Bright Young Minds: Envisioning a Child's Right to Direct Their Education

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INTRODUCTION

Temecula is a small community of fewer than 200,000 people, nestled in a Southern California valley dotted with wineries.[1] Despite presumptions of quiet pastoralism, this community has recently been embroiled in controversy, attracting interest nationwide—and it's the kids who are caught in the crossfire.[2] The Temecula Valley Unified School District Board, governed by a conservative majority since 2022, has advanced resolutions and policies drastically limiting the school curriculum, imposing polarizing duties on educators, extending parental control over children in public schools, and excising certain types of material deemed "inappropriate" for students (such as curriculum related to the gay rights movement).[3]

The Board's conduct captured widespread attention in July 2023, when the Board passed a resolution prohibiting "elements of Critical Race Theory"

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1. *About Temecula*, CITY TEMECULA, https://temeculaca.gov/163/About-Temecula [https://perma.cc/7CPJ-53B7]; *QuickFacts: Temecula City, California*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/temeculacitycalifornia [https://perma.cc/DF8V-2LK9].

2. Press Release, Pub. Couns., Educators, Students, and Parents Sue Temecula School Board for Violating Constitutional Rights After Curriculum Censorship (Aug. 2, 2023), https://publiccounsel.org/press-releases/educators-students-and-parents-sue-temecula-school-board-for-violating-constitutional-rights-after-curriculum-censorship [https://perma.cc/EFU2-RKES]. *See generally* Complaint, M. v. Komrosky, No. CVSW2306224 (Cal. Super. Ct. Feb. 23, 2024) (illustrating opposition from students, parents, and teachers regarding the ban on discussing Critical Race Theory in class).

3. Milla Surjadi & Howard Blume, *Temecula School District Sued over Its Ban of Critical Race Theory*, L.A. TIMES (Aug. 2, 2023, 6:21 PM), https://www.latimes.com/california/story/2023-08-02/public-counsel-sues-temecula-school-district-critical-race-theory-ban; Robin Buller, *Inside One City's Battle over Textbooks, Teaching and Harvey Milk: 'It Can Happen Anywhere*,*'* GUARDIAN (Aug. 10, 2023, 10:00 AM), https://www.theguardian.com/us-news/2023/aug/06/temecula-california-school-board-curriculum-harvey-milk [https://perma.cc/7B5Y-3H9T]; Rob McMillan, *High School Students in Temecula Stage Walkout over Alleged Anti-LGBTQ Policies*, ABC7 EYEWITNESS NEWS (Sept. 22, 2023), https://abc7.com/temecula-high-school-lgbtq-protest/13816822 [https://perma.cc/3MQ3-GTP5].

("CRT") from being taught in Temecula schools.[4] The pointed provisions of this resolution ban educators from teaching the concept that "racism is racial prejudice plus power," or that "racism is ordinary, the usual way society does business."[5] The resolution further prohibits teaching "interest convergence," "differential racialization," and the "voice-of-color" thesis—all principles associated with CRT.[6] The resolution proceeds to list eight specific doctrines associated with CRT that are forbidden in schools, like race- or sex-based oppression.[7]

The Board has also approved policies obligating school staff to inform parents if they become aware that a student uses preferred pronouns differing from their biological sex assigned at birth, uses "sex-segregated school programs and activities . . . that do not align with the student's biological sex or gender listed on the birth certificate," or requests any changes to their records—such as a name change.[8] The policy has been criticized as a means of forcing young LGBTQ+ youth "out" to their parents without the student's consent, a move that the critics say will threaten queer students' well-being and safety both at school and at home.[9]

The Board's policies have garnered sharp criticism from Temecula public educators and students, the California Attorney General,[10] and the California Governor.[11] The Board has backpedaled on some decisions, such as its

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4. TEMECULA, CAL., SCHOOL BOARD RESOLUTION NO. 2022-23/21 (2022), https://simbli.eboardsolutions.com/meetings/TempFolder/Meetings/Resolution%20No%202022-23-21%20CRT%20_396042m1cyetmijaj2m4ojqntvfwpp.pdf [https://perma.cc/5V5E-8WJB].

5. *Id.*

6. *Id.*

7. *Id.*

8. TEMECULA SCH. BD., BOARD PROPOSITION 5020.1 (2023), https://simbli.eboardsolutions.com/meetings/TempFolder/Meetings/Temecula%20Valley%20USD%20Proposed%20Board%20Policy%20-%20Parental%20Notification%20-%205020.1_581093m1cyetmijaj2m4ojqntvfwpp.pdf [https://perma.cc/VGT2-HSCN].

9. Amy Taxin & Sophie Austin, *California Sues District That Requires Parents Be Notified if Their Kids Change Gender ID*, ASSOCIATED PRESS (Aug. 28, 2023, 5:26 PM), https://apnews.com/article/california-sues-chino-valley-parental-notification-transgender-students-03fd6e74c62054d9bb4ba85ee92e850d [https://perma.cc/6R5E-JT4A].

10. Press Release, Cal. Dep't of Just., Off. of the Att'y Gen., Attorney General Bonta: Temecula Valley Unified School District's Forced Outing Policy Is Detrimental to the Wellbeing of LGBTQ+ Students (Aug. 23, 2023), https://oag.ca.gov/news/press-releases/attorney-general-bonta-temecula-valley-unified-school-district's-forced-outing [https://perma.cc/NYU5-4SBB].

11. In May 2023, the School Board voted to reject new state curriculum because the materials referenced discussions about the gay rights movement and Harvey Milk, the first openly gay man to be elected to public office in California. Press Release, Off. of Governor Gavin Newsom, Governor Newsom and State Leaders: If Temecula School Board Won't Do Its Job, State Will (July 13, 2023), https://www.gov.ca.gov/2023/07/13/temecula-do-your-job [https://perma.cc/Y4AB-N2A9].

rejection of a state social studies curriculum due to references to the gay rights movement and Harvey Milk.[12] Other matters, like the LGBTQ+ and gender pronoun policy, remain firmly in place despite ongoing litigation.[13] While the national discourse and attention surrounding Temecula Valley Unified School District might indicate a degree of novelty, the Board's decisions are not anomalous.[14] Public school officials, legislators, parents, and activists across the country are aggressively advocating for increased control over the

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12. Ryan Fonseca, *Temecula School Board Changes Course on Inclusive Social Studies Curriculum*, L.A. TIMES (July 24, 2023, 6:30 AM), https://www.latimes.com/california/newsletter/2023-07-24/social-studies-curriculum-clash-essential-california. In response, Governor Newsom threatened to enact legislation imposing fines on the Board if the district failed to provide adequate instructional materials. *See* Press Release, Off. of Governor Gavin Newsom, *supra* note 11. The Board later reversed its stance, approving the curriculum but removing a fourth-grade lesson on the gay rights movement for further review. *Southern California School Board OKs Curriculum After Gov. Gavin Newsom Threatened a $1.5M Fine*, ASSOCIATED PRESS (July 22, 2023, 3:04 PM), https://apnews.com/article/gavin-newsom-temecula-harvey-milk-curriculum-6fceefd6ebe1a201749dccfff7ed975a [https://perma.cc/JX4S-CPBH].

13. Reacting to these school policies, the California Legislature introduced the SAFETY Act—which Governor Newsom signed into law on July 15, 2024—prohibiting any school policy that requires a public school employee or a contractor "to disclose any information related to a pupil's sexual orientation, gender identity, or gender expression to any other person without the pupil's consent unless otherwise required by law." Support Academic Futures and Educators for Today's Youth Act, ch. 95, § 5 (July 15, 2024) (to be codified at CAL. EDUC. CODE § 220.3(a)).

14. In September 2024, a California Superior Court judge issued a permanent injunction against the Chino Valley School District's policies requiring parental notification when a child wishes to use pronouns or school facilities that align with a different gender identity than indicated on their school paperwork. People v. Chino Valley Unified Sch. Dist., No. CIVSB2317301 (Cal. Super. Ct. Sept. 9, 2024), https://oag.ca.gov/system/files/attachments/press-docs/Chino.Injunction.Decision.9.9.24.pdf [https://perma.cc/D6PR-MNZ8]. The court ruled that such policies violate equal protection by classifying based on gender identity. *Id.* at 11–15.

Previously, a different Superior Court judge denied a similar injunction that would bar enforcing Temecula Valley School District's CRT and gender-disclosure policies, thus allowing the policies to remain effective. Tentative Rulings for February 16, 2024 at 12–19, M. v. Komrosky, No. CVSW2306224 (Cal. Super. Ct. Feb. 23, 2024), https://publiccounsel.org/wp-content/uploads/2024/02/Tentative-Ruling-2-16-Dept-6.pdf [https://perma.cc/RGX3-NUB7]; Hannah Fry, *Critical Race Theory Ban at Temecula Valley Unified Stands for Now, Judge Rules*, L.A. TIMES (Feb. 23, 2024, 7:20 PM), https://www.latimes.com/california/story/2024-02-23/critical-race-theory-ban-at-temecula-valley-unified-stands-for-now-judge-rules. While Temecula Valley's policies were permitted to stand, the judge's ruling also indicated that the case would be allowed to move forward in litigation. Press Release, Pub. Couns., Ruling in Temecula Valley School District Case Indicates Case Will Proceed (Feb. 16, 2024), https://publiccounsel.org/press-releases/ruling-in-temecula-valley-school-district-case-indicates-case-will-proceed [https://perma.cc/R8YZ-MGFE]. The case has been appealed to the California Court of Appeals. M. v. Schwartz, No. G064332 (Cal. Ct. App. Feb. 28, 2024), https://appellatecases.courtinfo.ca.gov/search/case/dockets.cfm?dist=43&doc_id=3104258&doc_no=G064332&request_token=NiIwLSEnXkg%2BWzBdSCI9UEJIMDg7UFxbJSNeSzlTUCAgCg%3D%3D [https://perma.cc/CLX5-BDNK].

subjects and policies within public schools under the banner of "parental rights."[15]

Broadly speaking, parental rights are the legally protected interests parents have "in the care, custody, and control of their children."[16] The Supreme Court has long acknowledged a parental right to guide and direct the upbringing of their children, referring to parental interests as "perhaps the oldest of the fundamental liberty interests recognized by [the] Court."[17] But the Court has also recognized a concurrent (and sometimes conflicting) state interest in cultivating and educating future citizens.[18]

Historically, the legal authority over children's education was often divided solely between two authorities: the parents and the state.[19] While parental rights have been litigated before the Supreme Court on several occasions, the Court has not provided a clear test for lower courts to apply in determining whose rights are superior when conflicts between parents and the state arise.[20] Without direction from the Supreme Court, lower courts have struggled to identify where parental rights end and the state's interests begin—particularly as it relates to public education.[21]

The current legal framework is inherently binary, positioning "state rights" against "parental rights," and it often fails to identify which rights, if any, the child possesses in guiding their education.[22] Indeed, the rights of children are so constrained that "minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, . . . the right to come and go at will."[23] But the absence of a concrete precedential test presents a third option to explore: conferring agency rights

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15. *See, e.g.*, INLAND EMPIRE FAM. POL. ACTION COMM., https://iefamilypac.org [https://perma.cc/8VRA-28KG] (stating this organization's purpose is to "elect bold, pro-parental rights candidates to our local school boards").

16. Troxel v. Granville, 530 U.S. 57, 65 (2000).

17. *Id.*

18. *See* Todd A. DeMitchell & Joseph J. Onosko, *A Parent's Child and the State's Future Citizen: Judicial and Legislative Responses to the Tension over the Right to Direct an Education*, 22 S. CAL. INTERDISC. L.J. 591, 601 (2013) ("Parents' interests represent the private benefit of education and the state's interests represent the public good of education."); Prince v. Massachusetts, 321 U.S. 158, 167 (1944) (holding that the state possesses broad power "for limiting parental freedom and authority in things affecting the child's welfare").

19. *See* Anne C. Dailey & Laura A. Rosenbury, *The New Law of the Child*, 127 YALE L.J. 1448, 1456–59 (2018).

20. William G. Ross, *The Contemporary Significance of* Meyer *and* Pierce *for Parental Rights Issues Involving Education*, 34 AKRON L. REV. 177, 185 (2000).

21. *See id.*

22. Emily Buss, *Allocating Developmental Control Among Parent, Child and the State*, 2004 U. CHI. LEGAL F. 27, 29–30.

23. Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 654 (1995).

to the children to direct aspects of their own education, rather than deferring to either the parents or the state.[24]

This Comment argues that the law should grant mature children legally cognizable agency to shape their own educational choices and opportunities. Many jurisdictions already grant limited authority to minor children to guide their medical decisions and their legal independence, and the Supreme Court has clearly stated that minors possess some constitutional rights in their status as a minor.[25] Courts should determine and allocate student-vested agency based on several factors, including a child's psychosocial development and temporal proximity to adulthood. Such a balancing test provides a limitation to state or parental rights in children's education while expanding the rights of the child. Specifically, this Comment identifies when the superior interest in directing a child's education most appropriately belongs to neither the parent nor the state, but instead to the minor student.

This Comment presents a novel alternative for courts to utilize in deciding cases involving parental rights and government entities.[26] The proposed solution entails a multi-factor balancing test that evaluates the effect of the child's desired conduct on both the individual child and the collective school community, while inquiring as to the reasonableness of the child's request. To provide a workable test, the balancing approach will draw from preexisting frameworks and prior court decisions awarding children rights in other areas of law. This standard appropriately weighs the interests of the parents and the state while properly accounting for the social-emotional development and individual rights of the child, centering the agency of mature minors as they come of age and prepare to enter society as adults.

This Comment proceeds in four parts. Part I addresses the context and legal history underpinning contemporary conceptions of parental rights in education. This Part also examines the case law that developed the parent-primacy and state-primacy approaches to children and education. Part II analyzes the rights of minors in other areas of law, like family law. Part III

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24. *See* Buss, *supra* note 22, at 30–31.

25. For example, *Tinker v. Des Moines* established that minors have constitutionally protected First Amendment rights, even when on school grounds. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 513–14 (1969). However, these rights are limited, and the freedom to exercise certain rights—such as the right to purchase a gun or to bear arms—do not vest until adulthood. *See* 18 U.S.C. § 922; *cf.* Brown v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 704 F. Supp. 3d 687, 706 (N.D. W. Va. 2023) (holding as unconstitutional statutes that prohibit individuals over eighteen from purchasing non-rifle firearms). Minors are also unable to bring these rights to the court without a parent or guardian suing on their behalf. See *infra* Section I.D for an examination of current rights held by minors in public schools, and see *infra* Section III.C.5 for a discussion related to minor standing.

26. *See infra* Section III.C.

identifies the role of the child in education and proposes delegating some decision-making authority to the child when allocating rights in education. Part IV concludes.

I. CONTEXTUALIZING STATE, PARENT, AND STUDENT RIGHTS IN PUBLIC EDUCATION

This Part assesses the historical origins of public education and those who control it. Parents and the state have often engaged in a tense battle for the primary power to guide a student's education.[27] Although public education is state funded and formed, the courts have wrestled with identifying the constitutional liberties of parents in a public-school context.[28] Courts recognize a constitutional interest in a parent's right to guide their child's upbringing.[29] However, courts remain divided over what level of judicial scrutiny applies when adjudicating a state's infringement of these rights in the public-school context.[30]

This Part summarizes the development of the public-school model[31] and discusses how courts evaluate parental rights issues in education litigation in the absence of any clear Supreme Court ruling,[32] exploring the competing standards of review used to assess parental rights claims.[33] This Part concludes with an analysis of the limited rights minors currently have as public school students.[34]

A. "Common Schooling" and the Birth of Parental Rights

Historically, children were considered the property of their parents under early common-law theories of property.[35] Under this framework, parents—primarily fathers—possessed absolute control over their children "based on

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27. *See* DeMitchell & Onosko, *supra* note 18, at 594. As this Part discusses, that battle took place in the courtroom for several decades. *Id.* In recent years, however, parental rights advocates have taken to the legislature instead of the judiciary to enact legal change. *Id.*

28. *See id.* at 608.

29. *E.g.*, Troxel v. Granville, 530 U.S. 57, 65 (2000) ("[T]he interest of parents in the care, custody, and control of their children . . . is perhaps the oldest of the fundamental liberty interests recognized by this Court.").

30. *See infra* Section I.B.

31. *See infra* Section I.A.

32. *See infra* Section I.B.

33. *See infra* Section I.C.

34. *See infra* Section I.D.

35. Barbara Bennett Woodhouse, *"Who Owns the Child?":* Meyer *and* Pierce *and the Child as Property*, 33 WM. & MARY L. REV. 995, 1037 (1992).

actual or presumed biological ties."[36] In the early twentieth century, courts began to shift from a purely patriarchal and family-unit-based lens to a parental rights perspective, "articulat[ing] a theory that parental control was not an absolute power conferred by God, but a civic duty conferred and regulated by the state, in the interests of children and of the public."[37]

States' interest in the "children and of the public"[38] found early expression in the widespread movement away from family-based education and toward "common schooling."[39] These schools were "crafted as an instrument of government to create informed citizens and sound public policies that addressed social, economic, and political problems."[40] Instead of tutors, parent-provided education, or informal local efforts to hire a teacher, the common school model promoted a regulated universal approach to education, connecting all Americans by a shared curriculum funded by public dollars.[41] Supporters of the common school model perceived common schools as a necessary feature in the journey to realize the American Dream and "promise of equal opportunity."[42] But this promise of equality was not universally embraced, and wealthy families expressed opposition to public funds underwriting "free education for less well-off families."[43] Nevertheless, the common school movement prevailed, institutionalizing a formerly hodgepodge sector of American social life and marking an early fracture between prior parental interests and the state education system.[44]

This newly minted state education framework compelled some parents to pursue litigation to restore parental control.[45] In *Hardwick v. Board of School Trustees*, the California Court of Appeals held that expelling two children who refused to participate in school-sanctioned dancing to fulfill a fitness requirement was unconstitutional.[46] Because the children acted at the instruction of their parents, the school's punishment violated not only the

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36. Dailey & Rosenbury, *supra* note 19, at 1457.

37. Woodhouse, *supra* note 35, at 1038.

38. *Id.*

39. *See* DeMitchell & Onosko, *supra* note 18, at 597.

40. *Id.* at 597–98.

41. *See id.*

42. Woodhouse, *supra* note 35, at 1005. Woodhouse notes that, despite a benefits-oriented perception of common schooling when introduced to American society, historians contend that common schooling may have been implemented in part to control and assimilate immigrant and minority communities. *Id.*

43. DeMitchell & Onosko, *supra* note 18, at 598.

44. *Id.* at 597–99.

45. *Id.* at 602 ("Concerned parents have had two major avenues to counter the power of town, city, state, and federal educational systems: (a) legislation, which would codify their preferences, and (b) the courts to secure what they consider to be their rights.").

46. 205 P. 49, 56 (Cal. Ct. App. 1921).

Free Exercise clause of the Constitution, but also the "right of parents to control their own children."[47] The *Hardwick* court warned of the dangers of the state encroaching on family values, stating that upholding such overstepping policies "would be distinctly revolutionary and possibly subversive of that home life so essential to the safety and security of society and the government which regulates it."[48] The court concluded that such heavy-handed state power would have the inverse effect of the common school's mission.[49]

Following World War I, parental authority in public education settings continued to splinter as educational decision-making authority shifted from localized school boards to state legislatures.[50] "While parental authority was a prominent force when balanced against the authority of local school boards," parental power was substantially weakened against a state-wide legislature.[51] In the 1921 case *Meyer v. Nebraska*, the U.S. Supreme Court reallocated some of this authority back to educators and, by proxy, parents.[52] The Court in *Meyer* invalidated a protectionist Nebraska statute imposing criminal and civil penalties on teachers who taught in languages other than English or taught language classes to those younger than high school.[53] The Court rebuked the statute as the state's impermissible attempt to "materially . . . interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own."[54] States could "compel attendance, . . . make reasonable regulations for all schools, . . . [and] prescribe a curriculum,"[55] but they could not impinge on the teacher's right to teach or the parents' right to "engage him so to instruct their children."[56]

The Supreme Court reaffirmed *Meyer* two years later when it invalidated an Oregon law requiring all children to attend public school.[57] In *Pierce v.*

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47. *Id.*
48. *Id.*
49. *Id.*
50. *See* Ralph D. Mawdsley, *The Changing Face of Parents' Rights*, 2003 BYU EDUC. & L.J. 165, 168.
51. *Id.*
52. 262 U.S. 390 (1923). The plaintiff in *Meyer* was an educator convicted under a state statute for teaching his students in German. *Id.* at 396. However, the Court linked the teacher's right to educate with the parents' right to employ the teacher, protecting both under the Fourteenth Amendment. *Id.* at 400, 403.
53. *Id.* at 403.
54. *Id.* at 401.
55. *Id.* at 402.
56. *Id.* at 400.
57. Pierce v. Soc'y of the Sisters, 268 U.S. 510, 534–35 (1925).

Society of the Sisters, the Court eloquently opined that "[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."[58] The language of the ruling provided some rudimentary and early conceptions for keeping the state outside of the family unit, and *Pierce* would become a foundational case in establishing a constitutionally protected interest in parental rights and autonomy.[59]

Reading *Meyer* and *Pierce* within their proper context, two primary issues should be highlighted. First, the disputed laws in both *Meyer* and *Pierce* carried strong social and political undertones.[60] Post-World War I America was trepidatious and xenophobic.[61] States turned to the common schooling system to instill a sense of "Americanness."[62] By requiring all students to speak the same language and attend the same schools, a uniform standard of patriotism and American ideals could be implemented across the diverse groups living in the United States.[63] Second, neither *Meyer* nor *Pierce* were decided on constitutional grounds.[64] Instead, despite lofty constitutional musings on liberty and due process, these cases were resolved based on property theories.[65] The parents in *Meyer* had a contractual right to hire a teacher to teach their children German, and the private schools in *Pierce* had a right to run a business and provide meaningful employment to private school teachers.[66] Although the *Meyer-Pierce* holdings carved out the future trajectory for parental rights in American law, these cases benefitted parental

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58. *Id.* at 535.

59. Margaret Ryznar, *A Curious Parental Right*, 71 SMU L. REV. 127, 136 (2018).

60. *See* Ross, *supra* note 20, at 180 (describing the "antagonism against ethnic Americans and Roman Catholicism that animated the legislation that *Meyer* and *Pierce* nullified").

61. *See id.* at 177.

62. *See* DeMitchell & Onosko, *supra* note 18, at 604–05 (explaining that the Ku Klux Klan was a primary advocate for the contested law in *Pierce*, which the Ku Klux Klan hoped would "'Americanize' the schools in response to a wave of immigration" through compulsory public education); *see also* Meyer v. Nebraska, 262 U.S. 390, 401 (1923) (noting that the "purpose of the legislation was to promote civic development" by limiting exposure to foreign languages and ideals until students "could learn English and acquire American ideals").

63. *See Meyer*, 262 U.S. at 402 ("The desire of the Legislature to foster a homogeneous people with American ideals prepared readily to understand current discussions of civic matters is easy to appreciate."); *see also* Woodhouse, *supra* note 35, at 1009–12 (describing the widespread preoccupation with "Americanizing" immigrants following World War I, for some guided by a sense of "pluralist assimilationism").

64. Ross, *supra* note 20, at 178; *see also* WILLIAM G. ROSS, FORGING NEW FREEDOMS 186–89 (1994) (explaining that "the Court did not begin the process of incorporation in *Meyer* or *Pierce*" but instead decided those cases based on economic liberties).

65. Ross, *supra* note 20, at 178.

66. *See id.*

rights only secondarily and without conferring unlimited parental authority.[67] Nevertheless, in both instances the Court unequivocally emphasized the fundamental liberty interests that parents possess in relation to childrearing.[68]

B. Adjudicating Parental Rights in Public Education

Having established the fundamental interest in parental rights, it is important to also identify how these rights shape the circumstances in which parents may bring education-based claims on behalf of their children.

Education is not a fundamental right under the U.S. Constitution.[69] Finding no explicit or implicit protection of the right to education in the Constitution, the Supreme Court in *San Antonio v. Rodriguez* plainly denied embracing education as a constitutionally protected right.[70] Justice Powell, writing for the majority, claimed "it is not the province of this Court to create substantive constitutional rights in the name of guaranteeing equal protection of the laws."[71]

The protection conferred through the Fourteenth Amendment *can* implicate education—but only when education-based claims are brought in tandem with a constitutionally protected right, such as an equal protection violation.[72] Such a violation was the crux of *Plyler v. Doe*, a class action against a Texas public school superintendent brought by a group of parents on behalf of their children. The class—"consisting of all undocumented school-age children of Mexican origin residing within the School District"—sought to enjoin the school board's policy that excluded the undocumented children from enrolling in public school unless their parents paid a "full tuition fee."[73] The *Plyler* Court held that withholding a free public education based on documentation status is a violation of the Equal Protection Clause of the Fourteenth Amendment.[74] The Court required that Texas show a

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67. *See id.* at 184 (noting that *Pierce* may "withhold more parental autonomy than it confers" by using language suggesting that the child is the primary—but not "mere"—creature of the state); *see also* DeMitchell & Onosko, *supra* note 18, at 607.

68. *Meyer*, 262 U.S. at 400; Pierce v. Soc'y of the Sisters, 268 U.S. 510, 534–35 (1925).

69. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973) (holding that access to education is not a fundamental right and poverty is not a suspect classification).

70. *Id.* ("Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected. . . . [T]he undisputed importance of education will not alone cause this Court to depart from the usual standard for reviewing a State's social and economic legislation.").

71. *Id.* at 33.

72. *See* Plyler v. Doe, 457 U.S. 202, 223 (1982).

73. *Id.* at 205, 206 & n.2.

74. *Id.* at 202.

"compelling state interest" to justify the discrimination—a burden Texas failed to meet.[75]

The contrasting outcomes in *Plyler* and *Rodriguez* turn on the Court's equal protection rulings in each case. In *Plyler*, discrimination based on documentation status violated the Equal Protection Clause;[76] in *Rodriguez*, facially neutral property taxes favoring wealthier, predominantly white communities did not pose a violation.[77] Because the Court has determined that education, as a singular concept, is not a fundamental interest, minors and parents cannot use education classification alone as a means of bringing a constitutional claim.[78] As a result, education litigation is usually brought in conjunction with an additional, fundamentally protected legal hook, like equal protection, freedom of speech, or freedom of religion.[79] In adjudicating educational issues, lower courts will often weigh these rights against the states' interest in exposing children to new ideas through public education, which "teach[] fundamental values 'essential to a democratic society,'" like tolerance.[80]

The result, however, is incoherence among the circuits as they attempt to interpret which rights—and *whose* rights—are legally protected interests in education litigation.[81] While a fundamental right to education has been squarely rejected by the Supreme Court, the Court has also failed to issue any clear standards that a judge should apply when parental rights issues cross their bench.[82] Namely, current precedent leaves open important questions surrounding the constitutional reach of parents' rights when bringing suit against public schools and the proper level of scrutiny to apply during

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75. *Id.* at 223–24, 230 (stating that while laws affecting education do not trigger heightened scrutiny, education-based laws that discriminate against a suspect class or fundamental right must be justified by "compelling necessity").

76. *Id.* at 229–30.

77. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 54–55 ("In sum, to the extent that the Texas system of school financing results in unequal expenditures between children who happen to reside in different districts, we cannot say that such disparities are the product of a system that is so irrational as to be invidiously discriminatory.").

78. *See Plyler*, 457 U.S. at 223–24.

79. Matthew Patrick Shaw, *The Public Right to Education*, 89 U. CHI. L. REV. 1179, 1181–82 (2022). For a discussion on the intersection of constitutional liberties and education litigation, see *infra* Section I.D.

80. Dailey & Rosenbury, *supra* note 19, at 1494 (quoting Mozert v. Hawkins Cnty. Bd. of Educ., 827 F.2d 1058, 1068 (6th Cir. 1987)).

81. In *Wisconsin v. Yoder*, the Court explicitly avoided providing any "proper resolution of possible competing interests of parents, children and the state." 406 U.S. 205, 231 (1972). Although the *Yoder* decision was handed down in 1972, no subsequent Supreme Court holding has clarified how lower courts should approach similar educational issues.

82. *See* Ryznar, *supra* note 59, at 130–31.

adjudication.[83] In the absence of a uniform legal standard, the state's interest in producing democratic and contributory adults through education is often weighed against the constitutional right of parents to direct their children's development.[84] This lack of clarity has yielded mixed results in parental rights cases across the lower courts.[85]

Broadly speaking, three tests are used when the constitutionality of a government rule or regulation is challenged.[86] Strict scrutiny is the court's most exacting test, implicated when a law or regulation infringes on the rights of a suspect class.[87] Strict scrutiny presents a difficult hurdle for many government regulations, as they must show that the law is both related to a "compelling government interest" and "narrowly tailored" to achieve the law's objectives.[88] The lowest level of scrutiny, rational basis, only requires that the government provide a rational reason to justify its conduct.[89] Generally, this is an easy burden to meet, and legislation subjected to rational basis is frequently upheld.[90] Situated between these two is intermediate scrutiny, which asks whether a government rule furthers an important government interest by means that are substantially related to that interest.[91]

Until and unless the Supreme Court issues a bright-line framework for adjudicating parental rights in education cases, lower courts remain divided over the appropriate level of scrutiny such cases merit.[92] The Third Circuit applies a heightened scrutiny standard of review to issues involving parental

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83. *Id.* at 128–29; *see, e.g.*, Immediato v. Rye Neck Sch. Dist., 73 F.3d 454, 461 (2d Cir. 1996) ("The Supreme Court, however, has never expressly indicated whether this 'parental right,' when properly invoked against a state regulation, is fundamental, deserving strict scrutiny, or earns only a rational basis review.").

84. *See, e.g.*, Brown v. Hot, Sexy & Safer Prods., Inc., 68 F.3d 525, 533–34 (1st Cir. 1995), *abrogated in part on other grounds by* Martinez v. Chui, 608 F.3d 54 (1st Cir. 2010).

85. *Compare* Gruenke v. Seip, 225 F.3d 290 (3d Cir. 2000), *with* Fields v. Palmdale Sch. Dist., 427 F.3d 1197 (9th Cir. 2005).

86. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 539, 540–43 (3d ed. 2006).

87. San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 17 (1973) (noting that strict scrutiny is appropriate when government action "operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution"); *see also* Korematsu v. United States, 323 U.S. 214, 216 (1944) (applying strict scrutiny to a racially discriminatory government policy).

88. *E.g.*, Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 207–08 (2023).

89. *E.g.*, Plyler v. Doe, 457 U.S. 202, 223–24 (1982).

90. CHEMERINSKY, *supra* note 86, at 540.

91. *E.g.*, Craig v. Boren, 429 U.S. 190, 197, 205 (1976).

92. Ryznar, *supra* note 59, at 130–31.

rights.[93] By contrast, the First,[94] Second,[95] Fourth,[96] Ninth,[97] and Tenth[98] Circuits interpret parental rights in public education narrowly, utilizing a rational basis standard.

C. School-Primacy and Parent-Primacy Standards of Review

As a result, two leading frameworks have emerged from education-based appeals: the parent-primacy approach, as followed by the Third Circuit, or the school-primacy approach, as followed by the Ninth Circuit.[99] A parent-primacy framework applies heightened scrutiny when matters of the state infringe on the parents' right to control the upbringing of their children.[100] Under this framework, some courts state that in instances of "collision" between public education and parental preference, "the primacy of the parents' authority must be recognized and should yield only where the school's action is tied to a compelling interest."[101]

The Third Circuit firmly established its position as a parent-primacy state in *Gruenke v. Seip*, where the court warned that "public schools must not forget that '*in loco parentis*' does not mean 'displace parents.'"[102] The opinion proceeded to elucidate that "[i]t is not educators, but parents who have primary rights in the upbringing of children," and that the state, as the

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93. Tatel v. Mt. Lebanon Sch. Dist., 675 F. Supp. 3d 551, 563 (W.D. Pa. 2023).

94. Parker v. Hurley, 514 F.3d 87, 99 (1st Cir. 2008) ("We do not need to resolve the hybrid rights debate because the level of justification the government must demonstrate—a rational basis, a compelling interest, or something in between—is irrelevant in this case.").

95. Leebaert v. Harrington, 332 F.3d 134, 143–44 (2d Cir. 2003) (holding that parent's First and Fourteenth Amendment claims against school superintendent and town board of education were subject to rational basis review).

96. Herndon v. Chapel Hill-Carrboro City Bd. of Educ., 89 F.3d 174, 178 (4th Cir. 1996) ("Except when the parents' interest includes a religious element . . . the Court has declared with equal consistency that *reasonable* regulation by the state is permissible even if it conflicts with that interest.").

97. Fields v. Palmdale Sch. Dist., 427 F.3d 1197, 1200, 1208–11 (9th Cir. 2005) (holding that a school district's administration of a survey about sex did not implicate parents' fundamental rights and was "rationally related to [the district's] legitimate state interest in effective education and mental welfare of its students.").

98. Swanson *ex rel.* Swanson v. Guthrie Indep. Sch. Dist. No. I-L, 135 F.3d 694, 700 (10th Cir. 1998) (finding no "colorable showing of infringement of recognized and specific constitutional rights," and thus the "[d]efendants were not required to show a compelling state interest").

99. Note that "school-primacy" here and throughout this Comment refers specifically to public schools, which are government-funded and regulated.

100. Tatel v. Mt. Lebanon Sch. Dist., 675 F. Supp. 3d 551, 563 (W.D. Pa. 2023).

101. Gruenke v. Seip, 225 F.3d 290, 305 (3d Cir. 2000).

102. *Id.* at 307.

entity holding "only a secondary responsibility," must respect the parents' rights.[103] While the issue in *Gruenke* was decided on right to privacy and Fourth Amendment grounds,[104] the Third Circuit was careful to emphasize that the parents sufficiently alleged a due process violation against the school.[105] *C.N. v. Ridgewood Board of Education* further crystallized the Third Circuit's test, articulating that "parents, not schools, have the primary responsibility to 'inculcate moral standards, religious beliefs, and elements of good citizenship.'"[106] This framework continues to prevail in Third Circuit adjudication today.[107]

Other courts find that parental rights do not reach past the schoolhouse door, and government regulations must only be rationally related to a legitimate state interest to pass constitutional muster.[108] Within this school-primacy framework, public schools are not obligated to change their curriculums to satisfy parents' wishes, and courts only require that the government demonstrate a rational basis for the contested curriculum or procedures.[109] This provides schools with broad latitude in educating minors and means that parents who choose to enroll their children in public school are legally constrained from influencing curriculum or other matters through a parental rights claim.[110]

The Ninth Circuit has issued several clear opinions on matters of parental rights and public education. *Fields v. Palmdale School District* examined

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103. *Id.*

104. *Id.* at 308.

105. *Id.* at 307 (finding that, despite the parent's sufficient allegation of a constitutional violation, "the record must establish that the right violated was clearly established in order to defeat [Defendant's] claim of immunity," and this is where the claim failed).

106. 430 F.3d 159, 185 (3d Cir. 2005) (quoting *Gruenke*, 225 F.3d at 307). Although the *C.N.* court granted qualified immunity to the school employees because the plaintiffs failed to allege a constitutional violation, dicta highlighted the primacy of parental rights in the Third Circuit. Indeed, the parents' failure before the Third Circuit was not due to superior state interests but was instead because of insufficient allegations to merit a finding for the parents.

107. *See* Tatel v. Mt. Lebanon Sch. Dist., 675 F. Supp. 3d 551, 556 (W.D. Pa. 2023) ("Third Circuit Court of Appeals precedent . . . recognizes that a public school's actions may conflict with parents' fundamental constitutional rights and . . . the parents' rights prevail unless the public school can demonstrate a compelling interest for its actions.").

108. *See* Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 506 (1969) ("It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."); *see also* Fields v. Palmdale Sch. Dist., 427 F.3d 1197, 1200 (9th Cir. 2005).

109. Brown v. Hot, Sexy & Safer Prods., Inc., 68 F.3d 525, 533–34 (1st Cir. 1995), *abrogated in part on other grounds by* Martinez v. Chui, 608 F.3d 54 (1st Cir. 2010).

110. *Id.* at 533 (holding that parents' right to choose a specific educational program for their children does not "encompass[] a fundamental constitutional right to dictate the curriculum at the public school to which they have chosen to send their children").

whether a survey distributed to elementary school children containing questions related to sex violated the parents' due process and privacy rights.[111] The court upheld the district court's ruling for the school district, holding that there is no constitutional basis that authorizes parents "to interfere with a public school's decision as to how it will provide information to its students or what information it will provide, in its classrooms or otherwise."[112] Adopting the Sixth Circuit's approach, the Ninth Circuit embraced a school-primacy framework where "parents may have a fundamental right to decide *whether* to send their child to a public school, [but] they do not have a fundamental right generally to direct *how* a public school teaches their child."[113]

The Ninth Circuit later reaffirmed this position, upholding the lower court's ruling in favor of the school district that expelled a student after discovering a "hit list" of students that "must die."[114] The parents of the student sued, claiming that the school was infringing on the student's First Amendment rights, as well as the parents' substantive due process rights "to be free from state interference with their choice of . . . educational forum."[115] The court swiftly dismissed the parents' due process claims because they chose to enroll their child in a public school, and by doing so "accepted [the school]'s curriculum, school policies, and reasonable disciplinary measures."[116] Indeed, the parents' fundamental right to direct the care and education of their child in public education was most fully exercised by choosing a public school forum in the first place.[117] Beyond that, their rights "substantially diminished."[118]

D. The Limited Rights of Minor Students in Education

While state interests and parental interests remain the prevailing issues courts weigh when adjudicating education cases,[119] the Supreme Court has extended some limited rights to minors in their capacity as students. For example, in *West Virginia State Board of Education v. Barnette*, the Court held that a policy requiring children in public schools to recite the flag salute

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111. 427 F.3d 1197, 1200 (9th Cir. 2009).
112. *Id.* at 1206.
113. *Id.* (quoting Blau v. Fort Thomas Pub. Sch. Dist., 401 F.3d 381, 395 (6th Cir. 2005)).
114. McNeil v. Sherwood Sch. Dist. 88J, 918 F.3d 700, 704, 712 (9th Cir. 2019).
115. *Id.* at 706.
116. *Id.* at 711.
117. *See id.*
118. *Id.* (quoting Fields v. Palmdale Sch. Dist., 427 F.3d 1197, 1206 (9th Cir. 2005)).
119. *See supra* Section I.C.

violates those students' First Amendment rights.[120] While the controversy in *Barnette* arose because the plaintiff's religion prohibited pledging allegiance to anything other than God, the Court focused closely on the free speech issues instead of the Free Exercise Clause or broader Fourteenth Amendment analysis.[121] The Court rejected the justification that the school board's resolution promoted patriotic values and national unity.[122] Justice Black's concurrence explained that "compelling little children to participate in a ceremony which ends in nothing for them but a fear of spiritual condemnation" cannot be justified by theories of "tranquillity" or "martial effort."[123]

Twenty-five years later, the Supreme Court explicitly granted First Amendment freedoms to minor students at public schools.[124] Unlike *Barnette*, which prohibited the state from compelling speech from students, the Court in *Tinker v. Des Moines Independent Community School District* protected the right of minor students to openly exercise their right to free expression when on public school grounds.[125] The landmark holding plainly articulated, for the first time, that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[126] The Court ultimately determined that students and teachers in public schools are permitted to express themselves under their First Amendment rights.[127]

The Court specified, however, that student conduct that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others is . . . not immunized by the constitutional guarantee of freedom of speech."[128] In other words, First Amendment rights for students at school are protected, but only to a limited extent.[129] Schools are entitled to constrain

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120. 319 U.S. 624 (1943) (overruling Minersville Sch. Dist. v. Gobitis, 310 U.S. 586 (1940)).

121. *Id.* at 629, 639 (noting that "it is the Fourteenth Amendment which bears directly upon the State," but ultimately deciding the case on First Amendment grounds).

122. *Id.* at 640–42.

123. *Id.* at 644 (Black, J., concurring).

124. Mark Fidanza, *Aging Out of in Loco Parentis: Towards Reclaiming Constitutional Rights for Adult Students in Public Schools*, 67 RUTGERS U. L. REV. 805, 810 (2015); Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 514 (1969).

125. 393 U.S. at 514.

126. *Id.* at 506.

127. *See id.*

128. *Id.* at 513.

129. *See, e.g.*, Morse v. Frederick, 551 U.S. 393, 397, 409–10 (2007) (holding that a student's First Amendment rights were not infringed when a principal suspended him for unfurling a banner stating "BONG HiTS 4 JESUS" at a school event); Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260, 273 (1988) (holding that a school may "exercis[e] editorial control over . . . student speech" in "school-sponsored expressive activities so long as their actions are reasonably related to

some forms of student speech and conduct, because although the "First Amendment guarantees wide freedom in matters of adult public discourse," the constitutional rights of minors attending public schools "are not automatically coextensive with the rights of adults in other settings."[130] Thus, schools may properly limit a student's constitutional rights to protect other students from offensive or disruptive conduct.[131]

The First Amendment rights of students acquired further texture in *Mahanoy Area School District v. B.L.*[132] In *Mahanoy*, the Court held that a student's First Amendment rights were violated when the school suspended her from the cheerleading squad because of an online post she made about school while off-campus.[133] After failing to make the varsity cheerleading squad, the high school student took to social media, posting: "Fuck school fuck softball fuck cheer fuck everything."[134] The school suspended her from the junior varsity cheerleading squad, contending that her conduct was sufficiently disruptive to merit discipline despite occurring off-campus.[135] The Supreme Court determined that the school unjustly infringed on the student's free speech rights; however, they were careful to acknowledge that there may be instances where school regulation of off-campus speech is justified.[136]

The Court declined to issue a bright line rule for when off-campus speech is truly "off-campus" and fully immune from school regulation.[137] Instead, the opinion noted several features of off-campus speech that diminish "the leeway the First Amendment grants to schools in light of their special characteristics," leaving it to future courts to determine the proper application of these features in education litigation.[138] Taken together, *Tinker* and *Mahanoy* work to define the vague outer boundaries of minors' free speech rights related to school. Because of *Tinker*, students possess some

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legitimate pedagogical concerns"); Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 683, 685 (1986) (holding that "pervasive sexual innuendo" in a student speech "was plainly offensive" and "insulting," and the school district did not offend the student's constitutional rights by imposing sanctions).

130. *Fraser*, 478 U.S. at 682.

131. *See id.* at 683.

132. 594 U.S. 180 (2021).

133. *Id.* at 184–85, 193–94.

134. *Id.* at 184–85.

135. *Id.* at 187 (holding that schools may regulate student speech that "materially disrupts classwork or involves substantial disorder or invasion of the rights of others" (quoting Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 513 (1969))).

136. *Id.* at 188–89.

137. *Id.* at 189.

138. *Id.* at 190.

constitutionally protected rights to *on*-campus speech; because of *Mahanoy*, students possess some constitutionally protected rights to *off*-campus speech. While neither case conferred absolute free speech protection to students, together they illuminate the extent to which legally protected rights can be vested in minors instead of parents or the state.

When evaluating students' rights in schools, the existing precedent is clearest when interpreted through the lens of the First Amendment.[139] However, students are not limited strictly to the constitutional freedoms enshrined in the First Amendment.[140] For example, a student has a right to be free from discriminatory school dress code policies,[141] a right to a reasonable expectation of privacy,[142] a right to be free from unreasonable searches under the Fourth Amendment,[143] and a right to procedural due process when facing suspension.[144] Importantly, none of these rights are bestowed to their fullest extent, ultimately highlighting the constraints on students' constitutional claims.[145]

II. PREEXISTING FRAMEWORKS FOR LEGAL AGENCY IN MINOR CHILDREN

This Part addresses two primary areas of law that grant minors legal agency to direct their lives: medical decision-making and family law proceedings. These adjacent legal doctrines provide a touchstone for a new legal theory exploring a minor's rights related to educational issues.

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139. See cases cited *supra* note 129.

140. *See* Vivian E. Hamilton, *Immature Citizens and the State*, 2010 BYU L. REV. 1055, 1096–97.

141. Peltier v. Charter Day Sch., Inc., 37 F.4th 104, 126 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2657 (2023) (mem.) (holding that a school policy that required female students to wear skirts facially violated the Equal Protection Clause).

142. Gruenke v. Seip, 225 F.3d 290, 302–03 (3rd Cir. 2000) (reversing the dismissal of a student's right to privacy claim because the student's claim "falls squarely within the contours of the recognized right of one to be free from disclosure of personal matters").

143. New Jersey v. T.L.O., 469 U.S. 325, 339–40 (1985) (holding that students have "legitimate expectations of privacy," and that some rights of the Fourth Amendment apply in the school setting); *see also* Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995).

144. Goss v. Lopez, 419 U.S. 565, 581 (1975).

145. The *Fraser* Court clearly delineated this distinction. Justice Burger, writing for the majority, stated:

> The First Amendment guarantees wide freedom in matters of adult public discourse. . . . It does not follow, however, that simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school.

Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675, 682 (1986).

Importantly, medical law and family law both provide doctrinal frameworks for determining an adolescent's maturity when faced with meaningful decisions. Furthermore, both family law and the mature minor doctrine show that conferring agency rights to minors is not legally novel and can be feasibly imagined in other contexts across the law.

A. Medical Law and the Mature Minor Doctrine

In general, the medical system and common law deem minors as "incompetent to give consent or refuse medical intervention."[146] Thus, parents are generally in control of their child's medical decisions,[147] unless a state has statutorily conferred medical decision-making authority to minors[148] or the court applies the common law mature minor doctrine.[149]

In cases where the mature minor doctrine is utilized, courts generally consider various criteria to determine whether to apply the mature minor doctrine.[150] These criteria typically include evaluating: (1) whether the "treatment was undertaken for the benefit of the minor," and not a third party;

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146. Shawna Benston, *Not of Minor Consequence?: Medical Decision-Making Autonomy and the Mature Minor Doctrine*, 13 IND. HEALTH L. REV. 1, 3 (2016).

147. *See* Parham v. J.R., 442 U.S. 584, 604 (1979).

148. Often these rights are reserved for minors that are married, emancipated, homeless, and/or financially independent from their parents, or as necessary to authorize emergency medical care or to treat contracted infectious diseases. *See, e.g.*, ALA. CODE §§ 22-8-4 to -6 (2024); ALASKA STAT. § 25.20.025 (2024); ARIZ. REV. STAT. ANN. § 44-132 (2024); CAL. FAM. CODE § 6922 (West 2024); COLO. REV. STAT. § 13-22-103 (2024); DEL. CODE ANN. tit. 13, § 707(b) (2024); FLA. STAT. §§ 743.01, .064, .067 (2024); HAW. REV. STAT. § 577D-2 (2024); IDAHO CODE § 39-3801 (2024); 410 ILL. COMP. STAT. 210/1.5 (2024); IND. CODE §16-36-1-3 (2024); LA. STAT. ANN. § 40:1079.1 (2024); ME. STAT. tit. 22, § 1503 (2024); MD. CODE ANN., HEALTH–GEN. § 20-102 (LexisNexis 2024); MASS. GEN. LAWS ch. 112, § 12F (2024); MINN. STAT. § 144.341 (2024); MO. REV. STAT. § 431.056 (2024); MONT. CODE ANN. § 41-1-402 (2024); NEV. REV. STAT. § 129.030 (2024); N.M. STAT. ANN. § 24-7A-6.2 (2024); N.Y. PUB. HEALTH LAW § 2305 (McKinney 2024); N.C. GEN. STAT. § 90-21.5 (2024); N.D. CENT. CODE §§ 14-10-17.1, -19 to -20 (2024); OKLA. STAT. tit. 63, § 2602 (2024); OR. REV. STAT. § 109.640 (2024); 35 PA. CONS. STAT. § 10104 (2024); 23 R.I. GEN. LAWS §§ 23-4.6-1, 23-8-1.1 (2024); S.C. CODE ANN. § 63-5-350 (2024); TEX. FAM. CODE ANN. § 32.003 (West 2024); UTAH CODE ANN. §§ 78B-3-406(6)(f), (i)–(*l*) (LexisNexis 2024); VA. CODE ANN. § 54.1-2969 (2024); WYO. STAT. ANN. § 14-1-101 (2024).

149. In the 1960s, courts began to use the mature minor doctrine when adjudicating medical malpractice torts. Benston, *supra* note 146, at 2–3; *see, e.g.*, Smith v. Seibly, 431 P.2d 719, 723 (Wash. 1967) (finding that an eighteen-year-old married man who was financially independent could not assert lack of consent in a medical malpractice claim despite being under the twenty-one-year-old age of majority).

150. *See, e.g.*, Cardwell v. Bechtol, 724 S.W.2d 739, 748 (Tenn. 1987) (adopting a totality of circumstances approach that evaluates a minor's "age, ability, experience, education, training, and degree of maturity . . . [and] the conduct and demeanor of the minor at the time of the incident" when assigning responsibility to the minor).

(2) whether "the particular minor was near majority . . . and was considered to have sufficient mental capacity to understand fully" the gravity of the medical procedure or decision; and (3) whether the risk of the procedures "could be characterized by the court as less than 'major' or 'serious.'"[151] In other words, the mature minor doctrine lodges a thorough inquiry into the ability and decision-making capacities of a young adult to evaluate whether they have adequate competency to make informed medical decisions. If a minor demonstrates a lack of maturity, then the court may discretionarily decline extending the mature minor doctrine to a specific case.[152]

B. Family Law and the Emancipation Proceedings

Family law principles focus pointedly on the welfare and rights of children.[153] Even those unfamiliar with the nuances of family law are likely acquainted with the well-known concept of "the best interests of the child."[154] This legal standard is the guiding force of proceedings related to the custody, care, and services for minor children.[155] When children are entangled in the legal system, this phrase works to prioritize the child over the specific interests of the state or the parents.[156] However, states also allow the child to determine their "best interests" through legal emancipation.[157]

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151. Benston, *supra* note 146, at 3–4.

152. *See, e.g.*, *In re* Cassandra C., 112 A.3d 158, 172–73 (Conn. 2015) (holding that a minor and her mother failed to adequately prove the minor's maturity to justifiably refuse chemotherapy for Hodgkin's Lymphoma).

153. *See generally* RESTATEMENT OF CHILD. AND THE L., ch. 1, Introductory Note (AM. L. INST., Tentative Draft No. 1, 2018).

154. The specific factors of the "best interests of the child" doctrine vary from state to state. *Compare* Gibson v. Greene, 58 N.Y.S.3d 551, 551 (App. Div. 2017) (employing a totality of the circumstances test with five guiding factors to determine the best interests of the child), *with* ARIZ. REV. STAT. ANN. § 25-403 (2024) (setting forth eleven factors to guide courts in determining the best interests of the child).

155. Margaret Ryznar, *The Empirics of Child Custody*, 65 CLEV. ST. L. REV. 211, 212 (2017); *see also* Lynne Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337, 338–39 (2008).

156. *See* Julia Halloran McLaughlin, *The Fundamental Truth About Best Interests*, 54 ST. LOUIS U. L.J. 113, 144–51 (2009) (discussing previous Supreme Court case law in which the Court balanced state interests and parental interests against the "best interests of the child").

157. Carol Sanger & Eleanor Willemsen, *Minor Changes: Emancipating Children in Modern Times*, 25 U. MICH. J.L. REFORM 239, 261 (1992) ("[T]he court may issue the declaration of emancipation if it finds that the minor has met the . . . statutory requirements and that 'emancipation would not be contrary to the best interests of the minor.'" (quoting CAL. CIV. CODE § 64(c) (West 1982) (repealed 1993))).

Emancipation is the legal severance of a child under the age of majority from the care, custody, and control of their parents.[158] While some states grant emancipations through common law,[159] most states have enacted statutes that prescribe specific procedures for bringing an emancipation action.[160] The statutory requirements for emancipation vary from state to state, and the spread of emancipation statutes in the 1990s and early 2000s "evinced a focus on children's rights, as opposed to parents' rights" in matters of family law.[161] These statutes provide a clear legal framework for minors to pursue an "extraordinary grant of authority . . . in a legal system where even older children are permitted to decide very little for themselves."[162] Like the mature minor doctrine in healthcare law, statutory emancipation relies on evaluating various factors to determine whether a minor should be granted the rights and responsibilities of comprehensive adulthood.[163]

III. THE ROLE OF THE CHILD IN GUIDING THEIR EDUCATION

This Part examines the current state of educational rights in the United States and explores how a minor's rights in education compare to other areas of the law. Although minors have *some* constitutional rights under the law, those rights are often constrained by their underage status. This Part identifies how those rights are prioritized when dealing with issues implicating minors, and how the law distinguishes between parental rights, states' rights, and minors' rights.

This Part argues that older adolescents—those just shy of adulthood in their later teen years—have the decision-making capacities to guide their own education. Indeed, such minor-vested agency recognizes the mature, adult-like conduct many youths already engage in.

Lastly, this Part proposes a potential legal solution that reconciles the state-parent conflicts of interest by allowing the minor to take charge of their education. This solution embodies the states' interest in shaping good citizens through education while recognizing older adolescents' ability to discern their personal beliefs and values from those promulgated by either their parents or their school.

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158. *In re* Anonymous 3, 782 N.W.2d 591, 595 (Neb. 2010).

159. *See, e.g.*, *In re* Marriage of Baumgartner, 930 N.E.2d 1024, 1030 (Ill. 2010).

160. *See, e.g.*, ARIZ. REV. STAT. ANN. § 12-2451 (2024).

161. Lauren C. Barnett, *Having Their Cake and Eating It Too? Post-Emancipation Child Support as a Valid Judicial Option*, 80 U. CHI. L. REV. 1799, 1803 (2013).

162. Sanger & Willemsen, *supra* note 157, at 244.

163. *Id.*

As evidenced throughout Part II, the law is not per se adverse to vesting legal rights in children over their parents or the state. So if the law recognizes a minor's rights to decide their medical treatment or to dissolve of parental legal obligations—substantial decisions that arguably mandate more careful judicial consideration than matters of sexual education or classroom textbooks—why then does it defer only to parents or the state in education litigation? Because minors are afforded adult rights in other circumstances based on their age and maturity, it follows that they should be permitted some agency to guide their educational decisions as they approach the age of legal adult state citizenship.

Presently, the direction of a youth's education is determined solely by either their parents or the state.[164] Sometimes, as recent legislative trends have shown, parental interests and the state can become intermingled through protest, lobbying, and lawmaking.[165] Parents have taken to the legislature instead of the judiciary to advocate for increased control in public schools.[166] Instead of relying on the discretion of the courts to determine when a parent possesses a superior right to direct a child's upbringing, advocates of "parents' rights bills" seek to codify that right in state and national law.[167] Newly formed parental rights groups and political action committees support local and national candidates campaigning on parental rights platforms.[168] Conservative elected officials push bills to amend federal and state law to include a "Parents' Bill of Rights,"[169] which often include educational

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164. *See supra* Section I.C.

165. Jackie Valley, *32 States and Counting: Why Parents Bills of Rights Are Sweeping US*, CHRISTIAN SCI. MONITOR (Mar. 24, 2023), https://www.csmonitor.com/USA/Education/2023/0324/32-states-and-counting-Why-parents-bills-of-rights-are-sweeping-US [https://perma.cc/CL2T-TZZS].

166. *See, e.g.*, Stephen R. Groves, *House GOP Passes Parents' Rights Bill in Clash over Schools*, ASSOCIATED PRESS (Mar. 24, 2023), https://apnews.com/article/parents-rights-education-book-bans-9073f42e2bfda393d39dd8cb7b2cc8f4 [https://perma.cc/BA9X-UY9S].

167. *See* Bella DiMarco, *Legislative Tracker: 2023 Parent-Rights Bills in the States*, FUTUREED (Mar. 16, 2023), https://www.future-ed.org/legislative-tracker-2023-parent-rights-bills-in-the-states [https://perma.cc/5J8U-WWYR].

168. Erin Mansfield & Kayla Jimenez, *These PACS Are Funding 'Parents' Rights Advocates' Running for Local School Board Positions*, USA TODAY (Oct. 23, 2022, 3:00 AM), https://www.usatoday.com/in-depth/news/politics/2022/10/23/super-pacs-spending-local-school-board-races/8125668001 [https://perma.cc/J6BX-E9QV]; *About*, PARENTS' RTS. EDUC., https://parentsrightsineducation.com/about [https://perma.cc/C2C8-MF9H]; *see also* Dana Goldstein, *In School Board Elections, Parental Rights Movement Is Dealt Setbacks*, N.Y. TIMES (Nov. 8, 2023), https://www.nytimes.com/2023/11/08/us/parental-rights-school-board-elections.html.

169. These bills have moved through various parts of the legislative process for years, but often fail to become law. Barbara Sprunt, *What a House GOP Messaging Bill Could Spell for*

provisions requiring disclosure of student pronoun preferences and barring federal involvement in class curriculum.[170]

Locally, parental rights advocates turn to the democratic process.[171] School boards are composed of locally elected positions.[172] A parent dissatisfied with a school board's decisions can work to recall representatives, or even run as a representative in the next election to effectuate first-hand change. But these avenues of regulating public education continue to highlight the same prevailing voices: those of the state and the parent. Legislative solutions, much like the judicial alternative, silence the student's voice in the conversation.[173]

Adolescent minors are not passive actors in their education.[174] Numerous student movements have gained nationwide traction in recent years, often advocating for changes to policies affecting public schools.[175] High school students have organized walkouts protesting anti-LGBTQ legislation, advocating for the Black Lives Matter movement, and raising awareness related to climate change.[176] They demand meaningful gun reform laws, asking for increased restrictions on firearms that most students cannot

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2024 Culture War Campaign, NPR (Mar. 24, 2023), https://www.npr.org/2023/03/24/1165592471/what-a-house-gop-messaging-bill-could-spell-for-2024-culture-war-campaign [https://perma.cc/4TY5-PCP6]; *see, e.g.*, H.R. 5, 118th Cong. (2023).

170. *See, e.g.*, Libby Stanford, *What the Push for Parents' Rights Means for Schools*, EDUC. WEEK (Feb. 22, 2023), https://www.edweek.org/leadership/what-the-push-for-parents-rights-means-for-schools/2023/02 [https://perma.cc/YQT3-S7JU].

171. Ali Swenson, *Moms for Liberty's Focus on School Races Nationwide Sets Up Political Clash with Teachers Unions*, ASSOCIATED PRESS (July 2, 2023), https://apnews.com/article/moms-for-liberty-school-board-races-2024-5311cc11cd657a04e233216ac783d8f3 [https://perma.cc/CV8P-SG77].

172. *See, e.g.*, *Becoming a Board Member*, ARIZ. SCH. BDS. ASS'N, https://azsba.org/resources/becoming-a-board-member [https://perma.cc/GCH6-GTRF].

173. *Cf. Student Bill of Rights,* NAT'L YOUTH RTS. ASS'N, https://www.youthrights.org/issues/student-rights/student-bill-of-rights [https://perma.cc/DA2X-2P22] (asserting that a student bill of rights is necessary because students feel that their existing rights and freedoms are not adequately acknowledged within the public education system).

174. *See, e.g.*, Lexi Lonas, *5 Issues that Have Drawn Student Protests in the Past Year*, HILL (Apr. 13, 2023, 6:00 AM), https://thehill.com/homenews/education/3946139-5-issues-that-have-drawn-student-protests-in-the-past-year [https://perma.cc/5RTS-AD7C].

175. *Id.*

176. *Id.*; *see also* James Paterson, *Student Activism on the Rise*, NAT'L EDUC. ASS'N : NEA TODAY (Mar. 9, 2021), https://www.nea.org/nea-today/all-news-articles/student-activism-rise [https://perma.cc/C75N-83K4].

purchase.[177] This conduct is evidence of budding citizen engagement, a fundamental goal of the public school system.[178]

A. Prior to Adulthood, Whose Rights Are Superior to the Minor's Rights?

The crux of parental rights and state's rights hinges on a key factor: the age of majority.[179] The age of majority is determined by each state, with most states vesting full legal rights in those that are eighteen years old and above.[180] Once the age of majority is reached, those once legally considered the charge of their parents can enter enforceable contracts,[181] join the military,[182] and pursue medical care without parental consent.[183]

But the age of majority introduces an interesting tension in the public education setting, as many young adults will legally come of age while still students in public school. Thus, a minor who turn eighteen while still in school—without any other change in status or environment—is suddenly no longer the legal responsibility of the state or their parents. They are fully vested with a broader scope of civil liberties while continuing their studies alongside underage peers. This sudden shift thrusts the young adult out of one liminal space, where they had limited legal rights, into another, where their legal rights are fully expanded yet are effectively constrained by the same parent-versus-state binary as a minor student.

This conflict highlights the shortcoming of the current school-primacy and parent-primacy frameworks.[184] While there is well-explored tension between parental interest in guiding the upbringing of their children and the state's right to educate its future citizens,[185] the voice of the child is often left out entirely.[186] This has the effect of leaving older minors on the cusp of

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177. Despite being unable to purchase firearms, gun violence nevertheless tops the charts as the "leading cause of death for American children and teenagers." Josiah Bates, *Guns Became the Leading Cause of Death for American Children and Teens in 2020*, TIME (Apr. 17, 2022, 11:46 AM), https://time.com/6170864/cause-of-death-children-guns [https://perma.cc/ZLM5-T9KK].

178. DeMitchell & Onosko, *supra* note 18, at 592.

179. Dailey & Rosenbury, *supra* note 19, at 1456 n.9.

180. *Age of Majority*, CORNELL L. SCH. LEGAL INFO. INST. (Nov. 2021), https://www.law.cornell.edu/wex/age_of_majority [https://perma.cc/7Z4T-RGAE].

181. RESTATEMENT (SECOND) OF CONTS. § 14 (AM. L. INST. 1981).

182. 10 U.S.C. § 505(a).

183. *See, e.g.*, *State Laws that Enable a Minor to Provide Informed Consent to Receive HIV and STD Services*, CTRS. DISEASE CONTROL & PREVENTION (Oct. 25, 2022), https://www.cdc.gov/hiv/policies/law/states/minors.html [https://perma.cc/YVC3-GSKE].

184. *See supra* Section I.C.

185. *See generally* DeMitchell & Onosko, *supra* note 18.

186. *See* Buss, *supra* note 22, at 30.

adulthood unable to exercise their civic rights and duties until the gloss of childhood is suddenly lifted on their eighteenth birthday.

But the ungraceful transition from a citizen of the family to a citizen of the state is an incoherent shift for those mature minors who have developed the social-emotional and decision-making capacities that inform engaged citizenship. Children—particularly young adult minors—are not uninvolved and uninformed citizens, awaiting the day they turn eighteen and magically become educated and capable adults. Youth become involved in meaningful activism, advocate for changes in their communities, and protest laws they disagree with.[187] Youth are also often in "adult" situations, where they personally confront medical, social, or legal issues much like adults, and sometimes are even enabled to make adult-like decisions in those contexts.[188]

The law already recognizes limitations on a parent's child-rearing authority.[189] For example, the law does not permit a child to remain in an abusive household, even if the parents argue that they have the right to direct the care, education, and discipline of their children.[190] However, because "the child is not the mere creature of the State," these rights should also not be unquestioningly allocated to the states.[191] Where, then, lies the solution to this tension?

Perhaps the solution lies with the child. Or, more specifically, with the mature minor.[192] In the interest of promoting active and engaged citizens, the law should bestow expanded legal rights to minors when those rights are closely held interests to students of a reasonable decision-making age.[193] Specifically, the mature minor should be entitled to direct some of their educational experiences and decisions. Imparting limited legal agency to minors, such as the ability to choose whether to participate in a sexual education class, allows them to develop skills and knowledge essential to

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187. *See* Mattie Kahn, *Don't Wait for the Children to Save Us*, ATLANTIC (June 16, 2023), https://www.theatlantic.com/family/archive/2023/06/teenage-girl-activism-malala-greta-thunberg/674433; Megan Carnegie, *Gen Z: How Young People Are Changing Activism*, BBC (Aug. 8, 2022, 5:51 AM), https://www.bbc.com/worklife/article/20220803-gen-z-how-young-people-are-changing-activism [https://perma.cc/WA5U-3T25].

188. *See, e.g.*, Bellotti v. Baird, 443 U.S. 622 (1979); Diamond v. Diamond, 283 P.3d 260 (N.M. 2021); *see also supra* Part II.

189. *See supra* Part I; *see also* RESTATEMENT OF CHILD. AND THE L. § 2.80 cmt. a (AM. L. INST., Tentative Draft No. 5, 2023).

190. State laws provide statutory grounds for terminating parental rights if the parent abused or attempted to abuse the child, neglected the child, or abandoned the child. *See, e.g.*, ALA. CODE § 12-15-319(a)(1), (3) (2024); IDAHO CODE § 16-2005(1)(a)–(b) (2024); WYO. STAT. ANN. § 14-2-309(a)(ii)–(iii) (2024).

191. Pierce v. Soc'y of the Sisters, 268 U.S. 510, 535 (1925).

192. *See supra* Section II.A.

193. Emily Buss, *"Parental" Rights*, 88 VA. L. REV. 635, 647–48 (2002).

social contribution and engagement while also not disturbing less-contentious legal restrictions, like compulsory attendance policies.

B. Vesting Educational Decision-Making Authority in the Child

Vivian E. Hamilton proposes that the state should provide "young citizens" with "decision-making authority" in the contexts where minors "have reliably attained competent decision-making capacities."[194] Drawing from developmental science research, Hamilton contends that those in mid-adolescence, approximately fifteen or sixteen years old, possess mature "basic cognitive and information-processing abilities" and the "capacity for mature decision-making."[195]

Hamilton argues that "citizens are born, but they are also made."[196] Indeed, the very cornerstone of a common public education is the state's interest in educating its future citizens.[197] But as this Comment has discussed, the legal perspectives shaping adolescent education are almost never those of the minor, thus depriving minors of the self-actualizing experiences "necessary for them to develop the capacities of citizenship."[198] In effect, the current model of educational decision-making does a disservice to both state interests and parental interests by insufficiently centering the interests of the child. A child wholly unpracticed in the expansive rights and responsibilities of adult American citizenship is ill-equipped to "meet[] the demands of a successfully functioning society."[199] And while parental interests are couched in the desire to direct the growth and development of their child, older adolescents have "attained cognitive abilities substantially the same as those of their parents" and can comprehend "dissonances between their home education and values and their 'public' education."[200] In other words, a parent's control over their child's upbringing inevitably weakens by the time the child is high school aged.

A minor-centered third way for approaching public education issues addresses the shortcomings of the state-parent dichotomy and presents a potential resolution benefitting all parties—*including* the child. As discussed,

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194. Hamilton, *supra* note 140, at 1063.

195. *Id.* at 1063–64.

196. *Id.* at 1056.

197. *See* DeMitchell & Onosko, *supra* note 18, at 597–98.

198. Hamilton, *supra* note 140, at 1120.

199. Buss, *supra* note 22, at 32 ("It is the state, and not any individual parent, that can best assess what is necessary to ensure achievement of a successful democratic government, a healthy economy, and a safe society.").

200. Hamilton, *supra* note 140, at 1133.

this is not an entirely uncharted legal landscape; both the mature minor and emancipation doctrines present viable reference points for framing a child's right in education.[201] This would allow minors to direct their own educational objectives in areas that are commonly in conflict between the state and parents.

For example, some parental rights advocates strongly reject sexual education being taught in public schools.[202] Proponents of comprehensive sexual education curriculums in school argue that sexual education is invaluable for preventing sexual abuse, sexually transmitted diseases, and unplanned pregnancy among teenagers.[203] Legislation is drawn up on both sides, lawsuits are brought when parents disagree with sex education curriculum, and students are opted-out of classes and otherwise deprived of the independent freedom to pursue the education they may desire.

An alternative approach to education issues can vest in the *child* the right to decide whether they want to embrace the educational materials. While this freedom would be inappropriate for younger adolescents, older children are better equipped with the cognitive ability to distinguish between their home education—where parents confer family values, beliefs, and morals—from their public-school education.[204] Furthermore, older children are more likely to engage in the sexual behaviors being taught and regulated, which makes the matter of particular and personal importance to them.[205] Centering a child's right will properly scale the state's and parents' rights proportional to

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201. *See supra* Sections I.B–C.

202. *See* Emily J. Brown, *When Insiders Become Outsiders: Parental Objections to Public School Sex Education Programs*, 59 DUKE L.J. 109, 113 (2009).

203. *See* AM. COLL. OBSTETRICIANS & GYNECOLOGISTS, COMMITTEE OPINION: COMPREHENSIVE SEXUALITY EDUCATION 3 (2016, *reaffirmed* 2020), https://acog.org/-/media/project/acog/acogorg/clinical/files/committee-opinion/articles/2016/11/comprehensive-sexuality-education.pdf [https://perma.cc/AX6A-3WTZ].

204. Hamilton, *supra* note 140, at 1063.

205. CTRS. FOR DISEASE CONTROL & PREVENTION, YOUTH RISK BEHAVIOR SURVEY: DATA SUMMARY & TRENDS REPORT 11–12 (2023), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf [https://perma.cc/E3UP-WQWH] (reporting 30% of high school students in 2021 had ever engaged in sexual intercourse, 6% had ever been tested for HIV, and 21% were sexually active; of those who were sexually active, only 52% used a condom the last time they had sex); *see also* GUTTMACHER INST., ADOLESCENT SEXUAL AND REPRODUCTIVE HEALTH IN THE UNITED STATES 1 (2019), https://www.guttmacher.org/sites/default/files/factsheet/adolescent-sexual-and-reproductive-health-in-united-states.pdf [https://perma.cc/JM2C-DXBT] (reporting an increase in the proportion of sexual activity as adolescents age, increasing from "one in five 15-year-olds [to] two-thirds of 18-year-olds").

the child's, correlating the potential influences of the state and parent with the child's developed ability to make reasoned decisions.[206]

C. A Proposed Solution

This Comment proposes a three-factor balancing test to determine whether a student enrolled in public school has sufficient maturity to guide their education. First, courts should evaluate whether the conduct is disruptive under the *Tinker* standard. Second, courts should weigh the minor's maturity and cognitive development. And third, courts should conclude by determining whether the student has offered a sensible reason for directing their education. If a child has adequately satisfied all three factors, the test then weighs the child's interest in directing their education against the parents' interest and/or the state's interest.[207]

A child's right to direct their education entrusts important interests to individuals—the minors—who perhaps lack experience making significant decisions. Critics may argue that children are unable to properly assess a problem, and that the risk associated with making the "wrong" decision in education could create irreversible damage. However, the child-centered approach is not granting unlimited freedoms; it requires the careful assessment of many factors. Furthermore, social research indicates that older children make informed decisions like their adult counterparts when they are aware of the decision's gravity and are removed from the social and emotional pressures of their peers.[208] Thus, in a legal setting, the framework affords sufficient opportunities to ensure the child is indeed able to understand the decision they are making, as well as any related consequences.

As an illustration, consider the hypothetical plight of Jackie, a junior in high school. Jackie is heavily involved in student government, plays soccer for her school's team, and volunteers regularly at the animal shelter in her hometown. Her teachers describe her as precocious and mature; her friends jokingly call her the "mom" of their friend group. Jackie is close with her parents, although she finds them overly strict and old-fashioned.

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206. *See* Hamilton, *supra* note 140, at 1063.

207. The proposed test could be used in dispute resolution proceedings outside of courts, but this Comment considers the test's application specifically in litigation. While exploration of specific non-litigious avenues of resolution is beyond the scope of this paper, this test was crafted with the intention of being applicable to school boards, administrative law adjudications, and other similar contexts.

208. Hamilton, *supra* note 140, at 1063–64; *see also* Buss, *supra* note 22, at 28.

In the spring of her junior year, Jackie's high school offers a sex education class. Jackie wants to become sexually active with her partner of almost a year, but she fears unintentionally exposing herself to a sexually transmitted disease or pregnancy. Accordingly, she wants to take her school's sex education class. However, her state had passed restrictive laws on some subjects taught in schools, including any curriculum addressing sexual development.[209] As a result, Jackie needs written parental consent to attend her school's sex education course. Jackie's parents are unwilling to provide their consent. She finds herself at an impasse with her parents. As added insult to injury, Jackie is also upset because her friends can access the sexual education that she wants. Jackie wants to bring her case before the court.

1. The First Factor

The proposed test begins with the threshold question of whether the child's desired conduct is disruptive or offensive. Under *Tinker* and its progeny, such conduct is impermissible under the limited constitutional rights granted to students.[210] Disruptive conduct includes bawdy, illegal, or offensive behavior and should not be approved by a court using this test. However, as *Tinker* clarified, non-disruptive student expression is permitted and protected under the First Amendment.[211]

In the hypothetical with Jackie, a child wanting to participate in a specific curriculum that is available to her peers is unlikely to be considered disruptive. The class is already available—Jackie is not trying to implement something novel or otherwise lobby the school. She is merely trying to access the resources provided by her school, but barred by her parents' wishes. This factor would likely weigh in Jackie's favor.

2. The Second Factor

Next, the test weighs the minor's maturity and cognitive development. In evaluating this factor, the court may refer substantially to the principles of the mature minor doctrine and emancipation—and the court's historical approach to determining maturity under those doctrines—to determine the

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209. *E.g.*, ARIZ. REV. STAT. ANN. §§ 15-102(A)(4), -115(D)(2) (2024). Arizona has passed several laws that regulate the content taught at public schools and provide increased parental control over public education resources and curriculum. For example, parents can request a list of books their child checks out from the library. § 15-102(A)(3).

210. *See supra* Section I.D.

211. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 514 (1969).

child's ability to make reasonable and informed decisions related to the contested educational policy or content.

If Jackie were to avail the court and request the right to participate in sexual education, the court may look to her demonstrated maturity in school and other extracurriculars. Drawing from the mature minor doctrine, Jackie could show that she is mature enough to understand the gravity of sexual activity by her conduct at school and age. A court may be hesitant to give a twelve-year-old the right to opt-in to sexual education curriculum because most twelve-year-olds are not sexually active.[212] Jackie, however, is within the age of typical sexual activity for teenagers.[213] Accordingly, if her conduct and demeanor throughout the proceedings also reflect maturity, she is likely to prevail on this factor.

3. The Third Factor

Assuming the court finds sufficient evidence of maturity, the inquiry proceeds to whether the student has a sensible reason for wanting to direct a specific facet of their education. A court would probably find that a desire to safeguard one's health through appropriate sexual education is a sensible reason.

In Jackie's situation, her desire for sexual education aligns with broadly supported public health principles, such as preventing unplanned pregnancy and promoting safe sexual practices to reduce the transmission of disease and infection. This factor will likely weigh in her favor as well.

Suppose in the alternative, Jackie wanted to take the class solely because that's what all her friends were doing. She felt left out and irritated that her parents would bar her from something that her friends' parents permitted. Under these facts, a court may not be as convinced that Jackie's reasons are sensible (and may also question her maturity). Ultimately, this factor ensures that there is a valid purpose for adjudicating the matter at all, which is particularly important when the conflict disrupts family harmony.

4. Balancing the Interests

The evaluation then briefly turns to the interests of the state and the parents. After establishing the child's interest in directing their education, the court must determine whether the vestment of rights in the child would

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212. *See* GUTTMANCHER INST., *supra* note 205, at 1.
213. *Id.*

unduly burden the fundamental parental interest. This will turn largely on the court's findings under the first three factors: as discussed, a mature child is less likely to be exclusively embedded within the sensibilities and values of the parent. Older children are more likely to have the compartmentalization capacity to distinguish between their parents' values, their schools' values, and their personal values.[214]

Nevertheless, the test may provoke relational conflict between the parent and the child. Parent-child relationships can be harmonious, but they can also be rife with antipathy and disagreement. A child-centered approach risks potentially exacerbating parent and child conflict through the adversity of the legal process. However, while the state is not entitled to unduly regulate or sever parental and familial relationships, it is also not obligated to ensure their cohesion. Thus, healthy intimate bonds, unburdened by state or legal influence, are the responsibility of the parent and the child to maintain.

In assessing the states' interest in directing education against the child's, the court should ask whether the minor's desired educational right develops or contributes to their role as future citizens. If the desired educational right is arbitrary or unrelated to the state's obligations to the student through public education, the court should not defer to the minor's request. Public schools, after all, must accomplish "the government's interest in providing a well-rounded education"[215] that "form[s] the ideal citizen through discourse and democratic process."[216] This factor ensures coherence with the common school philosophy and eliminates any superfluous requests lodged by a student.

After analyzing all factors, the court can then determine which party—student, state, or parent—is best situated to direct a given educational decision. This test is likely best applied in a case-by-case basis. However, decisions made under this framework can help provide a guiding sensibility to schools as they craft policy and to states as they create curriculums.

5. Establishing Standing for Minor Petitioners

The U.S. legal system does not allow minors to file an adversarial lawsuit without an adult.[217] This procedural issue is, undoubtedly, one of the largest roadblocks with the framework, as minors as a class are unable to bring suit before the court without the representation (and financing) of a parent or

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214. *See* Hamilton, *supra* note 140, at 1063.
215. Fleischfresser v. Dirs. of Sch. Dist. 200, 15 F.3d 680, 690 (7th Cir. 1994).
216. DeMitchell & Onosko, *supra* note 18, at 592.
217. *See, e.g.*, FED. R. CIV. P. 17(c); ARIZ. R. CIV. P. 17(g).

guardian. Most education cases have been brought by a parent on behalf of their child. But what if a parent is opposed to the remedy that the child is seeking? If the child seeking sexual education in the earlier example has parents staunchly opposed to such classes due to religion or personal conviction (and thus refuses to file suit for the child), is that child left without any legal access to this test? Conveniently, a preexisting solution is already in place to address this issue: guardians ad litem.

Guardians ad litem are court-appointed representatives who may sue on behalf of a minor.[218] Frequently used in custody proceedings and personal injury cases, a guardian ad litem provides a legal avenue for an unrelated adult to represent a child with court approval.[219] A parent could theoretically prevent the child from instigating a lawsuit they do not approve of if they can show that their "right to control the child trumps the child's independent interest in the litigation."[220] However, such a burden is probably difficult for a parent to carry, as it would require "overcom[ing] the presumptions that . . . the child's own constitutional rights create in favor of the child litigant."[221] Based upon the foregoing discussion of mature minors and their adequate decision-making abilities, a child's viable claim to direct their right to education is likely to overcome this presumption.

IV. CONCLUSION

Education is vital to the social and emotional development of young people. It exposes students to new perspectives and provides them with the necessary tools to be competent citizens. Withholding meaningful educational opportunities, particularly from those older students who expressly desire them, stymies the development and engagement of individuals on the cusp of adult citizenship. The solution proposed in this Comment provides a reasonable alternative to address the issues that arise under the preexisting parental-rights or states-rights frameworks.

The Supreme Court's decisions regarding education, and their hesitancy to create a workable standard for lower courts to apply in parental rights cases in education, present difficult problems every time an educational lawsuit arises. A child's right to direct their own education carves out a novel approach to resolving the state versus parental interest conundrum that

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218. FED. R. CIV. P. 17(c).

219. Alison M. Brumley, *Parental Control of a Minor's Right to Sue in Federal Court*, 58 U. CHI. L. REV. 333, 336 (1991).

220. *Id.* at 339.

221. *Id.* at 345–46.

currently underscores the courts' approach to educational issues. The proposed test draws from preexisting doctrines conferring adult-like rights on minors to create a new framework for addressing education-based cases. Under this test, a mature child is empowered to guide their own education. This test leaves intact the liberty interests of the parent while bolstering those same interests in the child, ultimately empowering the child to govern parts of their education as they navigate the public school system. This test, although subject to the varied precedential preferences of the circuits, would ultimately offer new ways to resolve public education disputes while construing the child not merely as a student or a charge, but as an active learner and budding member of society.