents of this declaration.

2. We are a married couple and reside in Montgomery County, Maryland. We have three children enrolled in MCPS, including—a son and daughter in tenth grade and a son in second grade.

3. We are devout Muslims and believe that all humans are God's creations with God-given dignity that must be respected, regardless of the person's faith, race, ethnic origin, sex, gender identity, sexual orientation, or social status. These are truths reinforced in the Qu'ran. *Surah al-Israa* 17:70.

4. As Muslims, we believe we have a sacred duty

to teach our children our faith, including religiously grounded sexual ethics. We respect the rights of other parents to make their own decisions about sexuality, gender identity, and how to introduce these topics to their children.

5. We believe that mankind has been divinely created as male and female, *Surah al-Hujurat* 49:13, and that all people are connected through a common ancestor: the first male and the first female, *Surah an-Nisaa* 4:1.

6. Based on this teaching, we believe that sex and sexuality are sacred gifts from God to be expressed through the forming of a spiritual, marital bond between spouses—one male and one female—for the shared promise of security, tranquility, compassion, contentment, and joy. *Surah al-A'raf* 7:189; *Surah ar-Rum* 30:21.

7. We believe that this sacred bond between husbands and wives entails sexually distinct but mutual duties and affections: “They are clothing for you and you are clothing for them.” *Surah al-Baqarah* 2:187.

8. We believe that marriage, sex, and sexuality are meant for creating children and teaching them virtue—not only to build a loving family but also to serve as an example of righteousness for society at large. *Surah al-Furqan* 25:74.

9. Inherent in these teachings, we believe that “gender” cannot be unwoven from biological “sex”—to the extent the two are even distinct—without rejecting the dignity and direction God bestowed on humanity from the start.

10. The Qu'ran teaches that we are to respect God's wisdom in creation. Thus, as a general rule, Islam strictly prohibits medical procedures that attempt to alter the sex of a healthy person, regardless of whether such procedures are termed gender "affirming" or "confirming." For individuals born with biological ambiguities, such as disorders of sexual development, Islam permits them to seek medical care for corrective reasons. *Surah An-Nisa* 119.

11. Similarly, the Prophet Muhammad (peace be upon him) explicitly condemned imitating the appearance of the opposite gender.

12. It is our belief that humans attain their fullest God-given potential by embracing their biological sex.

13. Islam distinguishes between feelings, actions, and identity. God holds individuals accountable for their words and actions, not for their involuntary thoughts and feelings. We believe that all individuals have the potential to be forgiven by God for the mistakes they make.

14. We have a sacred obligation to teach these principles to our children. *Surah At-Tahrim* 66:6; *Sahih al-Bukhari* 7138; *Al-Adab Al-Mufrad* 212. This includes encouraging them to accept Islamic teachings on the differences between males and females, to embrace one's biological sex, and to practice self-restraint by expressing sexual desires in ways consistent with the Islamic faith.

15. We believe that practicing self-restraint in devotion to God is considered heroic. Its spiritual reward increases proportionally with the level of struggle involved. Our ultimate purpose is to prioritize

devotion to God over our desires and not sacrifice our faith.

16. We believe there are detrimental spiritual consequences from letting authoritative figures such as schoolteachers teach our children principles concerning sexual and gender ethics that contravene well-established Islamic teachings.

17. Islam specifically prohibits prying into others' private lives and discourages public disclosure of sexual behavior. *Quran, al-Hujurat: 12* and *al-Noor: 19*. It would violate our religious beliefs and the religious beliefs of our children if they were asked to discuss romantic relationships or sexuality with schoolteachers or classmates.

18. Intentionally exposing our young, impressionable, elementary-aged son to activities and curriculum on sex, sexuality, and gender that undermine Islamic teaching on these subjects would be immoral and would conflict with our religious duty to raise our children in accordance with our faith. *Surah Al-An'am 6:68-69*.

19. The storybooks at issue in this lawsuit and others like them directly undermine our efforts to raise our elementary-aged child in accordance with our faith, because they encourage young children to question their sexuality and gender, to identify with labels that categorize them by their sexuality, to focus prematurely on romantic relationships, to disregard differences between men and women, to accept gender transitioning, and to dismiss parental and religious guidance on these issues.

20. In short, forcing our son to participate in

reading these books and engaging in related discussions would confuse his religious upbringing.

21. A summary of our Islamic beliefs on these issues was recently drafted by Muslim scholars and preachers representing a diverse range of *theological schools*. A copy of this statement, entitled *Navigating Differences – Clarifying Sexual & Gender Ethics in Islam*, is attached as Exhibit 1.

22. This document accurately captures our religious beliefs. As stated in the document, we believe that the principles it espouses are immutable and not open to revision by any person or entity, including the highest religious authorities. *Quran, al-An‘ām: 115* (“And the word of your Lord has been fulfilled in truth and justice. None can alter His words, and He is the All-Hearing, the All-Knowing”).

23. In keeping with these religious beliefs, we asked the acting principal of our son’s elementary school for the option to opt him out of the class reading of *Prince and Knight* and to assign him an alternative activity.

24. The acting principal offered us an opportunity to read the book for ourselves.

25. The acting principal then followed up by stating that MCPS is not supporting parents opting out of the *Pride Storybooks* and that teachers are not required to provide alternative assignments.

26. We responded that our decision to opt out had not changed after reading the book, and we again asked for our son to receive an alternate assignment.

27. The acting principal finally responded (on March 20) that he would allow our son to sit outside

the classroom while the book was discussed.

28. On March 23, the School Board announced that the storybooks at issue in this lawsuit would be mandatory for students going forward and that parents would no longer receive advance notice or opportunity to opt their children out.

29. As members of a religious minority that frequently experiences bigotry and exclusion, we reject the notion that moral disagreement amounts to intolerance, bigotry, or incitement of violence. We affirm our right to express our beliefs and direct the upbringing of our children on such sensitive and religiously significant issues while simultaneously recognizing our civic and religious obligations to exist peacefully with those whose beliefs differ from ours.

We each declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of June, 2023.

/s/ Tamer Mahmoud  
Tamer Mahmoud

/s/ Enas Barakat  
Enas Barakat

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
et al.,

*Plaintiffs,*

v.

MONIFA B. MCKNIGHT,  
in her official capacity as  
Superintendent of the  
Montgomery Board of  
Education, et al.,

*Defendants.*

Case No. 8:23-CV-  
01380-TJS

**DECLARATION OF  
JEFF ROMAN and  
SVITLANA ROMAN  
IN SUPPORT OF  
PLAINTIFFS'  
MOTION FOR A  
PRELIMINARY  
INJUNCTION**

We, Jeff Roman and Svitlana Roman, declare and state as follows:

1. Our names are Jeff Roman and Svitlana Roman. We are over the age of 18 and are capable of making this declaration pursuant to 28 U.S.C. § 1746. We have personal knowledge of all of the contents of this declaration.

2. We reside in Montgomery County, Maryland, and have one son enrolled in MCPS in second grade.

3. We adhere to and follow the Roman Catholic (Jeff) and Ukrainian Orthodox (Svitlana) faiths. My (Svitlana's) beliefs align with the teachings of the Roman Catholic Church on marriage, family, sex, sexuality, and gender.

4. Our Christian faith teaches that all humans are children of God who are created in God's image and likeness and therefore have inherent dignity. Genesis 1:26-27; Catechism of the Catholic Church, § 1700 ("The dignity of the human person is rooted in his



creation in the image and likeness of God.”).

5. We believe that God commands us to treat others as bearers of this intrinsic nature. 1 Corinthians 3:16. We firmly reject that any student should be bullied or harassed for any reason, and we teach our son to treat all others with kindness and respect. 1 John 4:7-12, 16; Matthew 22:37-39.

6. Based on this teaching, we believe that all humans are created as male or female—each equal in dignity—and that a person’s biological sex is not arbitrary, but rather a gift bestowed by God that entails differences in men’s and women’s bodies and how they relate to each other and to the world. See Genesis 5:2; Catechism of the Catholic Church, § 2393 (“By creating the human being man and woman, God gives personal dignity equally to the one and the other. Each of them, man and woman, should acknowledge and accept his sexual identity.”).

7. We believe that because human beings are a unity of body and soul, our human bodies and sexuality, male and female, are an integral part of God’s design and essential to being made in God’s image and likeness. See 1 Thessalonians 5:23; Catechism of the Catholic Church, §§ 362-68. The human body, therefore, has great dignity, and human sexuality is a gift. See *id.*, §§ 369-73. “Learning to accept our body, to care for it and to respect its fullest meaning, is an essential element of any genuine human ecology.” *Laudato si’*, 155.

8. Accordingly, we believe that the gift of human sexuality is precious with its power to create life and love and that it calls for an authentic and healthy integration in the person—the virtue of chastity. See

Catechism of the Catholic Church, § 2337 (“Chastity means the successful integration of sexuality within the person and thus the inner unity of man in his bodily and spiritual being.”). We believe that chastity is necessary to the right living of one’s sexuality and requires habits of “self-mastery” to govern and channel one’s sexual emotions rather than being “dominated by them.” *Id.*, § 2339.

9. For this reason, we believe intimate sexuality is properly expressed only in marriage between a man and a woman for creating life and strengthening the marital union. *Id.*, § 2360-63; Genesis 2:24; Mark 10:6-9.

10. Based on these teachings, we believe that a person’s biological sex is both unchanging and integral to that person’s being, and that gender and biological sex are intertwined and inseparable. *Amoris Laetitia*, 56 (“[B]iological sex and the socio-cultural role of sex (gender) can be distinguished but not separated.”). And we believe that encouraging children to unwind them will teach them that their bodies are “an object, a mere tool at the disposal of the soul, one that each person may dispose of according to his or her own will,” rather than a “constitutive part of the human subject, a gift to be received, respected, and cared for as something intrinsic to the person.” Committee on Doctrine United States Conference of Catholic Bishops, *Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body* 4 (2023), <https://perma.cc/T6Y6-NXAB>. Thus, we believe that, “[b]eyond the understandable difficulties which individuals may experience, the young need to be helped to accept their own body as it was created, for thinking that we enjoy absolute power over our own

bodies turns, often subtly, into thinking that we enjoy absolute power over creation.” *Amoris Laetitia*, 285.

11. For the same reasons, we believe that humans attain their fullest God-given potential by embracing their biological sex. Catechism of the Catholic Church, § 2333 (“Everyone, man and woman, should acknowledge and accept his sexual identity. Physical, moral, and spiritual difference and complementarity are oriented toward the goods of marriage and the flourishing of family life.”); *Laudato si’*, 155 (“The acceptance of our bodies as God’s gift is vital for welcoming and accepting the entire world as a gift from the Father and our common home, whereas thinking that we enjoy absolute power over our own bodies turns, often subtly, into thinking that we enjoy absolute power over creation. Learning to accept our body, to care for it and to respect its fullest meaning, is an essential element of any genuine human ecology.”).

12. We have a sacred obligation to teach these principles to our son and to encourage him at appropriate times to embrace these principles and our religious way of life. *See* Catechism of the Catholic Church, §§ 2221-26. In particular, we have a duty to provide our son an “education in the virtues,” which “requires an apprenticeship in self-denial, sound judgment, and self-mastery—the preconditions of all true freedom.” *Id.*, § 2223. This, in turn, imposes a corresponding duty to “teach [our] children to avoid the compromising and degrading influences which threaten human societies.” *Id.*, § 2224.

13. We believe that young children should enjoy a time of innocence, when it is not necessary for them to have detailed understanding of issues surrounding

human sexuality, especially where that information is “dissociated from moral principles.” *Familiaris Consortio*, 37; see also Proverbs 22:6; Colossians 3:21; Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality: Guidelines for Education within the Family*, 78 (teaching that the “period of tranquility and serenity” during “‘the years of innocence’ from about five years of age until puberty ... must never be disturbed by unnecessary information about sex”); *id.*, 83 (“In some societies today, there are planned and determined attempts to impose premature sex information on children. But, at this stage of development, children are still not capable of fully understanding the value of the affective dimension of sexuality.”).

14. For these reasons, we believe that much of what is taught via the Pride Storybooks is false religiously and scientifically. We disagree that a child’s sex can be separated from his or her biology and that “gender” is a separate form of identity that is “manipula[ble] at will.” *Laudato si’*, 155 (“[V]aluing one’s own body in its femininity or masculinity is necessary if I am going to be able to recognize myself in an encounter with someone who is different. In this way we can joyfully accept the specific gifts of another man or woman, the work of God the Creator, and find mutual enrichment. It is not a healthy attitude which would seek to cancel out sexual difference because it no longer knows how to confront it.”). And we disagree that elementary schools should encourage young children to focus prematurely on romantic emotions and relationships. See Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality: Guidelines for Education within the Family*, 78, 83.

15. We are guided by Pope Francis's admonition: "Today children – children! – are taught in school that everyone can choose his or her sex." Address to the Polish Bishops during the Apostolic Journey to Poland (July 27, 2016). Our Christian faith rejects the "ideology of gender" that "denies the difference and reciprocity in nature of a man and a woman" and "leads to educational programs and legislative enactments that promote a personal identity and emotional intimacy radically separated from the biological difference between male and female." *Amoris Laetitia*, 56. Rather, we believe that "[s]ex education should help young people to accept their own bodies and to avoid the pretension to cancel out sexual difference because one no longer knows how to deal with it." *Id.*, 285.

16. In keeping with these religious beliefs, we corresponded with our son's elementary school principal, seeking both an opt-out for our son and guarantees that parents would continue to receive notice about the Pride Storybooks and that teaching them would be optional for teachers.

17. On February 1, 2023, the principal responded "it is your right to ask that [your son] not be present when this book is read to the class and if any other parents reach out I will meet with them to have the same discussion we engaged in and they can make a decision for their family."

18. Nevertheless, on March 23, the School Board announced that the Pride Storybooks were being read to students and that parents would no longer receive advance notice or opportunity to opt their children out. *Id.*

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19. Issues of sexuality and gender identity are complex and sensitive. Our son is not old enough to be thinking about many of the issues presented in the books MCPS is requiring him to read and would find them confusing.

20. Our son loves his teachers and implicitly trusts them. Having them teach principles about sexuality or gender identity that conflict with our religious beliefs significantly interferes with our ability to form his religious faith and religious outlook on life and is spiritually and emotionally harmful to his well-being. *See Pontifical Council for the Family, The Truth and Meaning of Human Sexuality: Guidelines for Education within the Family*, 83 (“Parents should politely but firmly exclude any attempts to violate children’s innocence” by “impos[ing] premature sex information” “because such attempts compromise the spiritual, moral and emotional development of growing persons who have a right to their innocence.”).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 10th day of June, 2023.

/s/ Jeff Roman  
Jeff Roman

/s/ Svitlana Roman  
Svitlana Roman

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
et al.,

*Plaintiffs,*

v.

MONIFA B. MCKNIGHT,  
in her official capacity as  
Superintendent of the  
Montgomery Board of  
Education, et al.,

*Defendants.*

Case No. 8:23-CV-  
01380-TJS

**DECLARATION OF  
CHRIS PERSAK  
and MELISSA  
PERSAK IN  
SUPPORT OF  
PLAINTIFFS'  
MOTION FOR A  
PRELIMINARY  
INJUNCTION**

We, Chris Persak and Melissa Persak, declare and state as follows:

1. Our names are Chris Persak and Melissa Persak. We are over the age of 18 and are capable of making this declaration pursuant to 28 U.S.C. § 1746. We have personal knowledge of all of the contents of this declaration.

2. We reside in Montgomery County, Maryland. We have two daughters in elementary school at MCPS.

3. We are Catholics by faith and believe that questions about sex and sexuality should be informed by the teachings of the Catholic Church. Our understanding of what is best for our children is also informed by our faith.

4. To that end, we believe matters regarding family life and human sexuality should be taught in way that is consistent with Catholic teaching.

5. In accordance with Catholic teaching on human sexuality, we believe that all humans are created as male or female, and that a person's biological sex is a gift bestowed by God that is both unchanging and integral to that person's being. *See* Genesis 5:2.

6. We believe that following God's commandments for marriage and family is not only necessary for raising the next generation of children, *see* Genesis 1:28, but also leads to human flourishing and happiness. *See* John 8:51, 14:21, 15:10.

7. As parents, we have a God-given responsibility to raise our children in accordance with the tenets of our faith. *See* Proverbs 22:6; Deuteronomy 6:6-7. Those tenets include the Catholic Church's teachings on the immutable sexual differences between males and females, the biblical way to properly express romantic and sexual desires, and the role of parents to love one another unconditionally and sacrificially within the confines of biblical marriage to create and sustain a family.

8. We believe that all persons should be treated with respect and dignity regardless of religion, race, sex, ethnicity, gender identity, sexual orientation, or other characteristics, as all people are made in God's image. *See* Genesis 1:26-27.

9. We respect the rights of other parents to make their own decisions about sexuality, gender identity, and how to introduce these topics to their children.

10. We want our daughters, at an appropriate age, to understand and appreciate the unique gifts and challenges of every individual.

11. We believe that discussing issues of sexuality



and gender with young children requires sensitivity from parents to determine how and when to introduce these topics to children.

12. We believe that exposing our elementary-aged daughters to viewpoints on sex, sexuality, and gender that contradict Catholic teaching on these subjects is inappropriate and conflicts with our religious duty to raise our children in accordance with Catholic teaching.

13. We believe that children—particularly those in elementary school—are highly impressionable to ideological instruction presented in children’s books or by schoolteachers.

14. We believe the risk is even more serious when ideological instruction is imposed to the exclusion of other viewpoints.

15. We believe that the Pride Storybooks go far beyond teaching kindness and respect and are being used to impose an ideological view of family life and sexuality that characterizes any divergent beliefs as “hurtful.”

16. The Pride Storybooks undermine our efforts to raise our children in accordance with our faith as the books encourage young, elementary-aged children to question their sexuality and gender, ignore important differences between men and women, approve gender transitioning, focus prematurely on romantic relationships and sexuality, and dismiss parental and religious guidance on these issues.

17. Earlier this year we asked our school principal to have our daughters excused from class when any of the storybooks at issue in this lawsuit were being read.

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18. The principal agreed that they would be excused from the classroom when any of the storybooks were read that semester.

19. The principal made it clear, however, that no future notifications or opt-outs would be provided.

20. The principal told us that opt-outs were allowed only to accommodate parents' "fears" and that she disagreed with it.

We each declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of June, 2023.

/s/ Chris Persak

Chris Persak

/s/ Melissa Persak

Melissa Persak

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
et al.,  
*Plaintiffs,*

v.

MONIFA B. MCKNIGHT,  
in her official capacity as  
Superintendent of the  
Montgomery Board of  
Education, et al.,  
*Defendants.*

Case No. 8:23-CV-  
01380-TJS

**DECLARATION OF  
ERIC BAXTER IN  
SUPPORT OF  
PLAINTIFFS'  
MOTION FOR A  
PRELIMINARY  
INJUNCTION**

I, Eric Baxter, declare as follows:

1. I am Senior Counsel at the Becket Fund for Religious Liberty. I represent Plaintiffs in this matter.

2. On June 1, 2023, I received link a copy of the June 2023 edition of the Gator Gazette, a publication of Greenwood Elementary School, which is part of the Montgomery County, Maryland public school system. A copy of the June 2023 newsletter can be found here: <https://perma.cc/D7S5-582P>.

3. The first article in the newsletter is entitled "June is Pride Month!" The article states that "the Greenwood community ... will be participating in 'Reading the Rainbow' month."

4. The article further states that, "[f]or each day in June, classrooms will read an inclusive, LGBTQ+

friendly book” followed by a “community circle discussion.”

5. The article includes the following link to a Google document identifying the story books to be read as part of “Reading the Rainbow”: <https://shorturl.at/xzES1>.

6. Attached as **Exhibit 1** is a true and accurate copy of one of the books on the list entitled *What Are Your Words?*

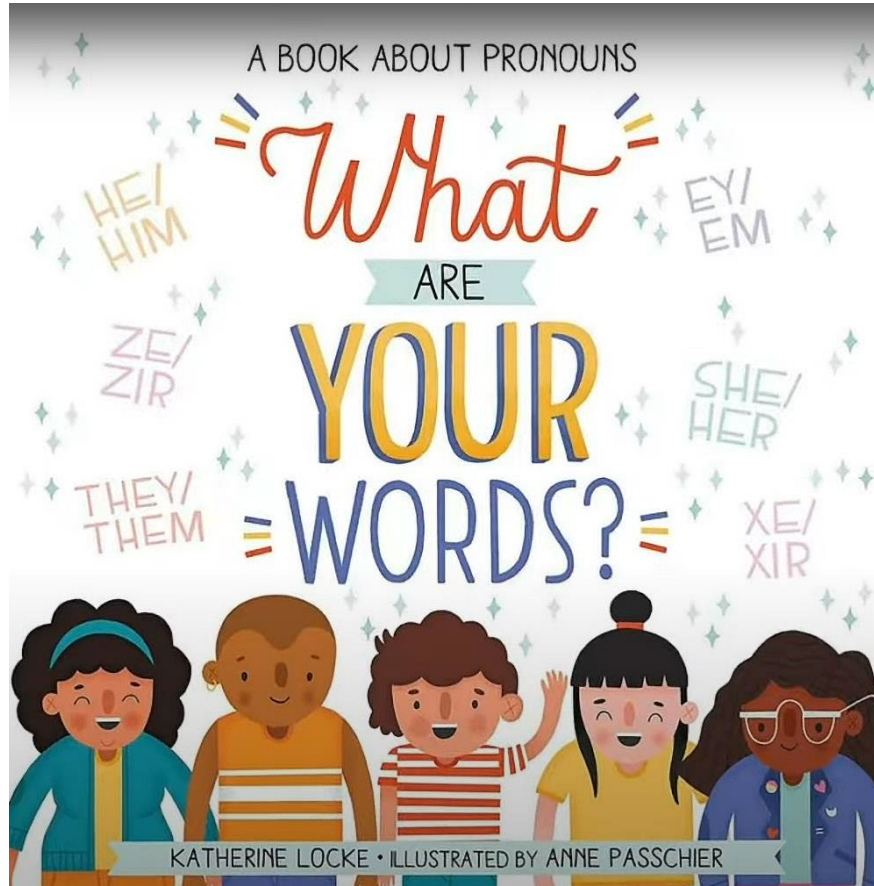
7. The book is also recommended by the School Board via its website here: <https://perma.cc/Y44H-TWBF> (Resources for Students Staff and Parents/Affirming LGBTQ+ Young Adults/Elementary Specific).

8. Attached as **Exhibit 2** is a true and accurate copy of another book recommended on Defendants’ website entitled *Jacob’s Room to Choose*.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 12th day of June, 2023.

/s/ Eric S. Baxter  
Eric S. Baxter



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My uncle Lior is coming to visit today! I can't wait to show them around my neighborhood. And I can't wait for all my neighbors to meet them!

Lior is my favorite uncle.



They have many beautiful, colorful hats.



The garden at their house is magical.



They are a biologist and look at teeny-tiny living things under a microscope.

I learn a lot from Uncle Lior, like that people can be described by more than what they look like or what they do. In fact, there are lots of words to say who people are and how they feel. Some of those words are pronouns. Pronouns are words that can take the place of your name, like *I*, *me*, *you*, *she*, *he*, or *they*.



Uncle Lior knows how important *my* words are to me because I am always growing and changing, and some of my words change with me. So every time they visit they ask, "What are your words, Ari?"



Sometimes I know my words right away.

HAPPY! CREATIVE!  
FUNNY! HE/HIM



Sometimes I have to think about my words.

THOUGHTFUL! ATHLETIC!  
SILLY! SHE/HER



Sometimes I have to try my words out.

SLEEPY! CALM!  
HONEST! EY/EM







Sometimes I just use  
one set of pronouns.



Sometimes I change  
my pronouns.



Sometimes I use all the  
pronouns I can think of.

My pronouns are like the weather. They change  
depending on how I feel.



AND THAT'S OKAY,  
BECAUSE THEY'RE  
MY WORDS.

This time when Uncle Lior asks about my words, I have a problem.  
"I don't know what words to use!" I cry. I can't decide which pronouns fit today.  
"That's okay," Uncle Lior tells me, their smile warm.  
"You have all day to think about it!"

But I want to know my words *now*.  
*He* and *him* feel squirmy and wiggly to me.  
Those aren't right.





I'll have to think about my words later because it's time for Uncle Lior, my sister, Rachel, and me to head to our neighborhood's big summer bash. Summer is my favorite season, and barbeques are my favorite type of party!

Rachel dances and sings in the street, twirling around and making me laugh. Rachel has her own words. Her pronouns don't change, but sometimes she's quiet instead of loud. Today she is loud!



Mrs. Bolton walks behind us, laughing at her friend Charlie's joke. Mrs. Bolton's cat chases Charlie's little brown dog up and down the sidewalk. Mrs. Bolton and Charlie each have their own words too.

Our neighbor Anna tinkers with her car in the driveway. When I first met Anna, she had a different name and used different pronouns. But now she goes by Anna and uses *she* and *her* every day. She's my favorite neighbor. "I'll be there soon!" she calls.



We see Robin Day and zir kids drawing with chalk.  
When I introduce Robin to Uncle Lior, I use zir words.

Uncle Lior says hello and tells zir their words too.  
"We'll see you at the bash!" they say.



Ava and George from the ivy-covered house are on their way to the summer bash.

"Nice to meet you, Lior!" Ava says.

"They are *Uncle Lior*," I explain proudly. Everyone laughs. Rachel laughs the loudest and turns to me.

"What are your words today, Ari?" she asks.



I think about my words.

*She* and *her* feel sharp and crackly to me.

Those won't work today.

WHY CAN'T I FIGURE  
OUT WHICH WORDS  
TO USE?

I WANT TO BE  
ABLE TO SHARE  
THEM WITH  
EVERYONE.

558a

When we arrive at the bash, we see our new neighbor.  
"Hello! My name is Ari. What are your words?" I ask.  
"Hi, Ari! I'm Avery, and I use *they* and *them*," they reply.  
"Like my uncle Lior!" I say. "What are your other words?"  
Avery thinks. "My other words are *feacher*, *friendly*, and *loyal*! What are *your* words?" Avery asks.  
I scrunch my face. I thought I would know by now.  
"I'm not sure what fits me today," I tell them.

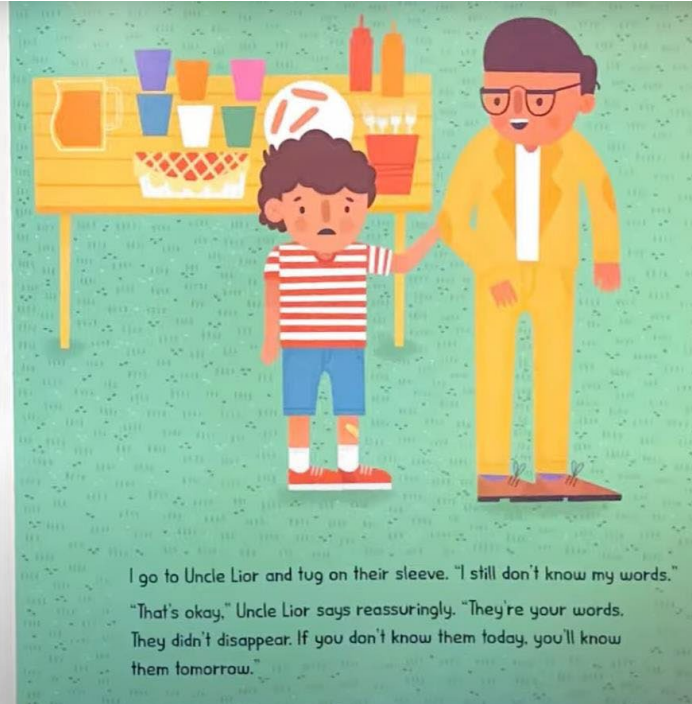




I try out some other words.  
*Ey* and *eir* feel heavy and bumpy to me.  
Those don't fit either!



"You'll figure it out," Avery tells me. "Sometimes it just takes patience."  
But I don't want to be patient. It shouldn't take this long to find my words.  
Everyone else seems to know theirs!



I go to Uncle Lior and tug on their sleeve. "I still don't know my words."  
"That's okay," Uncle Lior says reassuringly. "They're your words.  
They didn't disappear. If you don't know them today, you'll know  
them tomorrow."



Soon, it's time for fireworks. I wait for the show to start,  
just like I've been waiting all day to figure out my words.  
Waiting makes me buzzy like a bee and makes my skin feel itchy.  
When the first explosions finally burst in the sky, everyone gasps.  
Suddenly I feel my words fall into place.

Sometimes I know my words right away.  
Sometimes I have to think about my words.  
Sometimes I have to try my words out.  
But sometimes I have to wait for my words to find me.

I squeeze Uncle Lior's hand.

"Uncle Lior!" I whisper excitedly.

"What?" they ask.

There's another boom of fireworks, and colors race through the sky.

I point. "Those are my words! I'm like fireworks!"

IMPATIENT!  
EXCITED!  
COLORFUL!

And *they* and *them*  
feel right today."

"Fireworks!" Uncle Lior says with a laugh.  
They squeeze my hand back. "That's  
definitely you, Ari."

My words finally found me!  
*They* and *them* feel warm and snug to me.  
These pronouns are perfect.





563a



Hi there! I haven't met you yet.  
My name is Ari. My words are *impatient, bouncy,*  
*excited, nervous, colorful, and hopeful.*  
And today my pronouns are *they and them.*

# JACOB'S Room to Choose



Sarah and Ian Hoffman

Illustrated by Chris Case

# JACOB'S Room to Choose



Sarah and Ian Hoffman  
Illustrated by Chris Case

Imagination Press • Washington, DC  
American Psychological Association

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"Okay, kids," said Ms. Reeves. "We've got 10 minutes left. Does anyone need to use the bathroom before we head back to class?"

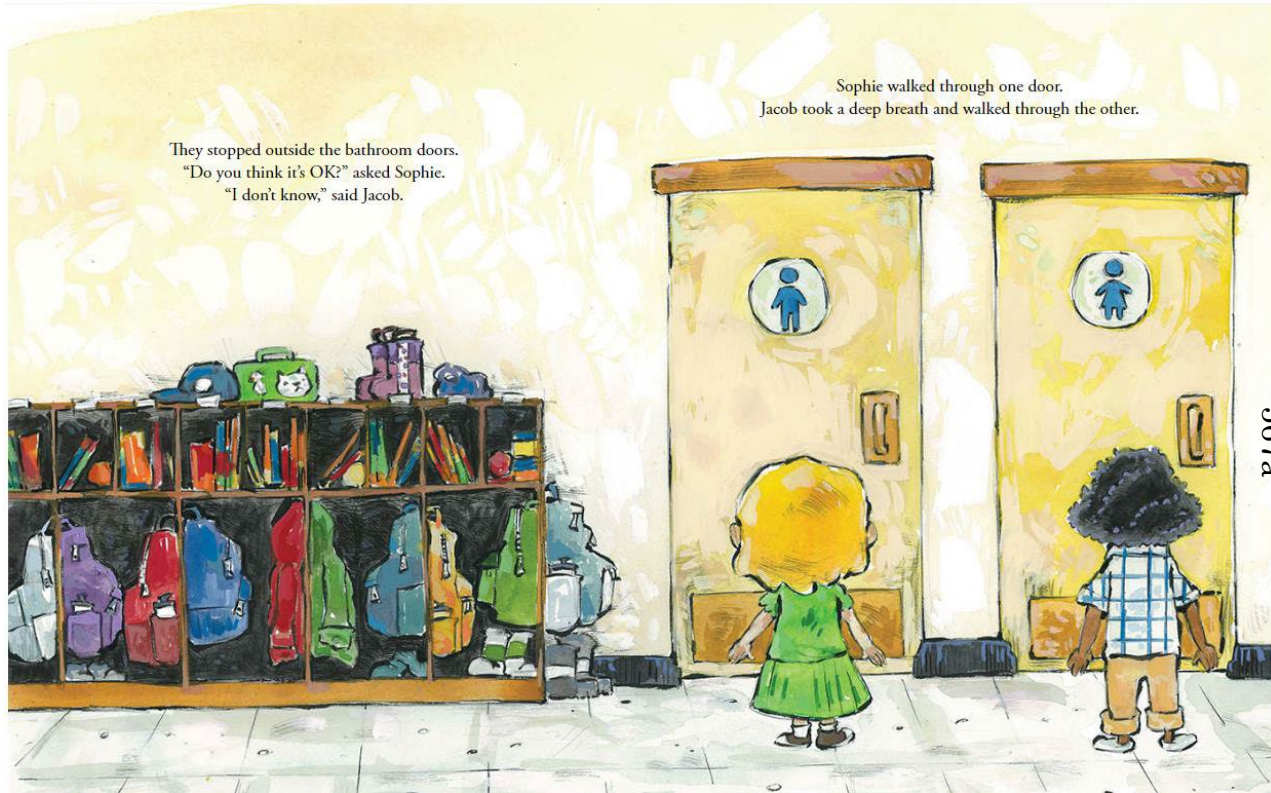
Jacob and Sophie raised their hands.



566a

They stopped outside the bathroom doors.  
"Do you think it's OK?" asked Sophie.  
"I don't know," said Jacob.

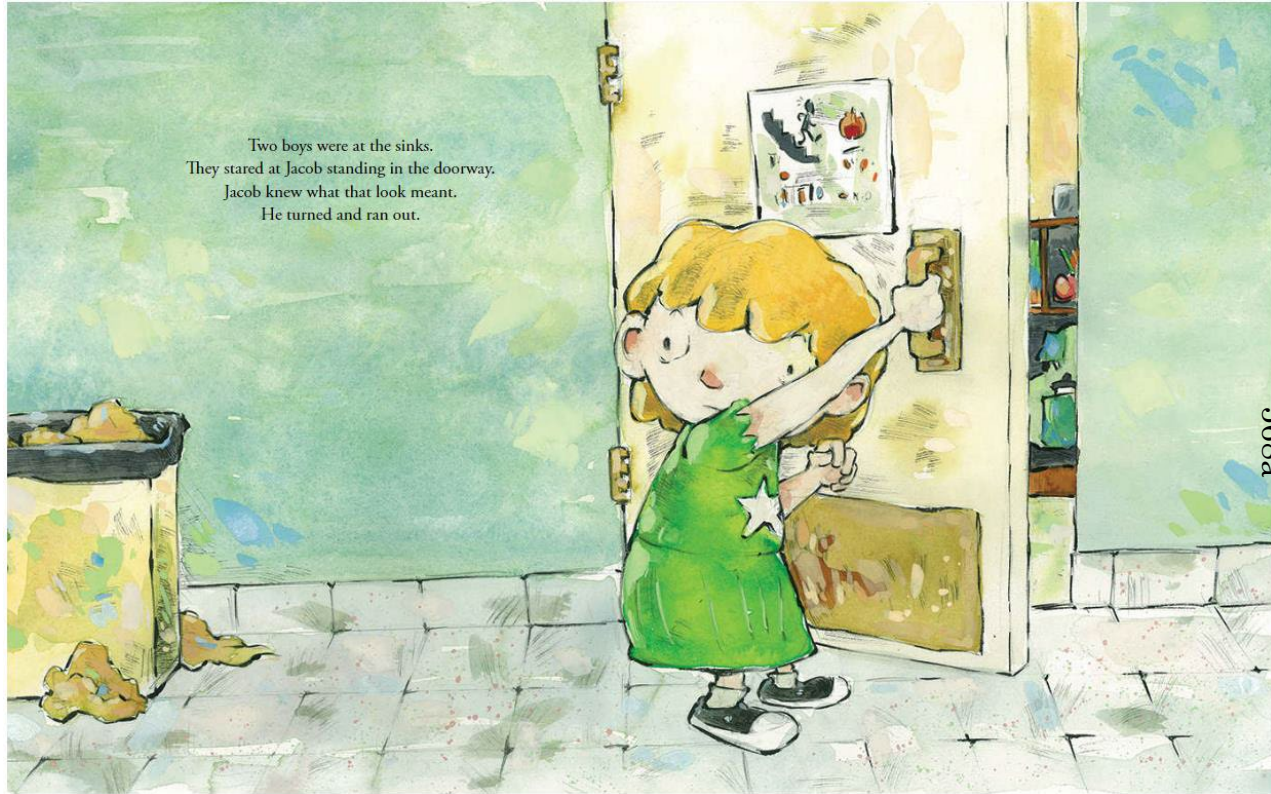
Sophie walked through one door.  
Jacob took a deep breath and walked through the other.



567a



Two boys were at the sinks.  
They stared at Jacob standing in the doorway.  
Jacob knew what that look meant.  
He turned and ran out.

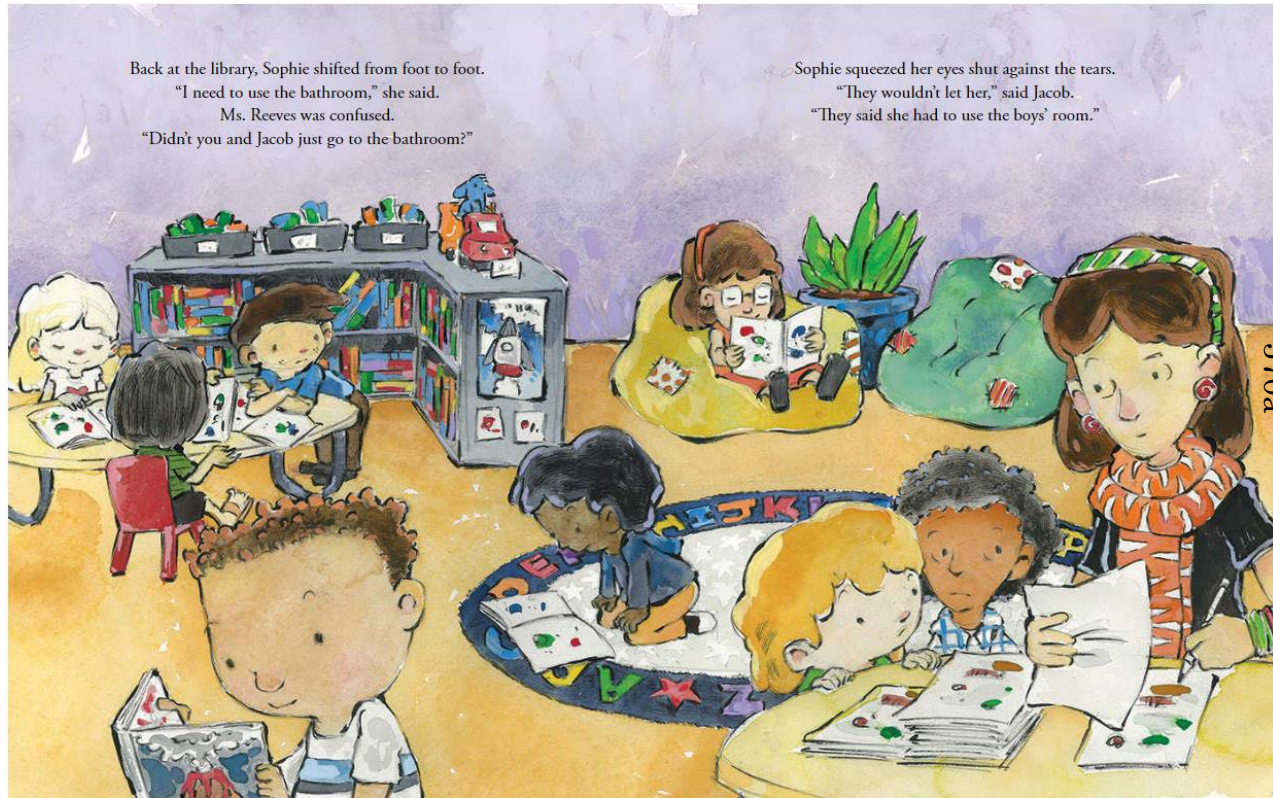




Jacob stood in the hall, his heart pounding.  
Just then Sophie ran out of her bathroom.  
It was hard for Jacob to talk.  
“Did you get chased out?”  
Sophie nodded.

Back at the library, Sophie shifted from foot to foot.  
"I need to use the bathroom," she said.  
Ms. Reeves was confused.  
"Didn't you and Jacob just go to the bathroom?"

Sophie squeezed her eyes shut against the tears.  
"They wouldn't let her," said Jacob.  
"They said she had to use the boys' room."



Ms. Reeves looked inside the bathroom. It was empty.  
"Anybody in there?"  
There was no response.  
She waited in the hall while Sophie and Jacob went in.



"Better?" asked Ms. Reeves.  
"Yes," said Sophie.  
"Has this happened before?"  
Sophie and Jacob glanced at each other.



571a

"Usually I don't go at school," said Jacob.  
Sophie started to cry again. "It's not fair," said Sophie.  
"No," agreed Ms. Reeves. She gave them both a hug. "It isn't."



Back in the classroom,  
Ms. Reeves drew on the board.  
"What do these pictures mean?"  
"Boys and girls!" the kids shouted happily.

"OK," said Ms. Reeves,  
"but how do you know?"  
"The girl has long hair," said Emily,  
"and she's wearing a dress."  
"The boy is wearing shorts," said Noah.  
"And a t-shirt."



"Now I want each of you to stand near the picture that looks like you," said Ms. Reeves.

Jacob and Sophie looked at Ms. Reeves. Ms. Reeves winked back.

"Hold on," called Ms. Reeves. "Noah, you have long hair. That sign shows short hair. And Emily, you're wearing pants, but the person on that sign is wearing a dress."

Ms. Reeves scratched her head. "Why don't you switch places?"  
Noah shrugged and walked to where Ms. Reeves pointed.



Emily looked at the group of boys.  
"I don't want to stand there," she said.  
"Why not?" asked Ms. Reeves.  
"Because I'm a girl."



574a

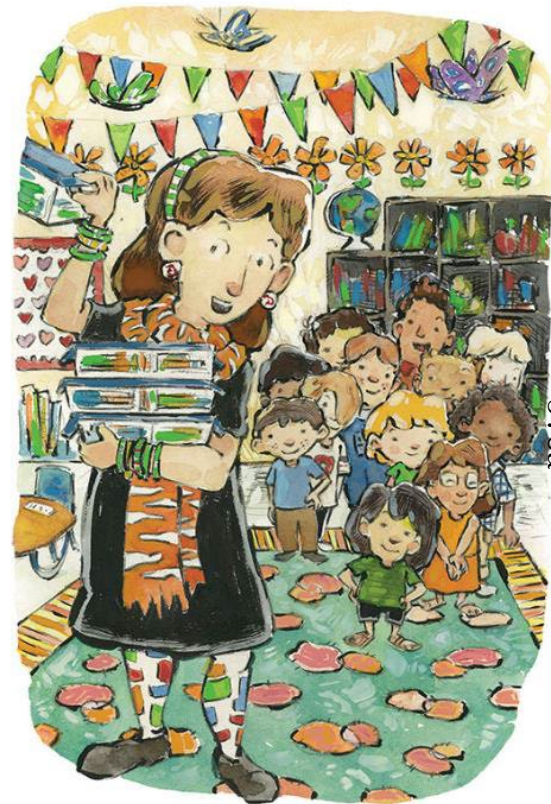


Ms. Reeves studied the kids again.  
"You know what? A lot of you don't look  
like the signs. Let's try this: look at the  
person next to you and help them stand  
next to people who look like them."

Arguing and giggling, the kids  
shuffled and reshuffled until  
everyone found a place to stand.



Ms. Reeves pointed at the board.  
“Are these pictures of what boys and girls really look like?”  
“Yes,” said Emily.  
“No,” said Sophie.  
“Sometimes,” said Jacob.  
“I wonder,” said Ms. Reeves, “if there is another way?  
Everyone has to use the bathroom, right?”  
“Maybe the signs should be pictures of toilets!” shouted Noah.  
Everyone giggled.  
“We should make our own bathroom signs,” said Sophie.  
“And rules,” said Jacob. “Like, if you’re in the bathroom and  
you see a kid who doesn’t look like you — leave them alone.”  
“Or ‘I have to pee, so let me be!’” said Noah.  
The giggling turned to cheers.  
“Great ideas!” said Ms. Reeves. “Let’s get to work!”



576a

The afternoon was filled  
with markers and laughter.



577a



New bathroom signs went up.

The bunny signs were funny.

Jacob and Sophie stopped outside the bathroom doors.



5798

“Do you think it’s OK?” asked Jacob.  
Sophie smiled. “I think it will be,” she said.  
And in they went.

## Authors' Note

When our son Sam was in kindergarten, he had waist-length blond hair and a gentle smile. His favorite outfit was a pink dress. Everyone who met him assumed he was a girl, and he didn't mind.

Sam's interests were a mix of traditional "girl" things like ballet, make-believe, and art, mixed with traditional "boy" things like knights, castles, and dinosaurs. Clinically, children like Sam are called gender-nonconforming; we liked to call him a pink boy—the male equivalent of a tomboy.

We didn't think there was anything wrong with being a pink boy, but we knew Sam was different—and different isn't always easy. In order to support Sam, we worked hard to educate his teachers about gender-nonconforming children. In turn, his teachers taught lessons about gender, difference, and acceptance. We were surprised how quickly and comfortably Sam's classmates took to looking at Sam—and the world—in a whole new way.

But the bathrooms at school were used by kids who weren't necessarily Sam's classmates. Older kids, bigger kids, kids who hadn't been taught these lessons looked at Sam—and didn't like what they saw. He was verbally and physically attacked by children who had not been taught to be kind in the face of unexpected difference.

It wasn't just school bathrooms that were a problem. It was restaurant bathrooms, and playground bathrooms, and airport bathrooms. It was the zoo bathroom where a little boy with a crew cut screamed, "Get out of here!" and tried to punch Sam—while Sam was using the urinal. There was no public bathroom our son could use without an adult along to guarantee his safety.

It doesn't have to be that way. Your home probably doesn't have a "men's bathroom" and a "women's bathroom." It just has a bathroom the whole family uses. As gender-nonconforming young people enter the mainstream, schools and institutions are starting to adjust to their presence and make changes. After all, everyone needs to use the bathroom.

It's not a choice; it's a necessity. Wouldn't it be great if everybody could do it in safety?

—*Sarah and Ian Hoffman*



581a

**POLICY**  
**BOARD OF EDUCATION OF**  
**MONTGOMERY COUNTY**

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Related Entries: ACD, ACF, ACH, ACH-RA, ACG, BMA, GAA, GBA-RA, GBH, GEG-RA, JHF, JHF-RA, JHG-RA

Responsible Offices: Chief of Staff Montgomery County Public School; Teaching, Learning, and Schools; Strategic Initiatives; Districtwide Services and Supports; Human Resources and Development; General Counsel

**Nondiscrimination, Equity, and Cultural Proficiency**

**A. PURPOSE**

To affirm the Montgomery County Board of Education's desire to create an educational community guided by its five core values—Learning, Relationships, Respect, Excellence, and Equity.

To affirm the Board's deep commitment to providing every student equitable access to the educational opportunities, rigor, resources, and supports that are designed to maximize the student's academic success and physical, psychological, and social/emotional well-being, and ensuring all staff are empowered to do their best work.

To assert the Board's belief that each and every student matters, each student's individual characteristics are valuable, and in particular, that educational outcomes should never be predictable by any individual's actual or perceived

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personal characteristics, and that equity demands intensive focus and attention to eliminate all gaps in student achievement.

To establish and promote a framework that prepares all students to live and work in a globally-minded society; fosters a positive learning environment that embraces all unique and individual differences; and, uses an equity lens to consider the impact of any program, practice, decision, or action on all student groups with a strategic focus on marginalized student groups.

To affirm the Board's unwavering commitment that all staff will be culturally proficient, and demonstrate mutual respect without regard to any individual's actual or perceived personal characteristics.

To uphold the Board's core values, and ensure compliance with all federal, state, and local nondiscrimination laws.

### **B. ISSUE**

Discrimination in any form will not be tolerated. It impedes Montgomery County Public Schools' (MCPS) ability to discharge its responsibilities to all students and staff, and achieve our community's long-standing efforts to create, foster, and promote equity, inclusion, and acceptance for all.

The Board recognizes that equity goes beyond meeting the letter of the law. Equity also requires proactive steps to identify and redress implicit biases and structural and institutional barriers

that too often have resulted in identifiable groups of students and staff being unjustifiably or disproportionately excluded from or underrepresented in key educational program areas and sectors of the workforce, as well as over-identified in student discipline actions. Continued vigilance is necessary to end identified inequities that students and staff experience because of their actual or perceived personal characteristics.

For the purposes of this policy, the following definitions are used:

1. *Cultural proficiency* is the ongoing process of becoming knowledgeable of one's own culture, as well as the cultures of others in order to foster an appreciation, understanding, and respect for varying cultural expressions that exist in the actions and interactions of an organization; and, to strengthen and enrich the organization and the community at large with the presence and contributions of many cultures.
2. *Discrimination* includes actions that are motivated by an invidious intent to target individuals based on their actual or perceived personal characteristics, as well as acts of hate, violence, insensitivity, disrespect, or retaliation-such as verbal abuse, harassment, bullying, slurs, threats, physical violence, vandalism, or destruction of property-that impede or affect the learning or work environment. Discrimination also includes conduct or practices that may be facially neutral but that have an unjustified impact based on individuals' actual or perceived



personal characteristics. Discrimination encompasses racism, sexism, and other forms of institutional prejudice in all their manifestations.

3. *Equity* is the commitment to ensure that every student and staff member, without regard to their actual or perceived personal characteristics, is given the individual challenges, support, and opportunities to exceed a rigorous common standard in order to be prepared for academic and career success.
4. *Equity lens* means that for any program, practice, decision, or action, the impact on all students is addressed, with a strategic focus on marginalized student groups.
5. *Implicit bias* refers to the attitudes or stereotypes that affect our understanding, actions, and decisions. These biases, which encompass both favorable and unfavorable assessments, may be activated involuntarily and without an individual's awareness or intentional control.
6. *Personal Characteristics* include race, ethnicity, color, ancestry, national origin, nationality, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family structure/parental status, marital status, age, ability (cognitive, social/emotional, and physical), poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations.

### **C. POSITION**

1. The Board expects the district to develop and promote a culture of high expectations for all students and staff performance and maintain environments that will be equitable, fair, safe, diverse, and inclusive; and eliminate inequities of opportunities, raise the level of achievement for all students, and significantly address achievement gaps.
2. The Board prohibits the use of language and/or the display of images and symbols that promote hate and can be reasonably expected to cause substantial disruption to school or district operations or activities. This prohibition will not be used, however, to prevent responsible discussion of such language, images or symbols for educational purposes.
3. The Board expects all students and staff to conduct themselves in a manner that demonstrates mutual respect without regard to an individual's actual or perceived personal characteristics.
4. The Board prohibits discrimination, by students and staff, of any kind, directed at persons because of their actual or perceived personal characteristics.
5. The Board commits to modelling the expectations in this policy, and expects all Board and MCPS reports, presentations, and decision making to take into account the equity implications of this policy.

6. The Board also expects and promotes the following:
  - a) Collaboration among staff, students, parents/guardians, and the community
    - (1) Staff are expected to work together and with students, parents/guardians, and community members to ensure that each school and work site is free from discrimination.
    - (2) Parents/guardians are encouraged to establish expectations for their children that are consistent with the beliefs, intentions, and obligations set forth in law and as reflected in this policy, and to collaborate with MCPS staff to meet these expectations.
    - (3) Staff are expected to promote engagement of all parents/guardians in their children's education and work to remove barriers that impede their active participation without regard to actual or perceived personal characteristics.
    - (4) MCPS shall seek broad participation on task forces, committees, commissions, and other advisory bodies which represent diverse communities, cultures, languages, and perspectives.
  - b) Equality of educational opportunities
    - (1) The Board is committed to addressing disparities in levels of access to factors

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critical to the success of all students, including the following:

- (a) Resources, including challenging and creative courses, programs, and extracurricular activities;
- (b) Effective and qualified teachers, leaders, and support staff;
- (c) Adequate facilities and equipment;
- (d) Updated technology;
- (e) Quality education materials;
- (f) Practices and procedures that provide for educational equity and ensure that there are not obstacles to accessing educational opportunities for any student; and
- (g) Sufficient funding.

This commitment is, and must continue to be, evident in how resources are allocated, including an intentional strategy of providing additional funding to students in greater need, as well as to schools that serve larger numbers of students in need.

- (2) MCPS will work to identify and address structural and institutional barriers that could prevent students from equitably accessing educational opportunities in all schools.
- (3) MCPS will expect the equitable administration of disciplinary consequences as one of the essential

components to equitable access to educational opportunities in schools.

- (4) MCPS will work toward empowering emergent multilinguals/English Learners to master social and academic English, using their first language(s) and culture(s) as assets, to thrive in school, college, careers, and as global citizens. MCPS will provide access to rigorous coursework and equal access to comparable academic programs both among schools and among students within the same school without regard to actual or perceived personal characteristics.
- (5) MCPS will encourage all students to pursue their goals and interests, without regard to historical barriers or stereotypes. Students will be provided wide access to various and multiple opportunities to enroll in challenging programs and participate in a wide variety of school activities, including athletics, extracurricular and non-academic programs, to enrich their perspectives and to prepare for meaningful and fulfilling work in their chosen careers.
- (6) MCPS will promote and encourage schools, classrooms, work sites, and school-sponsored representations (including mascots, logos, team names, chants, or musical accompaniments) to be inclusive, nondiscriminatory, and bias-free, and to provide a welcoming climate for all.

- (7) MCPS will provide a culturally responsive Prekindergarten to Grade 12 curriculum that promotes equity, respect, and civility among our diverse community, accurately depicts and represents the distinctive contributions of our global community, and provides opportunities for staff and students to model cultural proficiency in every school and program. The curriculum shall enable staff to model, and students to develop, the following attitudes, skills, and behaviors:
  - (a) Value one's heritage and the heritage of others;
  - (b) Respect, value, and celebrate diversity as an essential component of a healthy and thriving community;
  - (c) Value the richness of cultural pluralism and commonality;
  - (d) Develop and promote inclusive relationships and work effectively in cross-cultural environments; and
  - (e) Confront and eliminate stereotypes related to individuals' actual or perceived personal characteristics.
- (8) Instructional materials used in MCPS schools will reflect diversity of the global community, the aspirations, issues, and achievements of women, persons with disabilities, persons from diverse racial, ethnic, and cultural backgrounds, as well as

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persons of diverse gender identity, gender expression, or sexual orientation.

- c) Professional learning and education to achieve districtwide cultural proficiency

MCPS will encourage effective collaboration among staff, parents/guardians, and community members by offering opportunities to enhance cultural proficiency, creating districtwide engagement, and promoting understanding and resolution of differences and disagreements.

- d) Equality of employment opportunities

- (1) MCPS shall continue to monitor and promote a diverse workforce and take appropriate action to create a district free of implicit bias and discrimination in all aspects of employment.
- (2) MCPS will take positive steps to eliminate structural and institutional barriers to recruiting, hiring, retaining, and promoting a diverse workforce.
- (3) MCPS will identify staff positions in which individuals from diverse backgrounds are underrepresented, and promote a diverse workforce by actively recruiting and/or promoting qualified candidates, consistent with negotiated agreements. For example, MCPS will continue to recruit staff to positions that are nontraditional for their gender.
- (4) MCPS will empower staff to promote the Board's core values and beliefs expressed

in this policy in daily interactions with peers, students, parents/guardians, and members of the community.

**D. DESIRED OUTCOMES**

1. Every school and work site will embody a culture of respect, grounded in the Board's core values, that promotes understanding, respect, civility, acceptance, and positive interaction among all individuals and groups.
2. Structural and institutional barriers to educational and employment opportunities will be eliminated.
3. MCPS schools and work sites will be equitable, safe, diverse, inclusive, and free of discriminatory acts of hate, violence, insensitivity, and disrespect.
4. Educational outcomes shall not be predictable by actual or perceived personal characteristics, and gaps in student achievement will be significantly reduced.
5. MCPS students and staff will become models in the community of civility, acceptance, respect, and positive interactions.
6. The educational experiences of all students will be enriched by providing exposure to staff from many backgrounds reflecting the pluralistic nature of the community, thereby providing settings for education that promote understanding of diversity and contribute to the quality of the exchange of ideas inherent in the educational setting.



## **E. IMPLEMENTATION STRATEGIES**

1. The Board will address disparities in levels of access to resources critical to the success of students by implementing an intentional strategy of providing additional funding to students in greater need, as well as to schools that serve larger numbers of students in need; and ensuring equitable access to effective leaders and teachers for all students.
2. MCPS will engage with staff, students, parents/guardians, and the entire community to build and sustain a culture emblematic of the ideals of this policy.
3. MCPS will identify a process for analyzing data to develop goals, objectives, strategies, and timelines for the implementation of equitable and culturally competent practices in each school. Multiple indicators are necessary to monitor student outcomes, engagement, and school climate, and specific data will be used to ensure accountability for student, school, and districtwide performance; to reduce variability in outcomes; and to ensure that academic outcomes will not be predictable by actual or perceived personal characteristics and can be assessed and reported transparently to the public.
4. Programs, curricula, instructional materials, and activities, including athletics, extracurricular and non-academic programs and activities, will provide all students with the knowledge, skills, attitudes, and behaviors that promote cultural proficiency and

behaviors that enable students to live and work together in our increasingly diverse county, state, nation, and world.

5. MCPS will provide tailored and differentiated professional learning to –
  - a) build capacity for cultural proficiency and cultural responsiveness,
  - b) gain the skills and knowledge to create a learning environment that is student-centered and meets the individual and diverse needs of all students, and
  - c) address areas of inequity in the system and the barriers that may impede students success, social-emotional learning, and physical and psychological health of students.
6. At all times, staff will foster –
  - a) physically and psychologically safe and welcoming environments for learning and working;
  - b) model and encourage respectful, and civil discourse and interactions among all staff, students, parents/guardians, and community members; and
  - c) strive to remove cultural, linguistic, technological, or transportation-related barriers that may prevent families from engaging with their children's education, through the use of culturally responsive resources, such as –
    1. interpreters,

2. translated documents, and
  3. collaboration with organizations that may facilitate communication between MCPS and families.
7. Specific strategies will be identified, communicated and used to prevent discrimination, and procedures will be followed to resolve, monitor, and analyze such incidents of discrimination if they occur.
  8. MCPS will identify partnerships and work cooperatively with the Montgomery County Executive, the Montgomery County Council, local law enforcement agencies, other county agencies, community groups, business organizations, and other stakeholders to increase equity and reduce discrimination for students and staff.
  9. A statement summarizing this Board policy of nondiscrimination, will be prominently included in MCPS publications and on the MCPS website. Any publication that states the Board policy of nondiscrimination in English will also be translated into those languages for which translation and interpretation services are most frequently requested by parents/guardians of MCPS students.
  10. The superintendent of schools will designate an appropriate lead office to implement this policy, with support from other offices as appropriate, and assume responsibility for the following:
    - a) Monitoring and ensuring MCPS compliance with all federal, state, and local

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nondiscrimination laws and MSDE reporting requirements;

- b) Identifying the method of evaluation to measure the effect of equitable practices districtwide and in schools;
  - c) Promptly investigating, and resolving complaints of discrimination;
  - d) Designating an individual responsible for the facilitation, monitoring, and implementation of system equity initiatives;
  - e) Increasing awareness of the Board's values and expectations under this policy;
  - f) Requiring that an equity lens be used in reviews of –
    - 1) staff, curriculum, pedagogy, professional learning, instructional materials, and assessment designs; and
    - 2) all staff recruiting, hiring, retention, and promotion processes;
  - g) Providing professional learning regarding nondiscrimination, equity and cultural proficiency; and conducting outreach to support the application of these concepts in professional conduct and practice; and
  - h) Maintaining appropriate records.
11. The superintendent of schools may direct an employee who exhibits insensitive behavior, as evidenced by violating the values and expectation expressed in this policy, to participate in additional training regarding cultural proficiency. Continued insensitivity

will not be tolerated by the Board and may result in further disciplinary action, including dismissal, consistent with the *MCPS Employee Code of Conduct*.

**F. REVIEW AND REPORTING**

1. The superintendent of schools will -
  - a) ensure that equity be addressed in the Local Every Student Succeeds Act (ESSA) Consolidated Strategic Plan;
  - b) disaggregate student data to analyze trends and identify gaps, and use such data to support the creation of equitable solutions; and
  - c) provide the public and the Board with regular updates on the implementation of this policy and efforts undertaken by the district to create an equitable school system that fulfills the Board's core values.
2. This policy will be reviewed every three years in accordance with the Board of Education's policy review process.

\* \* \*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
et al.,

*Plaintiffs,*

v.

MONIFA B. MCKNIGHT,  
in her official capacity as  
Superintendent of the  
Montgomery Board of  
Education, et al.,

*Defendants.*

Case No. 8:23-CV-  
01380-DLB

**DECLARATION OF  
NIKI T. HAZEL IN  
SUPPORT OF  
DEFENDANTS'  
OPPOSITION TO  
PLAINTIFFS'  
MOTION FOR  
PRELIMINARY  
INJUNCTION**

I, Niki T. Hazel, declare as follows:

1. I am the Associate Superintendent, Curriculum and Instructional Programs at Montgomery County Public Schools, where I have been employed for 28 years. In my current role, I oversee PreK-12 Curriculum, Accelerated and Enriched Instruction, Emergent Multilingual Learner Education, Early Childhood Programs, Title I Schools, Choice and Application Programs and Services, School Library Media Programs, Career Readiness, and Technology Education. I make this declaration based on my personal knowledge and upon review of MCPS's records maintained in the ordinary course of business, to which I have access based on my job responsibilities.

**A. Montgomery County Public Schools And The  
Montgomery County Board of Education  
Serve A Diverse Community**

2. Montgomery County Public Schools is Maryland's largest school district. It enrolled 160,554

students for the 2022-2023 school year across 210 schools.

3. The Montgomery County Board of Education (the “Board”) is the official educational policy-making body in the county. It sets goals, establishes policies, and commits resources to benefit MCPS’s diverse student population.

4. The Board consists of seven county residents elected by voters for a four-year term and a student elected by secondary school students for a one-year term.

5. The Board values learning, respect, relationships, excellence, and equity. The Board believes that building relationships with its diverse community requires it to understand the perspectives and experiences of others. It also believes that the diversity of culture, interests, skills, and backgrounds in its community is an asset that makes it stronger.

6. These values are memorialized in the Board’s Policy ACA on Nondiscrimination, Equity, and Cultural Proficiency. Policy ACA is attached as **Exhibit 1**. Policy ACA provides that one of the Board’s purposes is to “foster[] a positive learning environment that embraces all unique and individual differences” and to “ensure compliance with all federal, state, and local nondiscrimination laws.” The Board recognizes that it must take “proactive steps to identify and redress implicit biases and structural and institutional barriers that too often have resulted in identifiable groups of students and staff being unjustifiably or disproportionately excluded from or underrepresented in key educational program areas ....” The Board therefore strives to “provide a

culturally responsive Prekindergarten to Grade 12 curriculum that promotes equity, respect, and civility among our diverse community ....” The curriculum prepares students to “[c]onfront and eliminate stereotypes related to individuals’ actual or perceived personal characteristics,” such as race, ethnicity, national origin, religion, immigration status, sex, gender identity, sexual orientation, and other “protected attributes or affiliations.” The Board accordingly expects that “[i]nstructional materials used in [its] schools will reflect the diversity of the global community ....”

**B. MCPS Carefully Selects The Materials That It Approves For Instructional Use**

7. In accordance with Policy ACA, the MCPS English Language Arts (“ELA”) Framework notes that the ELA curriculum is designed to “promote[] instruction that,” among other goals, “nurtures appreciation and understanding of diverse individuals, groups, and cultures.” The ELA Framework is attached as **Exhibit 2**.

8. MCPS has adopted Core Learning Practices under its ELA curriculum, under which MCPS teachers are expected to “plan instructional experiences where students frequently engage in” a variety of core learning practices, including “[s]electing from a range of diverse texts to understand and appreciate multiple perspectives.” These Core Learning Practices are attached as **Exhibit 3**.

9. After contracting with Johns Hopkins University to conduct a comprehensive review of its curriculum, MCPS announced in 2018 that it would contract with highly rated and proven third-party



educational companies to implement its English Language Arts and Mathematics curricula.

10. A committee of parents, teachers, and staff members chose Benchmark Education (“Benchmark”) to implement MCPS’s ELA curriculum after determining that its curricular resources best aligned with the Maryland College and Career Ready Standards published by the Maryland State Department of Education.

11. MCPS regularly supplements the external curricular resources delivered by companies such as Benchmark. Regulation IIB-RA outlines the standard procedure for selecting these instructional materials. That regulation is attached as **Exhibit 4**.

12. Instructional materials are approved by a selection committee comprised of professional staff members and subject-area experts.

13. That committee evaluates materials that may be approved for instructional use for alignment with the MCPS curriculum, age-appropriateness, and relevance to and reflection of a multicultural society.

14. The committee evaluates instructional material based on several criteria, including that the materials be “relevant to and reflective of the multicultural society and global community,” be “[a]ge/grade appropriate[],” and “support ... student achievement toward MCPS curriculum standards.”

15. Instructional materials are evaluated by the relevant selection committee using MCPS Form 365-25. A copy of that form is attached as **Exhibit 5**. Form 365-25 requires the committee of reviewers to provide five categories of information describing “how the

materials are essential to student learning.” These categories are “[d]irect support of content standards and performance indicators,” “[a]uthenticity of the material,” “[i]mpact on instructional time,” “[c]larity and ease of understanding,” and “information about content, strengths/weaknesses, areas of concern (restrictions) and cultural relevance (culture, religion, ethnicity, region, country, author, characters, gender).”

16. The instructional material selection process also allows for community input. Newly approved books remain in the Evaluation and Selection Unit for 30 calendar days to permit examination by professional staff and parents. Titles are also available for examination on the Montgomery County Public Schools Evaluation and Selection website.

17. In that 30-day examination period, parents and caretakers have opportunities to review and share feedback. When parents provide feedback on instructional materials during this time period, the coordinator of the evaluation and selection process reviews and considers this feedback before making a final decision about whether to approve the materials.

18. Teachers are provided materials that are approved for instructional use. Teachers are expected to use the instructional materials provided, and can select which of these materials to incorporate into their lesson plans.

### **C. MCPS Strives To Adopt Policies And Curricula That Reflect The Diversity Of Montgomery County Families**

19. MCPS is Maryland’s largest school district, serving an incredibly diverse community. MCPS

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serves a population of over 160,000 students, over 75% of whom are nonwhite, 44% of whom receive free and reduced-price meals, and 19% of whom receive English language development services. The community also includes people of many different religious faiths, family statuses, gender identities, sexual orientations, and other protected attributes or affiliations.

20. MCPS seeks to ensure that its policies and its curricula meet the needs of Montgomery County families. In line with this effort, MCPS has worked to accommodate families of all religious backgrounds. For example, MCPS authorizes absences for religious holidays, ensures students can make up missed assignments, and provides that students cannot be denied a perfect attendance award if their only absences have been excused for the observance of religious holidays. Beginning with the 2016-2017 school year, MCPS stopped scheduling classes on Eid al-Fitr or Eid al-Adha, two major Islamic holidays. And MCPS advises principals that schools should avoid scheduling tests or other major events on dozens of other “days of commemoration,” during which MCPS expects that many students may be absent for or engaged in religious or cultural observances.

21. MCPS also works continually to ensure that its pre-K through 12th grade curriculum reflects Montgomery County families. MCPS has accordingly made regular efforts to incorporate instructional materials that reflect the diversity of the community. For example, MCPS has purchased books for use as part of the ELA curriculum that are intended to be more representative of other races and cultures. These books include the *March* trilogy, which recounts the life of civil rights icon Congressman John Lewis,

and *The Leavers*, which introduces readers to the story of an Asian-American immigrant family. MCPS also recently updated its Social Studies curriculum to incorporate instructional materials about local history and the narratives of historically marginalized groups.

22. Representation in the curriculum creates and normalizes a fully inclusive environment for all students in MCPS. It supports a student's ability to empathize, connect, and collaborate with diverse peers and encourage respect for all.

#### **D. MCPS Selects The LGBTQ-Inclusive Books To Ensure Representation In The ELA Curriculum**

23. In recent years, MCPS determined that the books used in its existing ELA curriculum were not representative of many students and families in Montgomery County because they did not include LGBTQ characters. The LGBTQ-Inclusive Books were thus introduced following a years-long process that engaged parents, community members, students, teachers, and staff.

24. In the spring of 2022, MCPS initiated the procedures outlined in MCPS Regulation IIB-RA to evaluate potential new instructional materials that would be more inclusive of LGBTQ people.

25. Pursuant to this process, a committee comprised of four reading specialists and two instructional specialists participated in two rounds of evaluations of potential instructional materials.

26. The committee recommended approval of the LGBTQ-Inclusive Books after finding that the books supported MCPS content standards and performance

indicators, contained narratives and illustrations that would be accessible and engaging to students, and featured characters of diverse backgrounds whose stories and families students could relate to. The committee also reviewed a number of books that it decided not to recommend for instructional use.

### **E. MCPS Introduces The LGBTQ-Inclusive Books As Part Of The Curriculum**

27. MCPS introduced the books as part of the preK-12 English Language Arts curriculum in the 2022-2023 school year. The list of LGBTQ-Inclusive Books includes 13 books, recommended by grade level. A list of these books with accompanying summaries is available on the MCPS website at <https://www2.montgomeryschoolsmd.org/curriculum/office/inclusive-resources>.

28. Over the summer, MCPS prepared principals and teachers for the introduction of these books. MCPS sent an email update to principals about the upcoming book arrivals and a professional learning for reading specialists that was set to take place in October. MCPS also offered an optional professional development for reading specialists, counselors, and media specialists. More than 130 participants engaged in a session about using the LGBTQ-Inclusive Books as part of the English Language Arts Curriculum.

29. The MCPS Office of Curriculum and Instructional Programs suggested that teachers incorporate the new texts into the curriculum in the same way that other books are used, namely, to put them on a shelf for students to find on their own; to recommend a book to a student who would enjoy it; to

offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud.

30. In communications with schools, MCPS made clear that there is no planned explicit instruction on gender identity and sexual orientation in elementary school, and that no student or adult is asked to change how they feel about these issues. Instead, like other books in the English Language Arts Curriculum, the newly approved books are used to assist students with mastering reading concepts like answering questions about characters, retelling key events about characters in a story, and drawing inferences about story characters based on their actions.

31. As with all curriculum resources, there is an expectation that teachers use the LGBTQ-Inclusive Books as part of instruction. Teachers have a choice regarding which MCPS-approved materials to use and when to use them throughout each unit. While the LGBTQ-Inclusive Books include one suggested book per grade level, teachers can choose among the texts, and are not limited to a single book corresponding to their grade level. Teachers cannot, however, elect not to use the LGBTQ-Inclusive Books at all. This reflects MCPS's view that, if these instructional materials are not used at all, a teacher is not fulfilling MCPS's expectation that students will be taught pursuant to a representative and culturally responsive curriculum.

**F. The Board Announces That Parents Cannot Opt Their Children Out Of Classroom Instruction Using The Books For Any Reason**

32. During the 2022-2023 school year, MCPS's Guidelines for Religious Diversity provided that

“[w]hen possible, schools should try to make reasonable and feasible adjustments to the instructional program to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs,” or “would invade student privacy by calling attention to the student’s religion.” The Guidelines further provided that “[w]hen a student is excused from the classroom activity, the student will be provided with an alternative to the school activity or assignment,” and that “it may be feasible to accommodate objections from students or their parents/guardians to a particular reading assignment on religious grounds by providing an alternative selection that meets the same lesson objectives. However, if such requests become too frequent or too burdensome, the school may refuse to accommodate the requests.”

33. At the beginning of the 2022-2023 school year, some parents began contacting individual teachers, principals, or MCPS staff about the LGBTQ-Inclusive Books. Some of these parents asked that their children be excused from classroom instruction using the LGBTQ-Inclusive Books.

34. Many of the opt out requests were not religious in nature. Some parents, for instance, expressed their opposition to what they believed was an effort to teach students about sex, to teach students lessons about LGBTQ issues, or to use instructional materials that were not age-appropriate.

35. In some instances, individual teachers or principals who fielded these requests sought to

accommodate them by telling parents that students could be excused when the LGBTQ-Inclusive Books were read in class.

36. In March 2023, MCPS met with a small group of principals. Through these conversations, MCPS became aware that individual principals and teachers could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment and undermining MCPS's educational mission.

37. Among MCPS's concerns was high student absenteeism. In one instance, for example, MCPS became aware that parents sought to excuse dozens of students in a single elementary school from instruction using the LGBTQ-Inclusive Books.

38. Another concern was the infeasibility of continuing to use the LGBTQ-Inclusive texts in classroom instruction while honoring individual opt-out requests. Doing so would not only require teachers to track and accommodate opt out requests in their classrooms. It also would also force media specialists and other instructors who spend time in multiple classrooms each day to ensure that they were abiding by the accommodations granted to every student they encountered across an entire school.

39. MCPS moreover determined that allowing opt outs from instruction using the LGBTQ-Inclusive Books would defeat its efforts to ensure a classroom environment that is safe and conducive to learning for all students. MCPS was concerned that, when some students are permitted to leave the classroom whenever language arts lessons draw on books featuring LGBTQ characters, students who believe



that the books represent them or their families are exposed to social stigma and isolation. This result risks putting MCPS out of compliance with its obligations under state and federal nondiscrimination laws. MCPS's interest in compliance with these nondiscrimination laws is reflected in Policy ACA, as well as MCPS's Guidelines for Student Gender Identity. The 2019-2020 Guidelines for Student Gender Identity are attached here as **Exhibit 6**.

40. Based on these concerns, MCPS decided that it was not feasible or consistent with MCPS's curricular goals to accommodate requests for students to be excused from the LGBTQ-Inclusive Books.

41. On March 23, 2023, MCPS therefore informed parents, teachers, schools, and principals that, moving forward, schools could no longer entertain requests for students to opt out of the LGBTQ-Inclusive Books, for any reason. If schools already had granted accommodation requests, those accommodations would no longer be provided after the 2022-2023 school year ended.

42. Under the policy now in effect, MCPS does not permit students to be excused from classroom instruction using the LGBTQ-Inclusive Books for any reason. Students and families may not choose to opt out of engaging with these instructional materials.

43. MCPS continues to allow families to opt students out of the Family Life and Human Sexuality Unit of Instruction, which is required by Maryland law, as reflected in COMAR § 13A.04.18.01.

I declare under penalty of perjury that the foregoing is true and correct.

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Executed on this 12th day of July, 2023.

/s/ Niki T. Hazel  
Niki T. Hazel

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
et al.,  
*Plaintiffs,*

v.

MONIFA B. MCKNIGHT,  
in her official capacity as  
Superintendent of the  
Montgomery Board of  
Education, et al.,  
*Defendants.*

Case No. 8:23-CV-  
01380-TJS

**DECLARATION OF  
ROBERT MCCAW**

I, Robert McCaw, declare as follows:

1. My name is Robert McCaw. I am over 21 years old and capable of making this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of all of the contents of this declaration.

2. I am the Government Affairs Department Director at the Council on American-Islamic Relations (CAIR), the nation's largest Muslim civil rights and advocacy organization. Since 2011, I have overseen CAIR's Muslim civic engagement and empowerment programs. Since 2015, I have served as Chairman of the U.S. Council of Muslim Organizations Steering Committee for the National Muslim Advocacy Day on Capitol Hill. I hold a Master's degree in political science and a Certificate in Public Affairs from the University of Florida, Gainesville.

3. On June 8, 2023 I submitted an open records request to the Montgomery County Public Schools (MCPS) regarding its no-opt-out policy regarding

newly introduced reading materials and teacher-led discussions about issues involving gender, family life and other related topics.

4. A copy of MCPS's response is attached as Exhibit A.

5. MCPS also included over 130 pages of documents that were responsive to the request, including all "communications" between June 1, 2022, and June 8, 2023, "from or to Superintendent [Monifa B.] McKnight or Chief Academic Officer [Dr. Peggy A. Pugh] concerning the newly approved MCPS reading list of books" that are at issue in the captioned litigation.

1. I have reviewed all of the documents provided in response to the request. I found no mention of any concern that the number of parental requests for opt-outs were becoming too numerous or burdensome for MCPS.

2. The documents attached as Exhibit B were also included among the documents produced by MCPS.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 26th day of June, 2023.

/s/ Robert Stephen McCaw  
Robert Stephen McCaw

<b>EXHIBIT A</b>
------------------

MONTGOMERY COUNTY PUBLIC SCHOOLS  
*Expanding Opportunity and Unleashing Potential*  
Public Information Office

July 17, 2023

Mr. Robert McCaw  
rmccaw@cair.com

Dear Mr. McCaw:

I have received your Maryland Public Information Act (MPIA) request seeking copies of emails, text messages, files, reports, policies, trainings, guidance, classroom lesson plans, reading lists or other records, herein listed as “communications,” sent, received or possessed by MCPS Superintendent of Schools Dr. Monifa B. McKnight (Monifa\_B\_McKnight@mcpsmd.org) and MCPS Chief Academic Officer Dr. Peggy A. Pugh (Peggy\_Pugh@mcpsmd.org) between June 1, 2022, and June 8, 2023, related to the subjects identified below. The requested information includes:

- Any communications from or to Superintendent McKnight or Chief Academic Officer Pugh concerning the August 2022 professional development training titled: “Building Community with LGBTQ+ Affirming Picture Books.”
- Any communications from or to Superintendent McKnight or Chief Academic Officer Pugh concerning the newly approved MCPS reading list of books for students in prekindergarten to

eighth grade. Books include: "Pride Puppy" by Robin Stevenson; "Uncle Bobby's Wedding" by Sarah Brannen; "Intersection Allies: We Make Room for All" by Chelsea Johnson, LaToya Council and Carolyn Choi; "My Rainbow" by Trinity and DeShanna Neal; "Prince & Knight" by Daniel Haack; "Love, Violet" by Charlotte Sullivan Wild; "Born Ready: The True Story of a Boy Named Penelope" by Jodie Patterson; "Cattywampus" by Ash Van Otterloo; "The Best at It" by Maulik Pancholy; "Ivy Aberdeen's Letter to the World" by Ashley Herring Blake; "Hurricane Child" by Kacen Callender; "The Stonewall Riots: Coming Out in the Streets" by Gayle E. Pitman; and "Troublemaker for Justice: The Story of Bayard Rustin, the Man Behind the March on Washington" by Jacqueline Houtman, Walter Naegle and Michael G. Long.

I am responding on behalf of the superintendent of schools who, as official custodian of records for the school system, is responsible for replies under the Maryland Public Information Act, Title 4 of the General Provisions (GP) Article.

Please copy and paste the following link to find enclosed responsive documents to your request:  
[https://drive.google.com/drive/folders/1zIDT-5dIKvpI\\_lJG3NDb1h6QtKfmM0Do?usp=sharing](https://drive.google.com/drive/folders/1zIDT-5dIKvpI_lJG3NDb1h6QtKfmM0Do?usp=sharing)

Documents have been redacted in accordance with the student records exception in GP § 4-313.

If you believe you have been wrongly denied a public record, you are entitled to seek judicial review of this decision pursuant to GP § 4-362. In addition, pursuant

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to GP § 4-1B-01 et seq., you also have the option to express any concerns about this decision to the Public Access Ombudsman.

With regards,

/s/ Christopher C. Cram

Christopher C. Cram

Director, Department of Communications

\* \* \*

<b>EXHIBIT B</b>
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**From:** Bayewitz, Michael D

**To:** Murphy, Patrick K; Rogovoy, Elizabeth M; Reuben, Ruschelle; Hazel, Niki T; Logan, Kisha; Pugh, Peggy A; Cram, Christopher C; Stockton, Brian S; Hull, Brian; Bolden, Natasha; Edmundson, Greg

**Cc:** Clark-Harrison, Arienne M; Handy, Christine C - MCAAP; Forkert, Ryan D

**Subject:** MCAAP Elementary Cabinet White Paper on LGBTQ+ Materials

**Date:** Tuesday, November 22, 2022 10:36:09 AM

**Attachments:** MCAAP Elementary Cabinet White Paper on LGBTQ+ Materials.docx

Good morning,

On behalf of the MCAAP Elementary Cabinet, I am sharing the attached document that outlines specific concerns and questions raised by principals in regard to the LGBTQ+ supplemental materials. We also offer several suggestions. We stand ready to collaborate with central office leadership to be thought partners in order to ensure that our schools are welcoming,

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inclusive places where students feel physically and emotionally safe.

Arienne and I are happy to field any questions you may have.

I hope each of you are able to enjoy a happy and healthy Thanksgiving break!

Michael D. Bayewitz  
Chair, Elementary Chapter, MCAAP  
Principal, Cloverly Elementary School

### **[ATTACHMENT]**

Principals support the desire for all students to see themselves and their families in their literature. We value all stakeholders and strive for our school communities to be inclusive and value diversity. Principals also share Dr. McKnight's interest in rebuilding trust with our community. To achieve these goals, we must strive for clear communication and full transparency with all stakeholders.

It is within this context that we share the following concerns around the recent distribution, communication, and messaging around the LGBTQ+ supplemental books and materials.

#### **1. Communication Regarding Intent of Materials**

Central office leaders have communicated to principals that the purpose of the materials is to portray and represent LGBTQ+ characters in literature, for students to be able to see themselves and/or family in their learning, and to promote inclusivity; it has been



communicated that MCPS is not teaching about sexual orientation and gender identity as stand alone concepts in elementary school. However, several of the books and supporting documents seemingly contradict this message. (See item #7). Principals are requesting a clear and transparent message from MCPS to families about the intent and purpose of these books, as well as a draft message principals could utilize after the system-wide communication.

## 2. Appropriateness of Materials

Numerous concerns have been raised by principals, teachers, and community members that the content of the books does not align with the stated messages. There are concerns that the plot of some of the books center around sexual orientation and gender identity. There are concerns that some of the books are not appropriate for the intended age group, or in one case, not appropriate at all for young students. Specific concerns raised include:

- *Pride Puppy* (Pre-K)- Depicts a “queen”, (drag queen in glossary).
- *Uncle Bobby’s Wedding* (K)- No concerns shared Intersection Allies- (Gr. 1)- No concerns shared about content, but the text is too difficult and unengaging for first grade students.
- *My Rainbow* (Gr. 2)- The plot is about an African American autistic girl who comes to understand she identifies transgender. The words *transgender* and *cisgender* are used but not explained.

- *Prince and Knight* (Gr.3)- The plot is about a prince searching for a bride and who falls in love with a knight.
- *Love, Violet* (Gr. 4)- The plot is about a young school-age girl who falls in love with another girl in her class. It is problematic to portray elementary school age children falling in love with other children, regardless of sexual preferences.
- *Born Ready: True Story of a Boy Named Penelope* (Gr. 5)- The plot is about a girl who identifies as a boy.

Principals are requesting that MCPS consider other titles that more closely align to the communicated intent of the materials.

### **3. If Materials are Mandatory or Optional**

MCPS has stated publicly that these are optional materials. This stance places principals (and leadership teams) in a potentially polarizing position of having to decide whether to use the materials. In many schools that we have spoken with, there have been parents who have already vehemently expressed their desire for their child to be removed from the classroom during any lessons surrounding gender identity, sexual orientation, or LGBTQ+ related content. Other parent groups have shared their strong support for the materials to be used. If this is a school by school, or teacher by teacher decision, this will significantly damage school-community relationships.

#### **4. Opt-Out Option**

MCPS has stated publicly that there is no option to opt-out, with the rationale that MCPS is simply providing books about inclusion of LGBTQ+ characters and inclusivity. However, due to the concerns shared earlier about the plot and nature of the books, this creates a significant concern by some parents about “indoctrination” or “hidden agendas.”

#### **5. Teacher Training**

Teachers have not been trained on the use of these materials and subsequent questions, conversations, and class discussions that may occur. Some teachers have shared their discomfort about the content, the terminology, and the appropriateness of the books developmentally as well as from a sexual education perspective. For example, family life isn’t taught until fifth grade, but a second grade book uses terminology such as *cisgender* or *transgender*.

#### **6. Process of Selection of Materials**

It has been shared that these materials went through the established MCPS process of including multiple stakeholders and community involvement in the approval process. However, given the sensitive nature of the materials, there needs to be a more robust, inclusive, public-facing process that includes deliberate attempts to include administrators, teachers, and parents as stakeholders. It is especially important to include communities

that represent various perspectives across Montgomery County.

## 7. Communication Moving Forward

Beginning with the materials arrived in schools this summer without clear communication, the communication around the materials and messaging has been wrought with confusion. Moving forward, principals are seeking one office, or one point-person, to be the contact of communication for principals.

## 8. Supporting Documents Containing Mixed Messaging and/or Questionable Content

- a. In “Sample Student Call-Ins” document.  
Example provided:

A Student might say something like . . .	We can respond with . . .
“Being _____ (gay, lesbian, queer, etc) is wrong and not allowed in my religion.”	I understand that is what you believe, but not everyone believes that. We don’t have to understand a person’s identify to treat them with respect and kindness. (Concern- dismissive of religious beliefs)
“That’s weird. He can’t be a boy if he was born a girl.” “What body parts do they have?”	That comment is hurtful; we shouldn’t use negative words to talk about people’s identities.

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	<p>(Concern- shaming comment to a child).</p> <p>When we're born, people make a guess about our gender and label us boy or girl based on our body parts. Sometimes they're right and sometimes they're wrong. Our body parts do not decide our gender. (Concern: Stated as a fact. Some would not agree this as a fact).</p>
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b. "Adding an LGBTQ+ Lens to Our Critical Selection Repertoire"

Sample of concerns:

- "Who wrote & illustrated the book? How do they identify? Are they writing from a place of lived experience(s)?" (Concern: This criterion is exclusionary and should not limit possible resources that are relevant.)
- Does the book promote deep engagement and leave room for discussion and curious exploration? (Concern: This suggests the literature is designed to spark curiosity about the topic, as opposed to exposure and inclusivity).

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c. “Responding to Caregivers / Community Questions”

Concern: Throughout this document, many of the answers provided contradict the overarching messaging and seem to support the explicit teaching of gender and sexual identify.

### **Adding an LGBTQ+ Lens to Our Critical Selection Repertoire**

- Who wrote & illustrated the book? How do they identify? Are they writing from a place of lived experience(s)?
- Whose voices are being centered (as opposed to side characters or tokenized ones)? Whose perspective is missing? Whose life experience is not included? How might that impact how the story is received by those whose voices are present and those who are not?
- Is this a book that will serve to show students they are accepted in their full humanity, affirm their lived experiences and support ALL of their identities? Or will it serve to perpetuate bias, stereotypes and negative viewpoints?
- Are stereotypes reinforced or disrupted?
- Is heteronormativity reinforced or disrupted?
- Is cisnormativity reinforced or disrupted?
- Are power hierarchies that uphold the dominant culture reinforced or disrupted?
- Is the book structured in a way that assumes the reader's identities align with dominant culture? Is the LGBTQ+ reader "othered"?
- Are LGBTQ+ storylines presented in a way that frames them as mostly similar to and needing to be tolerated by those with dominant culture identities?
- Is the book an authentic representation of LGBTQ+ individuals as whole people, living

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complex lives that do not adhere to dominant culture narratives?

- Does the book promote deep engagement and leave room for discussion and curious exploration?
- Are the story, characters and illustrations rich and fully developed?

Sources: Empowering Educators Guidebook, Critically Analyzing Books for Representation, Beyond Normalization: An Analysis of Heteronormativity in Children's Picture Books, Mirrors and Windows with Texts and Readers: Intersectional Social Justice at Work in the Classroom



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
et al.,  
*Plaintiffs,*

v.

MONIFA B. MCKNIGHT,  
in her official capacity as  
Superintendent of the  
Montgomery Board of  
Education, et al.,  
*Defendants.*

Case No. 8:23-CV-  
01380-TJS

**DECLARATION OF  
GRACE  
MORRISON IN  
SUPPORT OF  
PLAINTIFFS'  
MOTION FOR A  
PRELIMINARY  
INJUNCTION**

I, Grace Morrison, declare as follows:

1. My name is Grace Morrison. I am over 21 years old and capable of making this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of all of the contents of this declaration.

2. I am a board member of Kids First, the Plaintiff unincorporated association of parents and teachers formed to advocate for the return of parental notice and opt-out rights in the Montgomery County Public Schools.

3. My husband and I reside in Montgomery County, Maryland. Our youngest child was adopted as an infant from Ukraine. She is now 10 years old and has Down Syndrome and Attention Deficit Disorder. She has been in the Montgomery County Schools since she was 3 years old. She is currently enrolled in the Learning for Independence Program in a Montgomery County Public School. She has an IEP and her advanced needs qualify her for a full time, one-on-one

paraeducator. She also receives special services in the school such as speech therapy and occupational therapy.

4. My husband and I adhere to the Roman Catholic faith, including the Church's teachings on marriage, family, sex, sexuality, and gender.

5. As the Catholic Church teaches, we believe that marriage is the lifelong union of one man and one woman—distinct from each other, while complementary to each other—and that the nature and purpose of human sexuality is fulfilled in that union. For these same reasons, we live and teach the Church's teachings to our children about gender, which we believe is interwoven with one's sex, sexuality, and the ordering of the male and female bodies.

6. While—as we know first-hand from our adoption experience—not every child is raised with a mother and a father, every child is created by a mom and dad. We believe this is the result of God's ordering of the human species. Our faith motivated us to adopt our youngest daughter, to provide her a loving mother and father, and to raise her in our Catholic faith—just as we have our biological children.

7. Among other requirements, our sacred obligation as parents compels us to form our daughter's understanding of what it means to be a woman, to love another person, the nature and purpose of marriage, and how to embrace the vocation she is called to by God.

8. Our religious obligations as our youngest daughter's parents are pressured by the "Pride" literature. In addition to conflicting with our religious

understandings of marriage, sexuality, and gender, it is practically impossible for us to contradict that instruction.

9. Due to her learning challenges, she doesn't understand or differentiate instructions from her teachers and her parents. In fact, at ten years old, we only recently helped her understand the need to use the girl's restroom. My husband and I won't be able to contradict what she hears from teachers. Due to her learning challenges, she will not be able to understand how or why we disagree.

10. Moreover, because of her needs we do not have a clear alternative for her education except to remain in the public schools. Even if we could afford private education, none of the private school options we are aware of would be able to keep her instruction at her developmental level, even with those school's best efforts and intentions. She would still need to go outside any private school for occupational therapy and speech therapy. Only the public school system has all those resources.

11. Because of this pressure, I asked my daughter's teacher via email if her class would be reading any of the "Pride" literature on May 31, 2023. Had I not asked, I would not have known.

12. My daughter's teacher told me that the literature would be presented by the librarian on June 2, and by her teacher on June 5 and 6 in the language arts class. I inquired about an opt out, and her teacher said that no opt out was possible. Subsequently, I emailed my daughter's principal to inquire more about the literature. I was told that they adhere to the MCPS policy. I responded that we would not have our

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daughter attend school at that time, and we kept her home.

13. Consequently, the School Board's decision to disallow opt outs from the Pride Storybooks directly and significantly burdens the religious obligation of me and my husband to instruct our youngest child in accordance with the Catholic faith.

14. By not allowing an opt out, my husband and I are forced to place our daughter in a school where she will be taught views on marriage, sexuality, and gender that will be practically impossible for us to contradict. We have no other realistic choice but public school.

15. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 11th day of August, 2023.

/s/ Grace Morrison  
Grace Morrison

**Sample Student Call-Ins  
(Inspired by Liz Kleinrock)**

<b>A student might say something like . . .</b>	<b>We can respond with . . .</b>
<p>“Being _____ (gay, lesbian, queer, etc) is wrong and not allowed in my religion.”</p>	<p>I understand that is what you believe, but not everyone believes that. We don't have to understand or support a person's identity to treat them with respect and kindness. School is a place where we learn to work together regardless of our differences. In any community, we'll always find people with beliefs different from our own and that is okay--we can still show them respect.</p>
<p>They can't get married or be a family, they're both men. Does that mean they're gay? That's weird</p>	<p>When people are adults they can get married. Two men who love each other can decide they want to get married, be a family and care for each other. There are so many different kinds of families and ways to be</p>

	<p>a family. Each family is special and has ways that they are similar to and different from our own.</p> <p>The word “gay” describes people of the same gender who love each other. In our school we respect all people so we don’t talk about being “gay” in a negative way like saying it’s “weird.”</p>
<p>She can’t like a girl like that, she can only like boys because she’s a girl.</p>	<p>Disrupt the either/or thinking by saying something like: actually, people of any gender can like whoever they like. People are allowed to like whoever they want. How do you think it would make (character’s name) to hear you say that? Do you think it’s fair for people to decide for us who we can and can’t like?</p> <p>Then, provide an example to counter the statement:</p>

	<ul style="list-style-type: none"> <li>• My best friend is a woman and she is married to another woman.</li> </ul>
<p>That's weird. He can't be a boy if he was born a girl.</p> <p>What's transgender?</p> <p>What body parts do they have?</p>	<p>That comment is hurtful; we shouldn't use negative words to talk about peoples' identities. Sometimes when we learn information that's different from what we always thought, it can be confusing and hard to process.</p> <p>When we're born, people make a guess about our gender and label us "boy" or "girl" based on our body parts. Sometimes they're right and sometimes they're wrong. When someone's transgender, they guessed wrong; when someone's cisgender, they guessed right. Our body parts do not decide our gender. Our gender comes from our inside--we might feel different than what</p>

	<p>people tell us we are. We know ourselves best. When someone tells us what their gender is, we believe them because they are the experts on themselves.</p> <p>It's none of our business what body parts a person has, so we should never ask that question.</p>
<p>How can someone be both a boy and a girl or neither? That doesn't make sense</p>	<p>It can be confusing to learn something new or try to understand something we've never felt or experienced before. Sometimes people feel like a boy or a girl, sometimes they feel like both, sometimes they feel like neither. We can't really guess someone's gender based on how they look or act. Not assuming people's gender is a way that we can respect one another.</p>
<p>Is that a boy or a girl?</p>	<p>We can't know someone's gender by looking at them. Also,</p>



	<p>not everyone is a boy or girl. Some people identify with both, sometimes one more than the other and sometimes neither. I know that we tend to look at someone and guess but we actually shouldn't do that because we could be guessing incorrectly. When we meet people, that's something they might share with us, but not always.</p> <p>When I introduce myself, I say hi my name is Mrs. Phillips and I use she/her pronouns. Then I ask, what's your name? Are you comfortable sharing your pronouns with me? This helps me respect people's identity because then I'm using the right pronouns when I'm talking about them and they're not here. For example, when you tell your caregiver about your day you can</p>
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	<p>say, Mrs. Phillips read a cool book today, she said it's her favorite one.</p>
<p>Stereotypes like: dresses are for girls, boys can't paint their nails, those are boy toys, that's a girl book, etc.</p> <p>***a consideration- are there items in my learning space that are sorted by gender?</p>	<p>Disrupt the either/or thinking by saying something like people of any gender can like dresses/nail polish/books/toys, etc. Those things don't have a gender and everyone is free to like what they like. Liking something is often based on our personality and interests and not on what gender we are. How do you feel when you get to wear the clothes you like, read what you like, play what you like and express yourself in the ways that feel good to you? Shouldn't everyone be able to do that?</p> <p>Then, provide an example to counter the stereotype made:</p> <ul style="list-style-type: none"> <li>• "Harry Styles wears dresses."</li> </ul>

	<ul style="list-style-type: none"><li>• Men who paint their nails</li></ul>
That's so gay	<p>Regardless of how it's intended, using gay to describe something negative reflects a long history of prejudice against LGBTQ+ people, so please don't use it in that way. There are so many different ways to say what you mean that are not insulting to others.</p> <p>You may not have meant to be hurtful, but when you use the word 'gay' in any way outside of its definition, it's disrespectful. When I ask you to not use expressions like "that's so gay," I'm just trying to make you aware that it is hurtful to a lot of people. How do you think it would feel to hear a word used over and over again to describe something negative when it also describes who you are?</p>

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	We have all been on the receiving end of an insult and felt its sting, so why wouldn't you put a little effort into avoiding language that insults others, especially when there are so many alternatives?
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Sources:

- Correcting Kids' Stereotypes
- Responding to Sexism, Homophobia and Transphobia: Tips for Parents and Educators of Younger Children
- Reading the Rainbow
- It Feels Good To Be Yourself
- Teaching About Gender and Diversity
- Welcoming Schools: Responding to Questions
- Anti-Bias Education for Young Children and Ourselves
- Gender Spectrum

## **Responding to Caregivers/ Community Questions**

The purpose of this document is to support educators with responding to caregivers.

**Possible Question: Why should my child learn about gender and sexuality identity at school?**

**Possible Response:** The learning we're talking about will happen through exposure to diversified gender and sexuality identity representation, not explicit instruction. Students are already learning about gender and sexuality identity in myriad ways. For example, when we read a story with mom and dad, a Prince kisses a Princess at the end of a fairy tale.

A School is where children are taught to respect one another and learn to work together regardless of their differences. Learning about--through exposure to diversified representation--gender diversity and sexuality identity diversity is part of that work. Our students are growing up in a world that is increasingly recognizing the diversity of gender and sexuality. Creating a more tolerant, inclusive, and accepting school environment teaches all children to recognize and resist stereotypes. We teach children to stand up for others, resist bullying, and work together. All students deserve to see themselves in books, including students who identify as LGBTQ+, come from LGBTQ+-headed families, and have family members who are part of the LGBTQ+ community. Inclusive books support a student's ability to empathize,

connect, and collaborate with diverse peers and encourage respect for all. Anti-LGBTQ bias hurts all children, both those directly affected and those who learn in an atmosphere of fear and tension, afraid to explore their own lives because of worry about disapproval and rejection. LGBTQ+ inclusive books benefit all students by promoting acceptance and respect and teaching them more about the diverse people and families in the world.

**Possible Question: Isn't my child too young to be learning about gender and sexuality identity?**

**Possible Response:** Children are already learning about it and mostly see “straight” and “cisgender” representations around them. Messages about gender are everywhere, and children receive clear messages about the “rules” for boys and girls, and the consequences for violating them. By learning about the diversity of gender, children have an opportunity to explore a greater range of interests, ideas, and activities. For all children, the pressure of “doing gender correctly” is significantly reduced, creating more space for them to discover new talents and interests. Students of all ages must be given the opportunity to learn that the words “gay,” “lesbian,” and “transgender” are adjectives that should be used with respect to describing people in their community, not words used in a negative way to hurt, insult, and degrade. Beginning these conversations in elementary school will help young people develop empathy for a diverse group of people and learn about identities that might relate to their families or even themselves. It is

never too early for schools to set up a foundation of understanding and respect.

**Possible Question: Ideas about gender diversity go against the values we are instilling in my child at home. Are you trying to teach my child to reject these values?**

**Possible Answer:** Absolutely not. Our children encounter people with different beliefs when they join any community. Teaching about LGBTQ+ is not about making students think a certain way; it is to show that there is no one “right” or “normal” way to be. Expanding our representation shows our LGBTQ+ community members that this is a place where they are welcome and included. While one aim for learning about diversity is to become more accepting of those around us, not everyone will be best friends. That does not mean that they can’t get along and learn together. The purpose of learning about gender and sexuality identity diversity is to demonstrate that children are unique and that there is no single way to be a boy, girl, or any other gender. If a child does not agree with or understand another student’s gender identity or expression or their sexuality identity, they do not have to change how they feel about it. However, they do not get to make fun of, harass, harm, or ignore the existence of other students whose gender identity or expression or sexuality identity they don’t understand or support. Gender and sexuality identity inclusive education is about teaching students to live and work with others. You do not need to fully understand

another person's experience to treat them appropriately. It comes down to the simple agreement that all children must be treated with kindness and respect. Teaching LGBTQ+ inclusive books acknowledges the reality that many students come from LGBTQ+-headed families, have family members that are part of the LGBTQ+ community, are being taught by LGBTQ+ educators, and are, increasingly, identifying as LGBTQ+ themselves, even in elementary school.

**Possible Question: Can I keep my child home when students are learning about LGBTQ+ topics?**

**Possible Answer:** As part of MCPS's commitment to equity and our school's mission, we are working towards cultivating inclusive environments for all of our students and their families. Part of how we do this is through diversifying representation in the curriculum; expanding our representation shows our LGBTQ+ community members that this is a place where they are welcome and included. All students deserve to see themselves in their school and classroom, including students who identify as LGBTQ+, come from LGBTQ+-headed families, and have family members who are part of the LGBTQ+ community. While there are no planned explicit lessons related to gender and sexuality, students will see these identities embedded in our curriculum and learning environment. Explicit instruction involves



teaching a specific concept or procedure in a highly structured and carefully sequenced manner where there is an opportunity to model, coach and apply the learning. The concepts or terms that relate to gender and sexual identity are not taught explicitly, but there may be a need to define words that are new and unfamiliar to students. This is not explicit instruction; for students for whom some of these identities are new, questions and conversations might organically happen.

Inclusive curricula support students' ability to empathize, connect, and collaborate with diverse peers and encourage respect for all. No child who does not agree with or understand another student's gender, expression, or their sexual identity is asked to change how they feel about it. Parents always have the choice to keep their student(s) home while using these texts; however, it will not be an excused absence.

**Possible Question: Are these books appropriate?  
What place do they have in the classroom?**

**Possible Answer:** Our Board Policy states, "Instructional materials used in MCPS schools will reflect the diversity of the global community, the aspirations, issues, and achievements of women, persons with disabilities, persons from diverse racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation." Additionally, two of the goals of the MCPS guidelines are: "Reduce stigmatization and marginalization of transgender and gender

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nonconforming students and Foster social integration and cultural inclusiveness of transgender and gender nonconforming students.” These books are a way for us to actualize the policy and gender identity guidelines.

These books have undergone a rigorous evaluation process conducted by a group of school-based and central office-based staff members, and are approved as instructional materials. All of the content within them is age and developmentally-appropriate. The texts are directly connected to language arts standards and CASEL competencies, used for social and emotional learning lessons.

Sources: Responding to Concerns: Teaching About Gender, Developing LGBTQ+ Inclusive Resources, Reading the Rainbow

**Excerpts from Transcript of  
Preliminary Injunction Hearing**

*Mahmoud v. McKnight,*

No. 8:23-cv-1380-DLB (D. Md. Aug. 9, 2023)

[TR. PAGE 54-55]

\* \* \*

**MR. SCHOENFELD:** There is no evidence in the record that any student was told something is right versus wrong or asked to disagree with their religious faith or in any way impugn any student's religious faith as part of these discussions. The only allegations in the declarations are that students were asked participate in read-alouds where these books were read.

**THE COURT:** Do you agree that the record -- there is record evidence that there will be classroom discussion about these books? I mean, it goes without saying, it seems so obvious, but I need to pin that down.

**MR. SCHOENFELD:** Sure. I'll answer in two ways; I want to make sure I satisfy you. I don't dispute that there will be discussion that ensues. In fact, I think everyone would hope that discussion ensues. There is no evidence, however— and that's sort of (1)(A)— that there would be anything derisive, or derogatory, or impugning anyone's religious faith, or that anyone would be punished for expressions of religious faith or beliefs rooted in religious faith as part of that discussion.

I'll also make the second point, which is, none of the declarations complains about some sort of discussion or anything that happened in those discussions. Each

of the declarations is specific, that their complaint is about exposure to the text in the classroom.

\* \* \*

[TR. PAGE 58-59]

\* \* \*

**THE COURT:** One thing the plaintiffs argue— and it wasn't raised here, but it's in their declaration— is that they don't want to have those discussions so early, that they're being forced now to have those discussions to preempt and defuse what they believe is information that conflicts with their religion.

**MR. SCHOENFELD:** I understand that. And you know, age-appropriateness of curriculum is a choice that school districts always have to make. And this was the same issue that was raised in *Parker*. Once professional educators make a decision to include this in the curriculum, the question— and it may be a good decision, it may be a bad decision; that's why public school boards are democratically elected, and that's why school board meetings are open to the public, and that's why the process for selecting these texts is meant to be open and participatory, as it was here.

The question before the Court, and the challenging one, is whether there's a free exercise claim to including age-inappropriate— or that some would claim are age-inappropriate texts; the answer is no. Some principals may take that view, some teachers may take that view. The question before the Court is whether it violates someone's free exercise rights to have their child exposed to that and have them come home asking certain questions.

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September 29, 2023

VIA CM/ECF

Nwamaka C. Anowi, Clerk of Court  
United States Court of Appeals for the Fourth Circuit  
Lewis F. Powell, Jr. United States Courthouse Annex  
1100 East Main Street, Suite 501  
Richmond, VA 23219-3517

**Re: *Mahmoud v. McKnight*, No. 23-1890  
Rule 28(j) Notice of Supplemental  
Authority  
Declaration of Grace Morrison (attached as  
Exhibit A)**

Dear Ms. Anowi:

Pursuant to Federal Rule of Appellate Procedure 28(j), Plaintiffs-Appellants submit the attached declaration of Grace Morrison as supplemental authority in support of their Emergency Motion for Injunction Pending Appeal. Mrs. Morrison is on the Board of Directors for Plaintiff-Appellant Kids First. She and her husband have a ten-year-old daughter with Down Syndrome and Attention Deficit Disorder. Their daughter has been in the Montgomery County Schools since age three. Because of her special needs, she qualifies for a full-time, one-on-one paraeducator and other special services including speech and occupational therapy.

Below, Mrs. Morrison testified that she and her husband are religiously obligated to shield their daughter from instruction that conflicts with their beliefs regarding marriage, sexuality, and gender. Meeting this obligation is critical for their daughter because she is especially impressionable and unable to

distinguish instruction from her teachers and parents. She would not be able to understand why or how her parents disagree with her teacher.

Because of their daughter's special needs, the Morrisons have no realistic choice besides public school for fully meeting their daughter's needs. Following the trial court's order denying a preliminary injunction, Mrs. Morrison raised her concerns with her daughter's teacher and principal. The principal responded that the assistant superintendent would not allow her to inform Mrs. Morrison when the Pride Storybooks would be read, but would allow her to "pre-teach" the materials to her daughter.

Because of the school's unwillingness, the Morrisons have made the difficult decision to remove their daughter from public school and teach her at home. This comes at significant cost. The Morrisons anticipate they will need approximately \$25,000 yearly to try replacing the services available in the public school. The Morrisons are concerned that homeschooling may not be successful for their daughter, but they have no choice considering the School Board's decision to remove the notice and opt-out rights previously available.

As a board member of Kids First, Mrs. Morrison is aware of many families being forced to make similarly difficult decisions at significant expense. For these reasons, even with an expedited schedule for appeal, an injunction pending appeal is necessary.

Sincerely,

/s/ Eric S. Baxter

Eric S. Baxter

William J. Haun

Michael J. O'Brien\*

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The Becket Fund for Religious  
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admitted in Louisiana. Practice  
limited to cases in federal court.*

Word Count: 350

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
et al.,  
*Plaintiffs,*

v.

MONIFA B. MCKNIGHT,  
in her official capacity as  
Superintendent of the  
Montgomery Board of  
Education, et al.,  
*Defendants.*

Case No. 8:23-CV-  
01380-TJS

**SECOND  
DECLARATION OF  
GRACE  
MORRISON**

I, Grace Morrison, declare as follows:

1. My name is Grace Morrison. I am over 21 years old and capable of making this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of all of the contents of this declaration.

2. I am a board member of Kids First, the Plaintiff unincorporated association of parents and teachers formed to advocate for the return of parental notice and opt-out rights in the Montgomery County Public Schools.

3. I previously submitted in this matter the declaration attached as Exhibit 1.

4. Since May of this year, my husband and I have been in touch with our daughter's teacher and principal about any instructional materials involving human sexuality, family, and gender ideology that



may be presented in our daughter's Language Arts class.

5. We are concerned that premature exposure to such materials poses a threat to our daughter's psychological, spiritual, and possibly physical well-being—a threat exacerbated by our daughter's Down Syndrome and attention deficit disorder, which impair her ability to make independent judgments.

6. We recently asked our daughter's teacher and principal whether, if we inquired on perhaps a quarterly basis, we could be given a schedule of the curriculum layout so we could know when the materials were being presented.

7. Unfortunately, we were informed that—according to the assistant superintendent—this would not be possible and instead we could only be permitted to review the books to be presented so we could “pre-teach” them to our daughter.

8. Reviewing the materials made it even more clear to us that they are inappropriate for our daughter at this stage of her development.

9. Because of her special needs, our daughter qualifies for extensive services in the public schools, including a full-time, one-on-one paraeducator and speech and occupational therapy.

10. We cannot realistically replicate these services, but because of Montgomery County's unwillingness to accommodate our religious concerns, we have made the difficult choice to remove our daughter from public school and educate her at home. Attached as Exhibit 2 is an email I wrote to school administrators explaining this decision.

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11. We anticipate it costing at least \$15,000 a year to replace our daughter's therapy and \$10,000 a year for the academic services and supplies that our daughter receives in the public schools.

12. We are concerned that homeschooling may not be successful for our daughter, but we feel compelled to protect her from information that may confuse her on issues of family life, gender, and sexuality.

13. As a board member of Kids First, I am aware of many other families being forced to make similarly difficult decisions at significant potential expense.

14. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 29th day of September, 2023.

/s/ Grace Morrison  
Grace Morrison

**EXHIBIT 1**

**to**

***Second Declaration of Grace Morrison***

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

TAMER MAHMOUD,  
et al.,  
  
*Plaintiffs,*

v.

MONIFA B. MCKNIGHT,  
in her official capacity as  
Superintendent of the  
Montgomery Board of  
Education, et al.,  
  
*Defendants.*

Case No. 8:23-CV-  
01380-TJS

**DECLARATION OF  
GRACE  
MORRISON IN  
SUPPORT OF  
PLAINTIFFS'  
MOTION FOR A  
PRELIMINARY  
INJUNCTION**

I, Grace Morrison, declare as follows:

1. My name is Grace Morrison. I am over 21 years old and capable of making this declaration pursuant to 28 U.S.C. § 1746. I have personal knowledge of all of the contents of this declaration.

2. I am a board member of Kids First, the Plaintiff unincorporated association of parents and teachers formed to advocate for the return of parental notice and opt-out rights in the Montgomery County Public Schools.

3. My husband and I reside in Montgomery County, Maryland. Our youngest child was adopted as an infant from Ukraine. She is now 10 years old and has Down Syndrome and Attention Deficit Disorder. She has been in the Montgomery County Schools since

she was 3 years old. She is currently enrolled in the Learning for Independence Program in a Montgomery County Public School. She has an IEP and her advanced needs qualify her for a full time, one-on-one paraeducator. She also receives special services in the school such as speech therapy and occupational therapy.

4. My husband and I adhere to the Roman Catholic faith, including the Church's teachings on marriage, family, sex, sexuality, and gender.

5. As the Catholic Church teaches, we believe that marriage is the lifelong union of one man and one woman—distinct from each other, while complementary to each other—and that the nature and purpose of human sexuality is fulfilled in that union. For these same reasons, we live and teach the Church's teachings to our children about gender, which we believe is interwoven with one's sex, sexuality, and the ordering of the male and female bodies.

6. While—as we know first-hand from our adoption experience—not every child is raised with a mother and a father, every child is created by a mom and dad. We believe this is the result of God's ordering of the human species. Our faith motivated us to adopt our youngest daughter, to provide her a loving mother and father, and to raise her in our Catholic faith—just as we have our biological children.

7. Among other requirements, our sacred obligation as parents compels us to form our daughter's understanding of what it means to be a woman, to love another person, the nature and purpose of marriage,

and how to embrace the vocation she is called to by God.

8. Our religious obligations as our youngest daughter's parents are pressured by the "Pride" literature. In addition to conflicting with our religious understandings of marriage, sexuality, and gender, it is practically impossible for us to contradict that instruction.

9. Due to her learning challenges, she doesn't understand or differentiate instructions from her teachers and her parents. In fact, at ten years old, we only recently helped her understand the need to use the girl's restroom. My husband and I won't be able to contradict what she hears from teachers. Due to her learning challenges, she will not be able to understand how or why we disagree.

10. Moreover, because of her needs we do not have a clear alternative for her education except to remain in the public schools. Even if we could afford private education, none of the private school options we are aware of would be able to keep her instruction at her developmental level, even with those school's best efforts and intentions. She would still need to go outside any private school for occupational therapy and speech therapy. Only the public school system has all those resources.

11. Because of this pressure, I asked my daughter's teacher via email if her class would be reading any of the "Pride" literature on May 31, 2023. Had I not asked, I would not have known.

12. My daughter's teacher told me that the literature would be presented by the librarian on June 2, and by her teacher on June 5 and 6 in the language

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arts class. I inquired about an opt out, and her teacher said that no opt out was possible. Subsequently, I emailed my daughter's principal to inquire more about the literature. I was told that they adhere to the MCPS policy. I responded that we would not have our daughter attend school at that time, and we kept her home.

13. Consequently, the School Board's decision to disallow opt outs from the Pride Storybooks directly and significantly burdens the religious obligation of me and my husband to instruct our youngest child in accordance with the Catholic faith.

14. By not allowing an opt out, my husband and I are forced to place our daughter in a school where she will be taught views on marriage, sexuality, and gender that will be practically impossible for us to contradict. We have no other realistic choice but public school.

15. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 11th day of August, 2023.

/s/ Grace Morrison  
Grace Morrison

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**EXHIBIT 2**  
**to**  
***Second Declaration of Grace Morrison***

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**From:** Grace Morrison  
<grace.m.morrison9@gmail.com>  
**Sent:** Wednesday, September 27, 2023 11:28 AM  
**To:** REDACTED  
**Cc:** REDACTED; Eric Baxter; Will Haun  
**Subject:** Student withdrawal from REDACTED  
Elementary School

Dear REDACTED and REDACTED,

It is with great disappointment that we have decided to withdraw our daughter, REDACTED, from the Learning for Independence Program at REDACTED Elementary School, as of October 2, 2023.

Sincer May of 2023, we have been in communication with you because of our deep concern over the materials involving human sexuality, family, and gender ideology (referred to as the Pride Literature) being presented in our daughter's Language Arts class. We have explained that we feel these materials are not developmentally appropriate and they oppose our religious beliefs. We recently asked that if we inquired on perhaps a quarterly basis, could we be given a schedule of the curriculum layout. Unfortunately, we were informed that according to the assistant superintendent this is not possible and instead we could only be permitted to review the books to be presented so that we could "pre-teach" the material to our daughter. There was no discussion as to how or why this might be helpful, especially in light of the concerns that we presented.

In order to give the issue our full consideration, we did receive the six books from **REDACTED** and we, her parents, carefully reviewed them. With the books in hand it became even more clear that these materials are incredibly inappropriate for **REDACTED**. We feel strongly that she is not developmentally ready to process the ideas presented and any suggested discussions to follow. In fact, we feel that they pose a threat to her psychological, spiritual and possibly physical well-being. We are not willing to risk this immediate harm to our child or damage which may not manifest itself until years later, long after her time at **REDACTED** has passed.

We are aware that there is a pending court case to restore the parents' right to be notified and to opt-out of these materials. However, this process may still take many months to be resolved. Unfortunately, due to the school's unwillingness to answer our question as to when these materials are scheduled to be presented, we are unable to wait for the courts to make a decision, and feel our only option is to withdraw **REDACTED** now.

We are saddened to have come against this barrier to our daughter's public school education. As we have expressed many times, we have been tremendously grateful to **REDACTED** and the many teachers and staff who have devoted themselves in caring for and educating **REDACTED** since she was three years old. It is unjust that our daughter can only continue to access these wonderful teachers and resources in the public schools if we, as parents, are willing to go against our instincts and give up our parental rights - which we will not do. Instead, we will continue to teach our daughter to love every person and to respect



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their differences, and present her with life issues when we feel she is ready.

Respectfully yours,

Grace and Eric Morrison

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## 5 THINGS TO KNOW

### MCPS

Thursday, March 23

#### **Revised Message Regarding the Use of Inclusive Texts**

#### **1. Revised Message Regarding the Use of Inclusive Texts**

MCPS expects all classrooms to be inclusive and safe spaces for students, including those who identify as LGBTQ+ or have family members in the LGBTQ+ community. A broad representation of personal characteristics within curricular or instructional materials promotes this desired outcome. Therefore, as with all curriculum resources, there is an expectation that teachers utilize these inclusive lessons and texts with all students.

As is standard practice, when planning for instruction teachers/schools are encouraged to utilize a variety of resources to continue to promote an inclusive environment as outlined in the MCPS Core Values and Board Policy. Students and families may not choose to opt out of engaging with any instructional materials, other than "Family Life and Human Sexuality Unit of Instruction" which is specifically permitted by Maryland law. As such, teachers will not send home letters to inform families when inclusive books are read in the future.

\* \* \*

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## Fox 5 Washington DC

### MCPS revises policy on LGBTQ-friendly books

March 24, 2023

By Stephanie Ramirez

MONTGOMERY COUNTY, Md. Third grade parents at Damascus Elementary School became frustrated when they found out their kids were being read an LGBTQ-inclusive book. Some allegedly began pulling their children out of the class.

The book, “Uncle Bobby’s Wedding,” is about a niece concerned she was going to lose her favorite uncle if he got married. The niece comes to learn she is not losing a family member, but gaining one. The book also includes the topic of same-sex marriage as Uncle Bobby marries another man.

Parents involved in the initial complaint were not willing to interview on-camera. FOX 5 spoke with other Montgomery County Public Schools parents on the matter.

Danielle Ibarra, while waiting to pick up her child at Damascus Elementary School, told FOX 5 she’s already read the book to her other children.



“I think religion probably plays a big factor. I guess I’m just in the camp of, we’re all in this together – so we should try to show that to our children too,” Ibarra said.

“I’m neither for nor against,” said Shireen Jarrar.

“That’s as long as parents give the green light,” she added. “I want parents to be aware and just to approve of it.”

After FOX 5 reached out to MCPS on the Damascus Elementary School claims, another parent posted to a public forum online that they were upset with a different LGBTQ-inclusive book being read at another MCPS elementary school.

The other book is titled, “Prince and Knight.” It’s about a prince who finds his significant other: a knight.

Stephanie Pate told FOX 5 she learned about the book after her 8-year-old daughter came home from Germantown Elementary School last week, crying.

“She was being called “gay, lesbian.” I reached out to the school and I found out they had ended up reading a book with two males kissing,” Pate explained.

When asked why her daughter was being called those names, the mother answered, “I’m not sure, I think it was just kids being kids.”

“She came home and asked me why her teacher showed her a book of two guys kissing and then asked me what the names meant,” Pate added.

The Germantown Elementary School parent claims her daughter was bullied and that it turned physical when another student hit her 8-year-old. Pate also said she asked her daughter’s school for a list of books

that will be read to her child – along with the request for her daughter to opt out if any other LGBTQ-inclusive books are read to the class in the future. The Germantown Elementary School parent told FOX 5 she was not getting answers.

Pate also used the word “grooming” in her online post. She said that she does feel the book is opening a door. She also said it’s not that she’s against same-sex marriage, she just wants the option to opt out.

“My frustration is, as a parent, I wish they would’ve reached out and asked first and let me have that decision,” Pate said. “I just feel like every child is different. I think where one 8-year-old could understand something, maybe a 10-year-old would understand something, and I think it’s the right of the parent to be able to teach that, not the school system.”

Pate said she loves the other two MCPS schools her other children are in. However, she’s now considering removing her child from Germantown Elementary School.

It appears some parents were not aware of any changes to the MCPS curriculum. A school spokesperson says those changes were announced back in January. FOX 5 is told this is one of the statements that went out at the time:

*MCPS is committed to ensuring all students and their families see themselves in the curriculum to cultivate an inclusive and welcoming learning environment. These books are on the approved list of supplemental materials schools will have access to that align with our goal of*

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*providing more inclusive texts and resources in support of curriculum standards.*

*As part of MCPS' mission to equity, "instructional materials are chosen to reflect the diversity of our global community, the aspirations, issues and achievements of women, persons with disabilities, persons from diverse, racial, ethnic, and cultural backgrounds, as well as persons of diverse gender identity, gender expression, or sexual orientation."*

*Additionally, two goals of the MCPS gender identity guidelines are to reduce stigmatization and foster social integration and cultural inclusiveness of all students and their families in our very diverse community. These policies involved extensive conversation and community input. These books are a way to actualize the policy and guidelines and have undergone a rigorous evaluation process. All the content within them is age and developmentally-appropriate.*

There is a review process for books evaluated as MCPS "textbooks." A MCPS spokesperson says according to Montgomery County Board of Education Policy, a five-person panel of staffers reviews the book. The reviews and book information then get posted online for 30 days, so that parents and/or guardians can also review the material and comment before possible approval.

What if a parent wants to opt out? Is their only option to pull their child from the class?

The MCPS Spokesperson shared with FOX 5 on Wednesday, “When a teacher selects the curriculum, a notification goes out to parents about the book. If a parent chooses to opt out, a teacher can find a substitute text for that student that supports these standards and aligns with curriculum.”

On Thursday, the school district updated its messaging regarding the use of inclusive texts.

*“MCPS expects all classrooms to be inclusive and safe spaces for students, including those who identify as LGBTQ+ or have family members in the LGBTQ+ community. A broad representation of personal characteristics within curricular or instructional materials promotes this desired outcome. Therefore, as with all curriculum resources, there is an expectation that teachers utilize these inclusive lessons and texts with all students,” the statement reads.*

*“As is standard practice, when planning for instruction teachers/schools are encouraged to utilize a variety of resources to continue to promote an inclusive environment as outlined in the MCPS Core Values and Board Policy. Students and families may not choose to opt out of engaging with any instructional materials, other than ‘Family Life and Human Sexuality Unit of Instruction’ which is specifically permitted by Maryland law. As such, teachers will not send home letters to inform families when inclusive books are read in the future.”*

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The school district says it is currently working with its principals to clarify expectations.

\* \* \*



**Maryland State Department of Education  
Equity and Excellence**

**Karen B. Salmon, Ph.D.  
State Superintendent of Schools**

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**TO:** Members of the State Board of Education

**FROM:** Karen B. Salmon, Ph.D.

**DATE:** June 25, 2019

**SUBJECT:** COMAR 13A.04.18

Comprehensive Health Education  
Instructional Programs for Grades  
Prekindergarten – Grade 12

**PERMISSION TO PUBLISH –  
REPEAL**

COMAR 13A.04.18

Comprehensive Health Education  
Instructional Programs for Grades  
Prekindergarten – Grade 12

**PERMISSION TO PUBLISH –  
REPLACE**

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**PURPOSE:**

The purpose of this item is to request permission to publish the repeal of COMAR 13A.04.18 Comprehensive Health Education Instructional Programs for Grades Prekindergarten – Grade 12, and replace with new COMAR 13A.04.18 Comprehensive Health Education Instructional Programs for Grades Prekindergarten – Grade 12.

**REGULATION PROMULGATION PROCESS:**

Under Maryland law, a state agency, such as the State Board, may propose a new or amended regulation whenever the circumstances arise to do so. After the State Board votes to propose such a regulation, the proposed regulation is sent to the Administrative, Executive, and Legislative Review (AELR) Committee for a 15-day review period. If the AELR Committee does not hold up the proposed regulation for further review, it is published in the Maryland Register for a 30-day public comment period. At the end of the comment period, Maryland State Department of Education (MSDE) staff reviews and summarizes the public comments. Thereafter, MSDE staff will present a recommendation to the State Board to either: (1) adopt the regulation in the form it was proposed; or (2) revise the regulation and adopt it as final because the suggested revision is not a substantive change; or (3) revise the regulation and re-propose it because the suggested revision is a substantive change. At any time during this process, the AELR Committee may stop the promulgation process and hold a hearing. Thereafter, it may recommend to the Governor that the regulation not be adopted as a final regulation or the AELR Committee may release the regulation for final adoption.

**BACKGROUND:**

Over the last two years, the Maryland State Department of Education has engaged local school systems, parents, school staff, and other state agencies in the development of revised regulations to meet the changing needs of students and local school systems (LSSs) in the State.

The proposed changes to the regulations are summarized as follows:

1. Adoption of National Standards: A survey of Maryland stakeholders confirmed that the State should change the health education standards to align with National Health Education standards which are skills-based standards rather than knowledge-based standards. However, Maryland stakeholders indicated that the State should include the core concepts identified by the Center for Disease Control and Prevention (CDC). Therefore, Maryland has customized the National Standards by adding the core concept topics and embedding them into Standard 1.
2. New Special Requirements Section: Legislative mandates are grouped into this section, including requirements for abuse and assault prevention, heroin and opioid prevention, and consent education lessons.
3. Inclusive Language: Family Life and Human Sexuality education is representative of all students and aligns with the new Educational Equity regulations.
4. Contraceptives: This instruction will now begin in grade 7 instead of grade 8 with the goal of addressing the rise of sexually transmitted infections (STIs) in Maryland youth. Additionally, this shift has the potential of delaying the onset of sexual activity and/or increasing the likelihood of safer sexual activity.

5. Approval of Family Life and Human Sexuality Instructional Materials: The regulation continues to require stakeholder involvement and approval; however, the State does not require local board of education approval unless mandated by LSS approval policies.
6. Disease Prevention: The parent/student opt-out is removed as a safety issue. This instruction includes medically accurate information about contact with bodily fluids as a method of transmitting infections.
7. Sexually Transmitted Infections and HIV: After extensive consultation with the Maryland Department of Health, outdated language regarding HIV and AIDS has been revised.

**EXECUTIVE SUMMARY:**

The recommended changes to Maryland's Health Education regulations are the result of consultation with the Maryland Department of Health regarding sexually transmitted infections in Maryland's youth and data regarding the sexual behavior of young people in the state. The proposed amendments resulted from stakeholder and LSS input and require skills-based health education with an emphasis on student safety, including mandates in Maryland statute.

**ACTION:**

Request permission to publish the repeal of COMAR 13A.04.18 Comprehensive Health Education instructional Programs for Grades Prekindergarten – 12 and replace with new COMAR 13A.04.18

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Comprehensive Health Education instructional Programs for Grades Prekindergarten – 12.

**Attachments:**

NEW: COMAR 13A.04.18.01 Comprehensive Health Education Instructional Program for Grades Prekindergarten-12

REPEAL: COMAR 13A.04.18.01 Comprehensive Health Education Instructional Program for Grades Prekindergarten-12

2023 2024

**Guidelines for Respecting Religious Diversity  
in Montgomery County Public Schools**

[www.montgomeryschoolsmd.org](http://www.montgomeryschoolsmd.org)

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[PAGES 3-4]

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▪ **Prayer and Religious Dress**

**Prayer at School**

Students are free to pray and discuss their religious views with other students, as long as these activities are voluntary, student initiated, and do not materially disrupt or infringe on classroom instruction, other school activities, or the rights of others. For example, a student may say a prayer or read religious texts before a meal or before a test in informal settings, such as cafeterias or hallways, to the same extent that students are permitted to engage in nonreligious activities; or a student athlete may pray before a competition or after scoring a touchdown or a goal as long as it does not unreasonably delay or disrupt the competition or interfere with the rights of other athletes or spectators. While students may exercise their right to pray during the school day or at school-related activities, they may not compel, harass, or pressure others at school to participate in or listen to a prayer, sermon, or other religious activity. For instance, student-led prayers broadcast to all classes over the school's public announcement system would not be permissible.

If a student requests a quiet place to pray, schools will make a reasonable effort to accommodate the request,

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provided that space is available, there is appropriate staff monitoring to ensure student safety, and the educational process is not disrupted. This could mean a quiet space in the media center, an empty classroom, or other room.

Students and their parents/guardians should expect that MCPS teachers, administrators, and other staff will not organize, lead, initiate, endorse, or actively participate in student prayers or other student religious activities during school hours or at school-sponsored events. MCPS staff may be present during student prayers or other student-led religious activities only for purposes of monitoring and providing oversight to ensure student and school safety.

### **Religious Dress**

Students have a responsibility to be dressed and groomed for school, in accordance with community standards for dress and grooming and in a manner that is not disruptive to or preclude their participation in the learning environment or school activities. Students are permitted to wear scarves, hijabs, yarmulkes, patkas, or other clothing or jewelry associated with their religion or containing religious messages, as long as their style of dress is consistent with the following guidelines. Students' clothing may not—

- endanger or potentially threatens the health and/or safety of self or others;
- display messages of hate or bias, or depict discriminatory symbols or images;

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fail to meet a reasonable requirement of a course or activity;

- be associated with gangs;
- be lewd, vulgar, obscene, or revealing or of a sexual nature; or
- promote sexual activity or tobacco, alcohol, cannabis, or other drugs prohibited on MCPS property as referenced in MCPS Regulation IGO-RA, *Guidelines for Incidents of Alcohol, Cannabis, Tobacco, and Other Drug Use Involving Students*.

When possible, schools should provide reasonable accommodations to students if they (or their parents/guardians on their behalf) request permission to wear or not wear certain clothing during physical education class or school-sponsored activities that they perceive as inconsistent with their religious beliefs, such as modesty requirements. Such accommodations do not preclude a student's participation in an activity. For example, the Maryland Public Secondary Schools Athletics Association allows athletes participating in interscholastic competitions to "wear a head covering, wrap, or other required religious garment which is not abrasive, hard, or dangerous to any player/others, and is attached in such a way that it is unlikely to come off during play." For other questions regarding athletic accommodations, please consult your school athletic director or the MCPS Athletics Unit.

### ▪ **Religion in the Instructional Program**

#### **Religion in School Assignments**

Students are free to express religious beliefs or nonbelief in school assignments as long as their



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expressions are relevant to the topic and meet the requirements of the assignment. In the evaluation of school assignments, teachers will not discriminate based on the religious content of students' submissions. Schoolwork will be judged by ordinary academic standards and other legitimate educational interests. For example, if an assignment involves writing a poem, the work of a student who submits a poem in the form of a prayer (such as a psalm or a piyyut) will be evaluated based on academic standards (such as literary quality) and neither penalized nor rewarded based on the poem's religious content.

### **Requests to be Excused from Instructional Programs for Religious Reasons**

Students may be excused from noncurricular activities, such as classroom parties or free-time events that involve materials or practices in conflict with a family's religious, and/or other, practices. However, MCPS cannot accommodate requests for exemptions from required curricular instruction or the use of curricular instructional materials based on religious, and/or other, objections.

### **Teaching About Religion or Religious Holidays in Schools**

MCPS believes that schools should develop a climate in which children can learn and appreciate cultures and heritages different from their own. To this end, the MCPS curriculum recognizes the role of religions in literature, history, the humanities, and the arts. The MCPS curriculum also builds students' understanding of the relationship between government and religious freedom. Students may attend elective classes, when available, on the history

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or comparative study of religions in which aspects of religion are discussed.

When students are taught about religion, they should expect instructional activities to be fair, objective, and not demean any religious or nonreligious beliefs. Respecting students' differing beliefs is an essential element of a pluralistic society. Classroom presentations by teachers, students, and guest speakers should not proselytize or advocate particular religious viewpoints as superior to other religious or nonreligious viewpoints. Students may or may not choose to share their ideas about religious traditions. Students should expect that they will not be asked to be spokespersons or representatives for their religious traditions. Singling out students in this way may make them feel uncomfortable, and one student's religious experience should never be generalized to an entire group.

As a teaching aid or resource, schools may use religious symbols in the classroom as examples of religious or cultural heritage. But these teaching aids or resources may be displayed only on a short-term basis to accompany appropriate classroom instruction. As part of the educational program, schools may teach about religious holidays in a factual manner. School activities may feature the secular aspects of a holiday, but holiday activities may not involve participation in a religious practice or event. Students of various faiths, or their parents/guardians, may ask for students to be excused from certain holiday activities. Teachers should work to honor these requests by planning an alternate activity for students who request one. Even birthdays or other occasions that

many may consider to be secular, such as Halloween and Valentine's Day, may be viewed by others as having religious overtones. Schools are permitted to have activities around these events—as long as they are secular in nature—and may excuse students who do not want to participate.

### **Religion in School Assemblies and Concerts**

Special school events, assemblies, concerts, and programs must be designed to further a secular and objective program of education and must not focus on any one religion or religious observance. For instance, religious music may be performed at a winter concert as long as the total effect of the program is nonreligious, and secular music is also included as part of a balanced and inclusive approach.

When assemblies or programs include student bands or other musical groups, students performing in the assembly or program may request reasonable accommodations if they feel that performing religious music is inappropriate to their beliefs. In handling requests for accommodations, school staff should consult with the students and their parents/guardians and take care to avoid embarrassment to, or coercion of, students.

Student or guest speakers at assemblies should be selected based on neutral and even-handed criteria that neither favor nor disfavor religion. Schools should make appropriate, neutral disclaimers to avoid conveying the perception to other students, their parents/guardians, or guests that the school endorses the student's or guest speaker's viewpoints (whether religious or not). In addition, parents/guardians should expect that age will be a factor in schools'

programming for assemblies and other school events involving religion-related topics or holidays. While high school students may understand that a school does not endorse the viewpoints of students or guests who are selected on an even-handed basis to speak, middle and elementary students are less likely to make this distinction, even if school staff provide appropriate disclaimers.

▪ **Food and Religious Observance**

**Religion-related Dietary Restrictions and Fasting**

Students, or their parents/guardians, may request schools to make reasonable and feasible accommodations for a student's dietary needs, including religion-related dietary restrictions and fasting. The MCPS Division of Food and Nutrition Services helps students who have certain dietary restrictions by labeling foods and/or offering a variety of choices for breakfast, lunch, and snacks, such as pork-free options; but schools are not required to prepare special foods solely to fulfill a student's particular religious requirements. For more information, visit [www.montgomeryschoolsmd.org/departments/food-and-nutrition/](http://www.montgomeryschoolsmd.org/departments/food-and-nutrition/).