

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

TAMER MAHMOUD, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 8:23-cv-01380-DLB
)	
MONIFA B. MCKNIGHT, <i>in her official</i>)	
<i>capacity as Superintendent of the Montgomery</i>)	
<i>County Board of Education, et al.</i> ,)	
)	
Defendants.)	
_____)	

**DECLARATION OF NIKI T. HAZEL IN SUPPORT OF DEFENDANTS’
OPPOSITION TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

I, Niki T. Hazel, declare as follows:

1. I am the Associate Superintendent, Curriculum and Instructional Programs at Montgomery County Public Schools, where I have been employed for 28 years. In my current role, I oversee PreK-12 Curriculum, Accelerated and Enriched Instruction, Emergent Multilingual Learner Education, Early Childhood Programs, Title I Schools, Choice and Application Programs and Services, School Library Media Programs, Career Readiness, and Technology Education. I make this declaration based on my personal knowledge and upon review of MCPS’s records maintained in the ordinary course of business, to which I have access based on my job responsibilities.

A. Montgomery County Public Schools And The Montgomery County Board of Education Serve A Diverse Community

2. Montgomery County Public Schools is Maryland’s largest school district. It enrolled 160,554 students for the 2022-2023 school year across 210 schools.

3. The Montgomery County Board of Education (the “Board”) is the official educational policy-making body in the county. It sets goals, establishes policies, and commits resources to benefit MCPS’s diverse student population.

4. The Board consists of seven county residents elected by voters for a four-year term and a student elected by secondary school students for a one-year term.

5. The Board values learning, respect, relationships, excellence, and equity. The Board believes that building relationships with its diverse community requires it to understand the perspectives and experiences of others. It also believes that the diversity of culture, interests, skills, and backgrounds in its community is an asset that makes it stronger.

6. These values are memorialized in the Board’s Policy ACA on Nondiscrimination, Equity, and Cultural Proficiency. Policy ACA is attached as **Exhibit 1**. Policy ACA provides that one of the Board’s purposes is to “foster[] a positive learning environment that embraces all unique and individual differences” and to “ensure compliance with all federal, state, and local nondiscrimination laws.” The Board recognizes that it must take “proactive steps to identify and redress implicit biases and structural and institutional barriers that too often have resulted in identifiable groups of students and staff being unjustifiably or disproportionately excluded from or underrepresented in key educational program areas” The Board therefore strives to “provide a culturally responsive Prekindergarten to Grade 12 curriculum that promotes equity, respect, and civility among our diverse community” The curriculum prepares students to “[c]onfront and eliminate stereotypes related to individuals’ actual or perceived personal characteristics,” such as race, ethnicity, national origin, religion, immigration status, sex, gender identity, sexual orientation, and other “protected attributes or affiliations.” The Board

accordingly expects that “[i]nstructional materials used in [its] schools will reflect the diversity of the global community”

B. MCPS Carefully Selects The Materials That It Approves For Instructional Use

7. In accordance with Policy ACA, the MCPS English Language Arts (“ELA”) Framework notes that the ELA curriculum is designed to “promote[] instruction that,” among other goals, “nurtures appreciation and understanding of diverse individuals, groups, and cultures.” The ELA Framework is attached as **Exhibit 2**.

8. MCPS has adopted Core Learning Practices under its ELA curriculum, under which MCPS teachers are expected to “plan instructional experiences where students frequently engage in” a variety of core learning practices, including “[s]electing from a range of diverse texts to understand and appreciate multiple perspectives.” These Core Learning Practices are attached as **Exhibit 3**.

9. After contracting with Johns Hopkins University to conduct a comprehensive review of its curriculum, MCPS announced in 2018 that it would contract with highly rated and proven third-party educational companies to implement its English Language Arts and Mathematics curricula.

10. A committee of parents, teachers, and staff members chose Benchmark Education (“Benchmark”) to implement MCPS’s ELA curriculum after determining that its curricular resources best aligned with the Maryland College and Career Ready Standards published by the Maryland State Department of Education.

11. MCPS regularly supplements the external curricular resources delivered by companies such as Benchmark. Regulation IIB-RA outlines the standard procedure for selecting these instructional materials. That regulation is attached as **Exhibit 4**.

12. Instructional materials are approved by a selection committee comprised of professional staff members and subject-area experts.

13. That committee evaluates materials that may be approved for instructional use for alignment with the MCPS curriculum, age-appropriateness, and relevance to and reflection of a multicultural society.

14. The committee evaluates instructional material based on several criteria, including that the materials be “relevant to and reflective of the multicultural society and global community,” be “[a]ge/grade appropriate[,]” and “support ... student achievement toward MCPS curriculum standards.”

15. Instructional materials are evaluated by the relevant selection committee using MCPS Form 365-25. A copy of that form is attached as **Exhibit 5**. Form 365-25 requires the committee of reviewers to provide five categories of information describing “how the materials are essential to student learning.” These categories are “[d]irect support of content standards and performance indicators,” “[a]uthenticity of the material,” “[i]mpact on instructional time,” “[c]larity and ease of understanding,” and “information about content, strengths/weaknesses, areas of concern (restrictions) and cultural relevance (culture, religion, ethnicity, region, country, author, characters, gender).”

16. The instructional material selection process also allows for community input. Newly approved books remain in the Evaluation and Selection Unit for 30 calendar days to permit examination by professional staff and parents. Titles are also available for examination on the Montgomery County Public Schools Evaluation and Selection website.

17. In that 30-day examination period, parents and caretakers have opportunities to review and share feedback. When parents provide feedback on instructional materials during

this time period, the coordinator of the evaluation and selection process reviews and considers this feedback before making a final decision about whether to approve the materials.

18. Teachers are provided materials that are approved for instructional use. Teachers are expected to use the instructional materials provided, and can select which of these materials to incorporate into their lesson plans.

C. MCPS Strives To Adopt Policies And Curricula That Reflect The Diversity Of Montgomery County Families

19. MCPS is Maryland's largest school district, serving an incredibly diverse community. MCPS serves a population of over 160,000 students, over 75% of whom are non-white, 44% of whom receive free and reduced-price meals, and 19% of whom receive English language development services. The community also includes people of many different religious faiths, family statuses, gender identities, sexual orientations, and other protected attributes or affiliations.

20. MCPS seeks to ensure that its policies and its curricula meet the needs of Montgomery County families. In line with this effort, MCPS has worked to accommodate families of all religious backgrounds. For example, MCPS authorizes absences for religious holidays, ensures students can make up missed assignments, and provides that students cannot be denied a perfect attendance award if their only absences have been excused for the observance of religious holidays. Beginning with the 2016-2017 school year, MCPS stopped scheduling classes on Eid al-Fitr or Eid al-Adha, two major Islamic holidays. And MCPS advises principals that schools should avoid scheduling tests or other major events on dozens of other "days of commemoration," during which MCPS expects that many students may be absent for or engaged in religious or cultural observances.

21. MCPS also works continually to ensure that its pre-K through 12th grade curriculum reflects Montgomery County families. MCPS has accordingly made regular efforts to incorporate instructional materials that reflect the diversity of the community. For example, MCPS has purchased books for use as part of the ELA curriculum that are intended to be more representative of other races and cultures. These books include the *March* trilogy, which recounts the life of civil rights icon Congressman John Lewis, and *The Leavers*, which introduces readers to the story of an Asian-American immigrant family. MCPS also recently updated its Social Studies curriculum to incorporate instructional materials about local history and the narratives of historically marginalized groups.

22. Representation in the curriculum creates and normalizes a fully inclusive environment for all students in MCPS. It supports a student's ability to empathize, connect, and collaborate with diverse peers and encourage respect for all.

D. MCPS Selects The LGBTQ-Inclusive Books To Ensure Representation In The ELA Curriculum

23. In recent years, MCPS determined that the books used in its existing ELA curriculum were not representative of many students and families in Montgomery County because they did not include LGBTQ characters. The LGBTQ-Inclusive Books were thus introduced following a years-long process that engaged parents, community members, students, teachers, and staff.

24. In the spring of 2022, MCPS initiated the procedures outlined in MCPS Regulation IIB-RA to evaluate potential new instructional materials that would be more inclusive of LGBTQ people.

25. Pursuant to this process, a committee comprised of four reading specialists and two instructional specialists participated in two rounds of evaluations of potential instructional materials.

26. The committee recommended approval of the LGBTQ-Inclusive Books after finding that the books supported MCPS content standards and performance indicators, contained narratives and illustrations that would be accessible and engaging to students, and featured characters of diverse backgrounds whose stories and families students could relate to. The committee also reviewed a number of books that it decided not to recommend for instructional use.

E. MCPS Introduces The LGBTQ-Inclusive Books As Part Of The Curriculum

27. MCPS introduced the books as part of the preK-12 English Language Arts curriculum in the 2022-2023 school year. The list of LGBTQ-Inclusive Books includes 13 books, recommended by grade level. A list of these books with accompanying summaries is available on the MCPS website at <https://www2.montgomeryschoolsmd.org/curriculum/office/inclusive-resources>.

28. Over the summer, MCPS prepared principals and teachers for the introduction of these books. MCPS sent an email update to principals about the upcoming book arrivals and a professional learning for reading specialists that was set to take place in October. MCPS also offered an optional professional development for reading specialists, counselors, and media specialists. More than 130 participants engaged in a session about using the LGBTQ-Inclusive Books as part of the English Language Arts Curriculum.

29. The MCPS Office of Curriculum and Instructional Programs suggested that teachers incorporate the new texts into the curriculum in the same way that other books are used, namely, to put them on a shelf for students to find on their own; to recommend a book to a

student who would enjoy it; to offer the books as an option for literature circles, book clubs, or paired reading groups; or to use them as a read aloud.

30. In communications with schools, MCPS made clear that there is no planned explicit instruction on gender identity and sexual orientation in elementary school, and that no student or adult is asked to change how they feel about these issues. Instead, like other books in the English Language Arts Curriculum, the newly approved books are used to assist students with mastering reading concepts like answering questions about characters, retelling key events about characters in a story, and drawing inferences about story characters based on their actions.

31. As with all curriculum resources, there is an expectation that teachers use the LGBTQ-Inclusive Books as part of instruction. Teachers have a choice regarding which MCPS-approved materials to use and when to use them throughout each unit. While the LGBTQ-Inclusive Books include one suggested book per grade level, teachers can choose among the texts, and are not limited to a single book corresponding to their grade level. Teachers cannot, however, elect not to use the LGBTQ-Inclusive Books at all. This reflects MCPS's view that, if these instructional materials are not used at all, a teacher is not fulfilling MCPS's expectation that students will be taught pursuant to a representative and culturally responsive curriculum.

F. The Board Announces That Parents Cannot Opt Their Children Out Of Classroom Instruction Using The Books For Any Reason

32. During the 2022-2023 school year, MCPS's Guidelines for Religious Diversity provided that "[w]hen possible, schools should try to make reasonable and feasible adjustments to the instructional program to accommodate requests from students, or requests from parents/guardians on behalf of their students, to be excused from specific classroom discussions or activities that they believe would impose a substantial burden on their religious beliefs," or "would invade student privacy by calling attention to the student's religion." The Guidelines

further provided that “[w]hen a student is excused from the classroom activity, the student will be provided with an alternative to the school activity or assignment,” and that “it may be feasible to accommodate objections from students or their parents/guardians to a particular reading assignment on religious grounds by providing an alternative selection that meets the same lesson objectives. However, if such requests become too frequent or too burdensome, the school may refuse to accommodate the requests.”

33. At the beginning of the 2022-2023 school year, some parents began contacting individual teachers, principals, or MCPS staff about the LGBTQ-Inclusive Books. Some of these parents asked that their children be excused from classroom instruction using the LGBTQ-Inclusive Books.

34. Many of the opt out requests were not religious in nature. Some parents, for instance, expressed their opposition to what they believed was an effort to teach students about sex, to teach students lessons about LGBTQ issues, or to use instructional materials that were not age-appropriate.

35. In some instances, individual teachers or principals who fielded these requests sought to accommodate them by telling parents that students could be excused when the LGBTQ-Inclusive Books were read in class.

36. In March 2023, MCPS met with a small group of principals. Through these conversations, MCPS became aware that individual principals and teachers could not accommodate the growing number of opt out requests without causing significant disruptions to the classroom environment and undermining MCPS’s educational mission.

37. Among MCPS's concerns was high student absenteeism. In one instance, for example, MCPS became aware that parents sought to excuse dozens of students in a single elementary school from instruction using the LGBTQ-Inclusive Books.

38. Another concern was the infeasibility of continuing to use the LGBTQ-Inclusive texts in classroom instruction while honoring individual opt-out requests. Doing so would not only require teachers to track and accommodate opt out requests in their classrooms. It also would also force media specialists and other instructors who spend time in multiple classrooms each day to ensure that they were abiding by the accommodations granted to every student they encountered across an entire school.

39. MCPS moreover determined that allowing opt outs from instruction using the LGBTQ-Inclusive Books would defeat its efforts to ensure a classroom environment that is safe and conducive to learning for all students. MCPS was concerned that, when some students are permitted to leave the classroom whenever language arts lessons draw on books featuring LGBTQ characters, students who believe that the books represent them or their families are exposed to social stigma and isolation. This result risks putting MCPS out of compliance with its obligations under state and federal nondiscrimination laws. MCPS's interest in compliance with these nondiscrimination laws is reflected in Policy ACA, as well as MCPS's Guidelines for Student Gender Identity. The 2019-2020 Guidelines for Student Gender Identity are attached here as **Exhibit 6**.

40. Based on these concerns, MCPS decided that it was not feasible or consistent with MCPS's curricular goals to accommodate requests for students to be excused from the LGBTQ-Inclusive Books.

41. On March 23, 2023, MCPS therefore informed parents, teachers, schools, and principals that, moving forward, schools could no longer entertain requests for students to opt out of the LGBTQ-Inclusive Books, for any reason. If schools already had granted accommodation requests, those accommodations would no longer be provided after the 2022-2023 school year ended.

42. Under the policy now in effect, MCPS does not permit students to be excused from classroom instruction using the LGBTQ-Inclusive Books for any reason. Students and families may not choose to opt out of engaging with these instructional materials.

43. MCPS continues to allow families to opt students out of the Family Life and Human Sexuality Unit of Instruction, which is required by Maryland law, as reflected in COMAR § 13A.04.18.01.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of July, 2023.

A handwritten signature in blue ink, appearing to read "Niki Hazel", is written over a horizontal line.

Niki T. Hazel