Let's Talk About Sex (Education): A Novel Interpretation of the Meyer-Pierce Standard Governing Parental Control in Public Schools

Jacqueline Webb, *American University Washington College of Law*
Let’s Talk About Sex (Education): A Novel Interpretation of the Meyer-Pierce Standard Governing Parental Control in Public Schools

Jacqueline Webb
American University, Washington College of Law
4801 Massachusetts Ave. NW
Washington, DC 20016
Jw1423a@american.edu
# TABLE OF CONTENTS

I. **INTRODUCTION** ........................................4

II. **BACKGROUND** ..........................................7

   A. Meyer v. Nebraska ......................................7

   B. Pierce v. The Society of the Sisters .................10

   C. Gruenke v. Seip .......................................11

   D. Application of the *Meyer-Pierce* Standard ........13

   E. Best Interest of the Child Standard .................19

   F. Tort Law Establishes Private Issues .................22

III. The *Meyer-Pierce* Standard Is Incorrectly Interpreted
    As Creating Two Polar Opposite Views .................24

    A. A Strict Application of the *Meyer-Pierce*
       Standard Limits Parental Control to a Choice
       Between Public and Private School,
       Failing to Preserve Parents’
       Constitutionally-granted Right to Control
       the Raising of Their Children......................24

    B. The *Gruenke* analysis Is a Balance Between
       the Strict and Expansive Applications of
       the *Meyer-Pierce* Standard and Protects Parents’
       Constitutionally-granted Right to Control Their
       Children’s Education...............................27

    C. The *Gruenke* Analysis Will Protect
       Parents’ Rights Without Posing a
       Heavy Burden on the State..........................31

    D. Parents Have the Right and
       Responsibility to Instill Moral Values
       and Beliefs in Their Children,
       Including Sexual Issues............................34

    E. Parents Are Ultimately Responsible for
       the Consequences of Exposure to Sexual
       Information, and Therefore Ought to Have
       Control Over Sex Education........................37
F. The Gruenke Analysis is More Appropriate Than the Polar Opposite Views of the Meyer-Pierce Standard

G. The Gruenke Analysis is More Appropriate Than the Expansive Application of the Meyer-Pierce Standard

H. Certain Types of Exposure to Sexual Information Rise to the Level of a Constitutional Violation

I. Certain Types of Exposure to Sexual Information Do Not Rise to the Level of a Constitutional Violation

IV. The Gruenke Analysis is in the Best Interest of the Child as it Supports Consistency in Values and Beliefs

V. Tort Law Cases of Defamation Delineated Certain Private Issues Which are Subject to Special Protection, Including Sex and Promiscuity

VI. Conclusion
I. Introduction

Each year, nearly one million teenage girls become pregnant, and close to four million teenagers contract sexually transmitted diseases.¹ Sex education is a critical part of adolescent development, and includes influences by the family and the community.² Most sex education classes emphasize four fundamental topics, including Acquired Immunodeficiency Syndrome (AIDS), other sexually transmitted diseases (STDs), reproduction, and abstinence.³ Protection of family values is

¹ See Note from Mossi W. White, President, National School Board Association, to School Board Members (Spring 2002), available at www.nsba.org (indicating that data shows that half of high school age people in the United States have had sexual intercourse and one in four sexually active teens contracts a sexually transmitted disease).

² See White, supra note 1 at 3 (stating that sex education begins at home and as of 2001, 39 states required public schools to provide sex education).

³ See White, supra note 1 at 3 (indicating that students in grades 7 through 12 report an emphasis on AIDS, other STDs, reproduction, and abstinence in their most recent sex education classes).
evident in the Fourteenth Amendment of the Constitution, which states that no person shall be deprived of liberty interests, including the right to marry and bring up children. The appropriate amount of parental control with regard to the raising of children has been debated, failing to result in a uniform balancing test between protection of parental rights and protection of state interest.\(^4\)

\(^4\) See Brown v. Hot, Sexy and Safer Productions, Inc., 68 F.3d 525, 533 (1st Cir. 1995) (referring to the Fourteenth Amendment and stating that “without a doubt, it denotes not merely freedom from bodily restraint but also the right of the individual . . . to marry, to establish a home and bring up children”); see also Gruenke v. Seip, 225 F.3d 290, 303 (3d Cir. 2000) (referring to the Supreme Court’s identification that “choices about marriage, family life, and the upbringing of children are among associational rights this Court has ranked as of basic importance in our society”).

\(^5\) See Meyer v. Nebraska, 262 U.S. 390, 400 (1923) (stating that the Court has not attempted to define the liberty guaranteed by the Due Process Clause of the Fourteenth Amendment, yet it has received much deliberation); Gruenke, 225 F.3d at 305 (indicating that the primacy of the parents’ authority must be recognized, and this parental authority should only yield when
This Comment argues that the *Meyer-Pierce* standard has been incorrectly interpreted as creating two polar opposite views with regard to parental control in public schools, and a middle of the road standard is a more suitable application which protects both the parents’ Constitutionally-granted rights and the States’ interest. Part II discusses the development and application of the *Meyer-Pierce* standard.\(^6\) Part III argues that a middle of the road application of the *Meyer-Pierce* standard, which gives parents control over private issues in public schools, is a more appropriate interpretation than the polar opposite views.\(^7\) Part IV asserts that the middle of the road application is in the best interest of the child.\(^8\) Part V

---

\(^6\) See *infra* Part II (discussing the development of the *Meyer-Pierce* standard and future interpretations of the standard, including strict and expansive readings).

\(^7\) See *infra* Part III (arguing that the middle of the road standard is more appropriate than the polar opposite views because it is not overburdensome on the state, it coincides with morals and religious beliefs, and the parents will ultimately have to handle the consequences resulting from exposure to sexual information).

\(^8\) See *infra* Part IV (asserting that the middle of the road
explains the protection of certain sensitive topics in tort law.⁹

II. Background

A. Meyer v. Nebraska

*Meyer v. Nebraska* sparked the debate over the scope of parental control with regard to the raising of children when the court struck down several state statutes which prohibited the teaching of German to elementary school students, and required that all teachings be conducted in English.¹⁰ The court agreed that the prohibition of teaching of any language besides English in public school prevents parents from having their children learn foreign languages in the school.¹¹ The court further

---

⁹ See *infra* Part V (discussing how tort law cases of defamation and slander have established that certain private issues deserve special protection under the law).

¹⁰ See 262 U.S. at 398 (stating that one statute was intended not only to require that teachings of all children be conducted in the English language, but also that until they had grown into that language, they should not be taught any other language in the schools).

¹¹ See *Meyer v. Nebraska*, 262 U.S. 390, 398 (1923) (stating that “It is suggested that the law is unwarranted, in that it applies
indicated that the purpose of the statute was to promote the Americanization of foreign students.\textsuperscript{12} The Meyer court considered whether the statute, as applied, was a violation of parental liberty interests granted by the Fourteenth Amendment.\textsuperscript{13} The court found it unnecessary in that case to define the
to all citizens or the state and arbitrarily interferes with the rights of citizens who are not of foreign ancestry, and prevents them, without reason, from having their children taught foreign languages in school.”).
\textsuperscript{12} See id. at 399 (stating that the purpose of the legislation was to promote civic development and “the English language should be and become the mother tongue of all children reared in this State.”).
\textsuperscript{13} See id. at 399 (indicating that the problem for their determination was whether the statute as applied unreasonably infringes the liberty guaranteed to parents by the Fourteenth Amendment, stating “No state shall . . . deprive any person of life, liberty, or property, without due process of law.”); see also U.S. CONST. amend. XIV, § 2 (1868) (requiring that no state shall make or enforce a law which infringes on the privileges of citizens of the United States, “nor shall any State deprive any person of life, liberty, or property, without due process of law . . .”).
preciseness of the liberty interest granted, although the term received much consideration.\textsuperscript{14} The court outlined some of the liberty interests included in the Fourteenth Amendment, including the right to marry, establish a home, and raise children.\textsuperscript{15} The court further indicated that these liberty interests may not be interfered with without a legitimate state interest.\textsuperscript{16} The \textit{Meyer} court concluded that the statute which

\textsuperscript{14} See \textit{id.} at 399 (stating that although the court had not attempted to define the exactness of the liberty interest granted, some of the included things have been definitely stated in the Fourteenth Amendment, such as the right to marry and raise children).

\textsuperscript{15} See \textit{id.} at 401 (referring to the Fourteenth Amendment and stating that “without doubt, it denotes not only freedom from bodily restraint but also the right of the individual to . . . marry, establish a home and bring up children . . . and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.”).

\textsuperscript{16} See \textit{id.} at 399 (indicating that the established doctrine is that these liberty interests may not be interfered with, under the cover of public interest, by legislative action which is not reasonably related to a state purpose).
prohibited the teaching of languages other than English went beyond state power and interfered with a liberty interest of the parent.\textsuperscript{17}

B. Pierce v. Society of the Sisters

In Pierce v. Society of the Sisters, the court deliberated regarding an Oregon law, which required all children to attend public school, was a violation of a liberty interest.\textsuperscript{18} The court followed the Meyer doctrine and found that the law unreasonably interfered with the liberty interests of parents.\textsuperscript{19}

\textsuperscript{17} See Meyer v. Nebraska, 262 U.S. 390, 402 (1923) (indicating that when the state required teachings to only be in English, this was not related to any emergency which would result from children learning another language, and this conflicted with the parents’ right to allow their children to learn a different language).

\textsuperscript{18} See Pierce v. Society of Sisters 268 U.S. 510, 530 (1925) (outlining the law which requires “every parent, guardian or other person having control or charge or custody of a child between eight and sixteen years to send him ‘to a public school for the period of time a public school shall be held during the current year’ in the district where the child resides.”).

\textsuperscript{19} See id. at 534-35 (finding that the law interfered with the liberty interest of the parents to direct the rearing and
C. Gruenke v. Seip

The decision in Gruenke v. Seip expanded the rights of parents to control the raising of their children, even while in public schools. The court determined that when a swim coach forced a student to take a pregnancy test, this violated the family’s right to privacy and interfered with their ability to make decisions regarding the situation. The Gruenke court asserted that the fundamental right of parents to direct the upbringing of their children is a well-established principle.

---

education of the children, and there is no general power of the state to standardize its children by forcing them to go to public school).

20 See 225 F.3d 290, 305 (3d Cir. 2000) (indicating that when the school’s policies come into conflict with the parents’ right to nurture their child, the primacy of the parents’ authority should only yield when the school’s action is tied to a compelling interest).

21 See id. at 303 (disagreeing with the district court’s determination that the swim coach’s interference with the student’s pregnancy did not rise to a level of a Constitutional violation).

22 See id. at 304 (stating that the primary role of the parents in the upbringing of their children is “now established beyond
The court further indicated that although public schools do have some responsibility with regard to the students, the parents’ rights should only be usurped when there is a legitimate state interest, such as the health and safety of the students. The court further recognized that it is important to protect highly personal relationships from interference from the state.

---

23 See id. at 304-05 (indicating that for some portions of the day students are in the compulsory care of the school system and the state’s power is custodial, permitting a level of control more than that which would be exercised over free adults; also indicating that when state and parents’ interests differ, parents’ rights should only surrender if the state can show a legitimate governmental interest.)

24 See id. at 305 (stating that "the Court has long recognized that, because the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State. Familial relationships are the quintessential personal bonds that act as critical buffers between the
D. Application of the *Meyer-Pierce* Standard

A strict interpretation of the *Meyer-Pierce* standard is evident in *Brown v. Hot, Sexy and Safer Productions, Inc.*, where the court stated that the *Meyer* and *Pierce* cases only established the principle that the state cannot force parents to choose a specific educational program for their children, whether it be a religious institution or instruction in a foreign language.\(^{25}\) The court in *Brown* indicated that a mandatory AIDS awareness program, which included sexually suggestive skits, did not encroach on the parents' right to rear their children because the information was not mean spirited or brutal.\(^{26}\) The *Brown* court also found a difference between a

---

\(^{25}\) See 68 F.3d 525, 533 (1st Cir. 1995) (claiming that the *Meyer-Pierce* standard evinces the principle that the State cannot choose a type of institution for the children).

\(^{26}\) See id. at 532-33 (referring to a mandatory AIDS assembly, which included a host who (1) told the students that they were going to have a "group sexual experience, with audience participation"; (2) used profane, lewd, and lascivious language to describe body parts and excretory functions; (3) advocated and approved oral sex, masturbation, homosexual sexual activity, and condom use during promiscuous premarital sex; (4) simulated
state prohibiting a child from learning German, and a parent prohibiting the state to teach subjects which are morally offensive to the parents, claiming that the former involves the state proscribing what the children may be taught.\textsuperscript{27} The Brown court further concluded that if parents had a fundamental right to control what schools are teaching their children, then schools would be forced to cater the curriculum to each student and create a burden on the state, therefore the court found that

\begin{quote}
\textit{...masturbation; (5) characterized the loose pants worn by one minor as "erection wear"; (6) referred to being in "deep sh--" after anal sex; (7) encouraged a male minor to display his "orgasm face" with her for the camera; and (8) made eighteen references to orgasms, six references to male genitals, and eight references to female genitals).}
\end{quote}

\textsuperscript{27} See id. at 533-34 (claiming that it is fundamentally different for a parent to say to a state, ‘You can't teach your child German or send him to a parochial school,’ than for the parent to say to the state, ‘You can't teach my child subjects that are morally offensive to me.’ The first instance involves the state prescribing parents from educating their children, while the second involves parents prescribing what the state shall teach their children.”).
the program did not violate parental rights.\textsuperscript{28}

A more expansive interpretation of the Meyer-Pierce standard is evident in \textit{C.N. v. Ridgewood Board of Education}, where the court analyzed whether a survey administered in school was a constitutional violation infringing on parental rights to control the upbringing of their children.\textsuperscript{29} The court concluded that no violation of familial right to privacy had occurred because the survey was voluntary, the Superintendent sent a letter to parents, and there was substantial publicity with the Parent Teacher Association regarding the survey.\textsuperscript{30} The court

\textsuperscript{28} See \textit{id.} at 534 (concluding that if parents had a fundamental right to control what schools teach their children, the school would be forced to cater to the parent’s wishes, creating a burden on the public school system, and further claiming that the Constitution did not intend to create this burden).

\textsuperscript{29} See 430 F.3d 159, 161 (3d Cir. 2005) (describing the survey which included information about students’ drug and alcohol use, sexual activity, experience of physical violence, attempts at suicide, and personal relationships).

\textsuperscript{30} See \textit{id.} at 534 (finding that no violation on the right to familial privacy had been shown because the survey was voluntary and anonymous, the Superintendent sent a letter to the parents, and there Parent Teacher Association meetings provided an
followed the Gruenke analysis and determined that parents have the primary responsibility to influence their children with regard to morals and religion; however, the court also found that parental rights have limits.  

The protection of family bonds is emphasized in *Roberts v. United States Jaycees* when the court asserted that certain highly personal relationships deserve protection. The court determined that when a group excluded women, the right of the men to associate with whom they pleased was outweighed by the compelling state interest of preventing discrimination. The court further indicated that the male organization was outside opportunity for parents to be heard regarding the survey).

31 See *id.* at 534 (indicating that parental rights are not absolute or unlimited, and there are certain circumstances in which parental rights can be outweighed by a legitimate governmental interest).

32 See 468 U.S. 609, 618 (1984) (concluding that because the Bill of Rights is designed to ensure liberty, it must allow for the preservation of certain highly personal relationships).

33 See *id.* at 618 (referring to the Bill of Rights and stating that it must protect certain types of highly personal relationships, and determining that adult male associations were not sufficiently personal).
the realm of what would be considered highly personal relationships, and the state’s interest of preventing discrimination against women outweighed any minimal inconvenience the men may experience.\textsuperscript{34}

Protection of family relationships is further supported in Lehr v. Robertson, where a father claimed his parental rights were not protected when the mother’s husband adopted the child without the father’s knowledge.\textsuperscript{35} The court concluded that a father’s parental rights were protected because the state provided several different avenues, including marriage, which would preserve the father’s interest in his child.\textsuperscript{36} Actions which do not have a substantial impact on family relationships

\textsuperscript{34} See id. at 618-22 (indicating that Minnesota’s compelling state interest in eliminating discrimination against its female citizens, an interest unrelated to the suppression of expression, justifies an inconvenience the men may suffer by allowing women into the group).

\textsuperscript{35} See 463 U.S. 248, 249 (1983) (indicating that the child was adopted by the mother’s husband at the age of two, and the father had not had a relationship with the child).

\textsuperscript{36} See id. at 251 (indicating that the father failed to enter his name into the available putative father registry, and did not put his name on the birth certificate of the child).
do not rise to the level of a Constitutional violation, as in *Hodge v. Jones*, where a family claimed that records obtained by a social services agency, which contained information regarding the family, violated their familial rights.\(^{37}\) The court concluded that because the records retained by the Carroll County Department of Social Services (CCDSS) did not harm the family, it did not infringe on their privacy rights to the level of a constitutional violation.\(^{38}\)

Exposure to sexual information at school does not always rise to the level of a constitutional violation, as is evident in *Fields v. Palmdale School District*, where the court determined that a survey distributed to students did not violate parental rights to make private decisions regarding their family because there was informed consent and the survey was voluntary.\(^{39}\) The court further stated that because no

\(^{37}\) See 31 F.3d 157, 160 (4th Cir. 2004) (explaining that the social services workers investigated a possible case of child abuse, and later filed a report which classified the case as unsubstantiated).

\(^{38}\) See *id.* at 164 (stating that the filing of the report with the family’s information in it only affected the family incidentally and was not sufficient to establish a constitutional violation).

\(^{39}\) See 447 F.3d 1187, 1191 (9th Cir. 2006) (stating that the
information of a private nature was disseminated and the survey provided general information, the parents’ rights were not violated.\textsuperscript{40} In \textit{Alfonso v. Fernandez}, the court determined that because condom distribution was an act of public health, rather than education regarding the issue of AIDS, it was a valid state interest.\textsuperscript{41} The court concluded that the school could continue to distribute the condoms provided there was parental consent.\textsuperscript{42}

E. Best Interest of the Child

Courts emphasize consistency when determining what is in the best interest of the child, as is apparent in \textit{Wisconsin v. Yoder}, where parents refused to send their fourteen and fifteen

\textsuperscript{40} See \textit{id.} at 1191 (indicating that parents do not have the right to restrict schools from giving out general information they see to be educational).

\textsuperscript{41} See 606 N.Y.S.2d 259, 266 (N.Y. App. Div. 1993) (stating that the state has a compelling state interest in controlling AIDS because it is a public health concern).

\textsuperscript{42} See \textit{id.} at 266 (finding that the condom distribution program could continue without violating parent’s rights simply by requiring parental consent).
year old children to public school following eighth grade because they were Amish, and education after the eighth grade was not consistent with their religious beliefs. The court indicated that compulsory school attendance until the age of sixteen carries with it a very real threat of undermining the Amish community and religious practice as it currently exists, and enforcement of the requirement of compulsory education beyond eighth grade violates parental rights to control the raising of their children.

Consistency in a child’s life is further protected in Mastropole v. Mastropole, where the father petitioned for a change in the custody arrangement which would divide the child’s time between each parent. The court rejected a change in a

43 See 406 U.S. 205, 209 (1972) (recognizing that children’s attendance at high school is contrary to the Amish religion and way of life and may cause harm to the children).

44 See id. at 209 (indicating that exposure to outside sources could result in great psychological harm to Amish children because of the conflict it creates).

custody agreement because it would disrupt the consistency in the child’s life.\textsuperscript{46}

The importance of parental control with regard to a child’s influences is evident in \textit{Troxel v. Granville}, where the court determined that because there is a long standing parental interest in the nurture and raising of children, the statute that allowed anyone to petition for visitation violated parental rights.\textsuperscript{47} The court also identified that the parents have a strong interest in controlling their child’s associates, and compared the choice of a child’s associates to the choice of the individuals who will teach the child in school.\textsuperscript{48}

\textsuperscript{46} See \textit{id.} at 960 (stating that the constant shuttling of the child between his father and mother every few days would be disruptive to the stability essential to the child’s well being and emotional development, and if this occurred, it would cause severe emotional damage).

\textsuperscript{47} See 530 U.S. 57, 77 (2000) (stating that the strength of a parent's interest in controlling a child's associates is related to the effect of personal associations on the development of social and moral character).

\textsuperscript{48} See \textit{id.} at 77 (indicating that adults may not only influence, but they may instruct children, and a choice about a child’s associates is not substantially different from a choice of who
F. Tort Law Establishes Private Issues in Defamation Cases

In determining what constitutes a defamatory statement, the courts look at the content and context of the statement, and have consistently found that sex, chastity, and related issues are private.\textsuperscript{49} Statements involving sex or chastity have been granted protection in defamation cases, as in \textit{Stanton v. Metro Corp.}, which dealt with an article on teen sexuality, and included a student’s photo.\textsuperscript{50} The court concluded that by attaching the student’s photo to the article, this implied that she was promiscuous and supported a case for per se defamation because of the nature of the issue.\textsuperscript{51} In \textit{Bryson v. News America}

\textsuperscript{49} See \textit{Bryson v. News Am. Publs.}, 672 N.E.2d 1207, 1213 (Ill. 1996) (indicating that referring to a woman as a “slut” and implying that she was unchaste in a magazine did constitute the type of language which would be defamatory to the individual).

\textsuperscript{50} See \textit{Stanton v. Metro Corp.}, 438 F.3d 119, 122 (App. Ct. 1st Cir. 2006) (stating that the article which had a headline referring to “hooking up” was defaming to the student because it would tend to hold her up to scorn and ridicule).

\textsuperscript{51} See \textit{id.} at 124 (finding that a reasonable reader could conclude that the girl in the photograph was sexually active and engaged in some kind of sexual misconduct).
Publications, an article referred to a woman as a “slut” and an unchaste individual.⁵² The court found that these statements rose to the level of per se defamation because they essentially accused the woman of fornication.⁵³ Statements regarding non-sensitive issues are not defaming, as is evident in Minerva Marine, Inc. v. Spiliotes, where an employee made statements accusing his employer of hiring terrorists.⁵⁴ The court found that the statements were not defaming because it did not affect the way the employer did business.⁵⁵

⁵² See Bryson, 672 N.E.2d 1207, 1216 (Ill. 1996) (finding that by referring to the female as a “slut” it implied that she was unchaste because there is not an innocent construction of the word “slut”).

⁵³ See id. at 1216 (finding that because the statements in the article accused the woman of fornication or adultery, it was per se defamation and fell under the Slander and Libel Act).

⁵⁴ See Minerva Marine, Inc. 2005 U.S. Dist. LEXIS 41854, 16 (indicating that the employee accused his employer of hiring terrorists and firing people for wanting to get rid of the supposed terrorists he was hiring).

⁵⁵ See id. at 16 (stating that there was no way in which the statements made by the former employee, including “Minerva either does not care that it may be employing individuals with
III. The Meyer-Pierce Standard is Incorrectly Interpreted as Creating Two Polar Opposite Views, Failing to Acknowledge a Middle of the Road Application

A. A Strict Application of the Meyer-Pierce Standard Limits Parental Control to a Choice Between Public and Private School, Failing to Preserve Parents’ Constitutionally-granted Right to Control the Raising of Their Children

A strict view of the Meyer-Pierce standard fails to protect the rights of the parents to control the rearing of their children with regard to sensitive issues including sex education.\(^56\) In Brown, the court interpreted the Meyer and

\(^56\) *See* Symposium: Education and the Constitution: Shaping Each Other and the Next Century: The Contemporary Significance of Meyer and Pierce for Parental Rights Issues Involving Education, 34 Akron L. Rev. 177, 186 (2000) (stating that both federal and state courts have generally refused to read Meyer and Pierce cases as conferring a fundamental right upon parents, causing parental rights advocates to lobby for Congressional legislation); *see also* C.N. v. Ridgewood Board of Education, 430 F.3d 159, 185 (3d Cir. 2005) (disagreeing with the Fields court which stated that the rights of parents does not extend beyond the school door and finding that rights do extend beyond the school door to include some private issues).
Pierce cases as simply stating that the state cannot prevent parents from choosing a specific educational program for children.\textsuperscript{57} The Brown court failed to identify the consequences of a strict application, which would find a Constitutional violation only if the state mandated a certain curriculum, such as requiring private education.\textsuperscript{58}

Courts have asserted that the Constitutionally-granted right of parents to have control over their children’s education is protected by giving parents the option of sending their child to either public or private school, and once that decision is

\textsuperscript{57} See 68 F.3d 525, 533 (1st Cir. 1995) (concluding that the State cannot prevent parents from religious instruction or instruction in a foreign language, but the state can control other aspects of children’s education).

\textsuperscript{58} See C.N., 430 F.3d at 185 (recognizing that the categorical approach to the Meyer-Pierce standard effectively dooms a claim grounded in this standard because it simply evokes a question into which type of institution the child attends). But see Brown v. Hot, Sexy and Safer Productions, Inc., 68 F.3d 525, 533 (1st Cir. 1995) (concluding that the State does not have the power to mandate the children to attend a certain type of institution, such as public or private school).
made, the ability to monitor the education of the child ceases.\textsuperscript{59} This claim requires the assumption that there is a realistic choice between public and private schools which parents make after careful consideration, regardless of their financial situation.\textsuperscript{60} This claim fails to recognize that the vast majority of parents, with their child’s interest in mind, would logically choose to send their child to private school for a better education, but they are financially unable to make that choice.\textsuperscript{61} Simply giving parents the choice between public and

\textsuperscript{59} \textit{Compare Brown}, 68 F.3d at 533 (stating that the \textit{Meyer-Pierce} standard recognizes that “the custody, care, and nurture of the child reside first in the parents.”) \textit{with Brown}, 68 F.3d at 533 (asserting that the \textit{Meyer} and \textit{Pierce} cases evince the principle only that the State cannot prevent parents from choosing a specific educational program).

\textsuperscript{60} \textit{See F. Howard Nelson, Trends in Private School Costs and Tuition: No Immunity From the Cost Disease,} at 6, \textit{available at} \texttt{www.aft.org/research} \textit{(indicating the estimated private school tuition for 1998 was $3,895, all of which is paid by the parents, and public school costs per pupil were estimated at $6,235, none of which is paid by the parents).}

\textsuperscript{61} \textit{See U.S. Public Schools and Private Schools: Performance and Spending Compared,} \textit{The Public Purpose,} (1998), \textit{available at}
private school fails to protect their Constitutionally-granted right to control the upbringing of their children.\footnote{See \textit{C.N.}, 430 F.3d at 184-85 (concluding that the failure to require parental consent prior to administering a survey deprived parents of their right to make decisions regarding what their children were exposed to in school).}

B. The Gruenke analysis is a balance between the strict and expansive applications of the \textit{Meyer-Pierce} standard and protects parents’ Constitutionally-granted right to control their children’s education

The polar opposite views of the \textit{Meyer-Pierce} standard, including a strict reading of the \textit{Meyer-Pierce} standard which gives parents control only of sending their children to either public or private school,\footnote{See \textit{Brown v. Hot, Sexy and Safer Productions, Inc.}, 68 F.3d 525, 533 (1st Cir. 1995) (asserting that the state does not have the power to “standardize its children” by foreclosing the opportunity of individuals to choose a different path of education).} and an expansive application which

\url{http://www.publicpurpose.com/pp-edpp.htm} (identifying several advantages of private school, including significantly higher proficiency of students, higher satisfaction of teachers and principals, a 2.5 higher rate of application into college, and a significantly higher rate of graduation from college).
gives parents control over the entire curriculum, fail to recognize a workable middle of the road interpretation that gives parents limited control with regard to private issues. Parental control is extremely important with regard to sensitive topics, as the Gruenke analysis demonstrates by giving parents control over private issues in public school. Parental control is essential with regard to private issues such as sex education, and courts have emphasized the effect that parental involvement has with regard to sensitive topics in public school. The Gruenke court recognized that the primary role of

---

64 See id. at 533-34 (claiming that an expansive reading of the Meyer-Pierce standard would give parents a fundamental right to dictate individually what schools teach their children).

65 See Gruenke v. Seip, 225 F.3d 290, 303 (3d Cir. 2000) (finding that a swim coach’s interference with a student’s pregnancy violated the family’s right to privacy and the parents’ right to guide the daughter in pregnancy-related decisions).

66 See id. at 306 (finding that a student’s pregnancy was a family crisis of which the state had no right to interfere, and the parents had the right to choose the proper method of resolution).

67 See C.N. v. Ridgewood Board of Education, 430 F.3d 159, 161 (3d Cir. 2005) (indicating that introducing a child to sensitive
the parents in the rearing of children is well-established, especially with regard to issues of “moral standards, religious beliefs, and elements of good citizenship.”

Although parental control is limited, it ought to extend to sex education, as the court in Hodge v. Jones recognized that the long-standing maxim of familial privacy is not absolute but can only be outweighed by a legitimate governmental interest.

topics before the parents may have done so can undermine parental authority); Wisconsin v. Yoder, 406 U.S. 205, 232-33 (1972) (recognizing the importance of parental involvement in matters such as religion and moral development of the children).

68 See Gruenke, 225 F.3d at 304 (indicating that school officials have only secondary responsibility when it comes to children and they must respect and defer to parental rights); Roberts v. United States Jaycees, 468 U.S. 609, 618 (1984) (stating that the court must preserve certain kinds of highly personal relationships, and protect them from undue influence from the state).

69 See Hodge v. Jones, 31 F.3d 157, 162-63 (4th Cir. 2004) (stating that the right to familial privacy does not create a Constitutional right to be free from child abuse investigations because the state has a legitimate interest in protecting children); see also Roberts v. United States Jaycees, U.S. 609,
Although courts refer to the level of state interest which can outweigh parental rights as legitimate and compelling, they are applying them as the same standard.\(^7^0\)

The Gruenke court states that when children go to public school, they are in the compulsory care of the school system, and the school has simply a custodial responsibility.\(^7^1\) With this responsibility comes the power to control certain aspects of the children’s education, but this control must also be balanced with the parental rights and must be rooted in a valid

---

\(^7^0\) Compare Gruenke, 225 F.3d at 305 (recognizing that parents’ authority must be recognized and the State can only trump this authority if it has a compelling interest), with Hodge v. Jones, 31 F.3d 157, 163 (4th Cir. 2004) (finding that the State had a legitimate interest in providing for the health and safety of its minors when it investigated a suspected case of child abuse).

\(^7^1\) See Gruenke v. Seip, 225 F.3d 290, 307 (3d Cir. 2000) (stating that public schools must not forget that “in loco parents” does not mean “displace parents.”).
compelling state interest. When dealing with issues such as the education of children, the Constitution is rightly interpreted as giving parents a fundamental right to raise their children as they wish, recognizing the importance of parental involvement in the education of children.

C. The Gruenke Analysis Will Protect Parents’ Rights Without Posing a Heavy Burden on the State

The Brown court claims that any expansion in the reading of the Meyer-Pierce standard will create too high a burden on the school system, contrary to the purpose of the Fourteenth Amendment; however, this claim fails to see that a middle of the road application will not create a high burden on schools because it is limited to private issues.

---

72 See id. at 305 (recognizing that if the school’s interests conflict with the fundamental right of parents to nurture their child, the “primacy of the parents' authority must be recognized and should yield only where the school’s action is tied to a compelling governmental interest).

73 See Brown v. Hot, Sexy and Safer Productions, Inc., 68 F.3d 525, 533 (1st Cir. 1995) (referring to the Fourteenth amendment and stating that “without doubt, it denotes . . . the right of the individual . . . to establish a home and bring up children . . . ”).

74 Compare Fields v. Palmdale School District, 447 F.3d 1187,
The middle of the road analysis balances the state’s interest while still protecting parental rights by giving parents control over their children beyond the decision to send them to either public or private school, and still putting limitations on the control so as not to overly burden the public school system.\(^{75}\) If the courts adopted the Gruenke analysis with regard to sex education, it would allow parents to monitor their children’s exposure to sensitive issues and protect their Constitutionally-granted interest, while posing only a slight burden on the school system.\(^{76}\) If courts apply the Gruenke 1191 (9th Cir. 2006) (indicating that parental consent was sought before distribution of a survey), with Brown, 68 F.3d at 533 (asserting that if the Meyer-Pierce standard were read to include a right to restrict the flow of information in public schools, this would create a burden contrary to the intent of the Constitution).

\(^{75}\) See White, supra note 1 at 3 (referring to most states and indicating that local school districts have the ability to provide sex education in way aligned with both community values and state interest).

\(^{76}\) See Fields, 447 F.3d at 1991 (finding that a survey distributed to students, which contained sensitive information, did not interfere with the right of parents to make intimate
analysis, the rights of the parents can be protected without a heavy burden on the state, as public schools have already begun to adopt informed consent policies when dealing with sensitive issues. The court in Fields found that because parental consent was sought prior to administering the survey, it did not interfere with parental rights, similarly, in Alfonso, the court required the school to obtain parental consent in order for a condom distribution program to continue.

decisions because parental consent was sought prior to the distribution of the survey, with no indication that parental consent created a burden on the school).

77 Compare Protection of Pupil Rights Law, N.J.S.A. § 18A:36-34 (2001) (requiring “prior written informed consent before a survey with sensitive topics could be administered in New Jersey’s public schools), with Brown, 68 F.3d at 533 (claiming that the Constitution did not intend to impose such a burden on educational systems, as would be the case if the Meyer-Pierce standard were read to “encompass a broad-based right to restrict the flow of information in the public schools.”).

78 See Fields, 447 F.3d at 1991 (indicating that the parents were notified before the survey was given, and all but one parent signed the consent form); Alfonso v. Fernandez, 606 N.Y.S.2d 259, 266 (N.Y. App. Div. 1993) (ruling that the condom
D. Parents Have the Right and Responsibility to Instill Moral Values and Beliefs in Their Children, Including Sexual Issues

When dealing with such sensitive issues as sexual information, parents have the fundamental right and responsibility to invoke in their children their own values and beliefs.\(^7^9\) Parents have the right to expose their children to sexual information as they see fit, and exposure to sensitive information at school before a parent may have done so undermines the authority of the parent, therefore, parents should have control over sex education in public school.\(^8^0\)

\(^7^9\) See Wisconsin v. Yoder, 406 U.S. 205, 233 (1972) (stating that it is the parent, not the schools, who have the primary responsibility “to inculcate moral standards, religious beliefs, and elements of good citizenship”).

\(^8^0\) See C.N. v. Ridgewood Board of Education, 430 F.3d 159, 185 (App. Ct. 3rd Cir. 2005) (recognizing that a myriad of influences surround students every day, and exposing a child to sensitive topics at school can complicate the authority of the
The C.N. court claimed that a middle school or high school student who is exposed to sensitive topics at school will align these ideas within the framework of the family’s values and will further supplement the information with appropriate materials.\textsuperscript{81} What the court fails to recognize is the fact that the parents have the right and responsibility to monitor the education of their children, and simply adding information to what has been given to the child at school is an insufficient protection of this right.\textsuperscript{82} The rights of parents must extend to allow monitoring of sex education in public school, as the court in C.N. recognized that there are many influences in public school which the parents cannot control, and monitoring of sex education programs would protect the parents’ interest.\textsuperscript{83}

\textsuperscript{81} See id. at 185 (claiming that although premature exposure to sexual information can complicate the parental authority, if children can receive further information at home, this would not cause substantial harm to the children).

\textsuperscript{82} See White, supra note 1 at 3 (asserting that sex education begins in the home, although parents support schools adding to the information provided at home).

\textsuperscript{83} See C.N., 430 F.3d at 185 (stating that the myriad of
Like religion, sex education is a critical part of adolescent development and merits the same treatment, and the court in *Yoder* recognized the importance of religious beliefs in the development of a child through adolescence. Many religions have fundamental beliefs about sex and sex education, and if the courts recognize that parents have the right to control the information their children receive with regard to religious issues, it follows that they should be given the same right to control the information they receive with regard to sex education. The Catholic religion has many rules regarding sexual intercourse and birth control; including the belief that sex before marriage is a sin. If parents are given the control influences are not under the strict control of the parents, and exposure to sensitive topics may undermine parental authority).

84 See *Yoder*, 406 U.S. at 218 (concluding that exposing Amish children to religious beliefs which contradict their own would interfere with critical adolescent development).

85 See Wisconsin v. Yoder, 406 U.S. at 213-14 (stating that “the values of parental direction of the religious upbringing and education of their children in the early and formative years have a high place in our society.”).

86 See Jessica Steinmetz, article, Basics of Sex and the Catholic Church, *available at*
over their child’s education with regard to Catholicism, it follows that sex education, which directly contradicts some of the fundamental values of the Catholic religion, should merit the same parental control.\textsuperscript{87}

E. Parents are ultimately responsible for the consequences of exposure to sexual information, and therefore ought to have control over sex education.

Because parents will ultimately have to deal with the consequences of the sexual information their children receive while in school, it is the parents’ right to control the content.

\textsuperscript{87}Compare White, \textit{supra} note 1 at 3 (indicating that student’s and teachers report that sex education has a heavy emphasis on AIDS, other STDs, reproduction, and abstinence), with Jessica Steinmetz, \textit{supra} note 86 (indicating that the Roman Catholic Church is against unnatural means of birth control such as condoms and the birth control pill, further asserting that when artificial birth control is used, sex is cheapened).
of this information. Problems resulting from sex education or lack thereof will ultimately have to be handled by the parents, supporting the claim that parents should have the right to control the education of their children with regard to sensitive issues such as sex education. In Gruenke, where a student was forced to take a pregnancy test, the parents explained the effects of the school official’s involvement in their daughter’s pregnancy and the court stressed the impact of the coach’s actions on the ability of the family to deal with the pregnancy privately.

---

88 See Gruenke v. Seip, 225 F.3d 290, 303 (App. Ct. 3rd Cir. 2000) (indicating that the mother of a pregnant student dealt with the consequences of the pregnancy and the actions of the swim coach in announcing the pregnancy to others interfered with the mother’s right to make decisions regarding the student’s pregnancy).

89 See id. at 306 (concluding that the involvement of the school swim coach in the pregnancy of the student hindered the ability of the family to make a decision on their own, and therefore violated their right to familial privacy).

90 See id. (explaining that had there not been so much adverse publicity as a result of the actions of the school swim coach, the parents would have quietly withdrawn their child from school
F. The Gruenke Analysis is More Appropriate Than the Polar Opposite Views of the Meyer-Pierce Standard

The Gruenke analysis is a more suitable application than a strict interpretation of the Meyer-Pierce standard because it recognizes that parental control does extend beyond the school door and it extends into some private issues within the school. Unlike the strict interpretation of the Meyer-Pierce standard, and sent her to Florida to live with her married sister, and further holding that this interference hindered the parents’ right to handle the situation as a family).

See id. at 303 (establishing that the family’s right to privacy was violated because the mother had a right to guide her daughter during her pregnancy and further concluding that because the coach forced the student to take a pregnancy test and spoke of the pregnancy to others at school this violated the family’s right to deal with the situation); see also C.N. v. Ridgewood Board of Education, 430 F.3d 159, 187 (3d Cir. 2005) (concluding that the parental interest at stake has been recognized in New Jersey legislature which requires parental consent before a survey with sensitive information can be distributed to students).
which does not give control to parents regardless of the private nature of the issue involved, the Gruenke court recognized the importance of the preservation of certain kinds of highly personal relationships which deserve protection from interference from the state.\(^92\) The Gruenke analysis takes into account the severe consequences of a strict interpretation of the Meyer-Pierce standard, which bases its protection of parental rights on a supposed choice between public and private school, failing to recognize that this application does not afford parents the protection deserved.\(^93\)

\(^92\) See Gruenke, 225 F.3d at 305 (referring to Roberts v. United States Jaycees, 468 U.S. 609, 618 (1984) ("[B]ecause the Bill of Rights is designed to secure individual liberty, it must afford the formation and preservation of certain kinds of highly personal relationships a substantial measure of sanctuary from unjustified interference by the State.").

\(^93\) See C.N., 430 F.3d at 187 (identifying that a strict interpretation of the Meyer-Pierce standard makes successful claims unrealistic because the only determination needed is whether the child goes to public school, and once that is determined the claim fails because the parents’ rights would be limited to the decision between certain types of education for their children).
The court in Brown failed to identify the middle road that lies between the two extreme opposites.\textsuperscript{94} The middle of the road analysis, guided by Gruenke, which gives parents control with regard to sensitive and private issues such as sex education is a valid reading of the Meyer-Pierce standard and protects the Constitutionally-granted right of parents to control the upbringing of their children.\textsuperscript{95} The middle of the road analysis provides a balance between the two extreme applications of the Meyer-Pierce standard, contrary to the assertion that courts either have to limit parental control to the choice between public and private school, or afford parents so much control that they are able to order every aspect of their child’s education.\textsuperscript{96}

\textsuperscript{94} See Brown v. Hot, Sexy and Safer Productions, Inc., 68 F.3d 525, 533 (1st Cir. 1995) (implying that there are two ways to read the Meyer-Pierce standard, on one side giving parents no control beyond choosing the type of educational institution they send their children to, and the other giving them so much control as to dictate their child’s curriculum).

\textsuperscript{95} See Gruenke v. Seip, 225 F.3d 290, 303 (3d Cir. 2000) (asserting that the right of parents to control the upbringing of their children is well-established by the Supreme Court).

\textsuperscript{96} Compare Brown, 68 F.3d at 533 (stating that the Meyer-Pierce
The court in *C.N. v. Ridgewood* recognized that there is a middle ground between the two extreme readings the rights of parents under the *Meyer-Pierce* rubric.\(^9^7\) The court was guided by the analysis in *Gruenke*, where the court stressed that it is primarily the parents’ right “to inculcate moral standards, religious beliefs and elements of good citizenship.”\(^9^8\) The court in *C.N.* also recognized that parents have a right to monitor what their children are exposed to in school, and this right is not protected by simply giving parents a choice between public

---

\(^9^7\) See *C.N. v. Ridgewood Board of Education*, 430 F.3d 159, 184 (3d Cir. 2005) (following the middle of the road standard and recognizing a distinction between actions that strike at the heart of parental decision-making authority on highly important matters and other actions which do not rise to the level of a Constitutional violation).

\(^9^8\) See *Gruenke v. Seip*, 225 F.3d 290, 307 (3d Cir. 2000) (stating that parents have the primary rights in the upbringing of their children).
and private school. The court in C.N., following the Gruenke analysis, stressed the impact of a polarized view of the Meyer-Pierce standard when it predicted that with this strict interpretation a claim grounded in Meyer-Pierce will only activate a query into the question of which school the parents chose to send their children to.

A strict reading would in actuality eliminate any possible recourse parents may have when faced with a violation on their parental rights simply because their child attends public school. Parents ought to be allowed to monitor the sex education their children receive while in public school,

99 See C.N., 430 F.3d at 185 (rejecting the polarized view of the Meyer-Pierce standard and finding that parental rights extend to certain issues which affect the highly important parental decision-making authority, such as pregnancy).

100 See C.N., 430 F.3d at 185 (recognizing that a claim based on the Meyer-Pierce standard, with a strict application, realistically would not go forward once it is determined that the child attends public school).

101 See C.N., 430 F.3d at 187 (showing the inadequacy of the strict interpretation of the Meyer-Pierce standard which effectively dooms all claims rooted in this standard if the child attends public school).
similarly, the court in C.N. appreciated the importance of following a middle of the road standard when it found that although the survey did not rise to the level of a constitutional violation, some private issues will rise to the level of a constitutional violation.\textsuperscript{102}

G. The Gruenke Analysis is More Appropriate than the Expansive Application of the Meyer-Pierce Standard

The court in Gruenke also falls short of the polar opposite view which, if applied, would give parents the right to dictate individually what schools could teach their children.\textsuperscript{103} The Gruenke court differs from this extreme expansive view in that it recognizes that parental control has limits.\textsuperscript{104}

\textsuperscript{102} See C.N., 430 F.3d at 187 (finding that the survey had not infringed on the parental rights to the level of a constitutional violation, although they did establish the possibility of constitutional violations with more substantial interferences, such as issues related to pregnancy).

\textsuperscript{103} Compare Brown v. Hot, Sexy and Safer Productions, Inc., 68 F.3d 525, 534 (1st Cir. 1995) (indicating that the State cannot force parents to send their children to public school), with Brown, 68 F.3d at 534 (stating that parents cannot say to the State that they cannot teach the child anything that is morally offensive to them).

\textsuperscript{104} See Gruenke v. Seip, 225 F.3d 290, 305 (3d Cir. 2000)
circumstances in which school authorities, in order to maintain a safe and appropriate educational environment, may impose standards on the students that may differ from the views of some parents, and this is an acceptable state interest that can outweigh the rights of the parents.\textsuperscript{105} If schools do not allow parents to monitor sex education programs, this is unrelated to a government interest, such as providing for the health and safety of students.\textsuperscript{106} The Gruenke analysis is more appropriate standard than the extreme expansive view because it identifies the interest of the school and does not give parents complete (finding that parents’ rights over their children will only be usurped if the state has a compelling interest, such as the health and safety of their students).

\textsuperscript{105} See Gruenke, 225 F.3d at 304 (holding that when there are instances of conflict between the parents’ views and the school curriculum, the parents’ rights have substantial importance and can only be outweighed when the school’s action is in support of a compelling state interest).

\textsuperscript{106} See Hodge v. Jones, 31 F.3d 157, 163 (4th Cir. 2004) (indicating that the State had a legitimate interest in providing for the safety of its minor citizens when it investigated a suspected case of child abuse).
control over every aspect of the curriculum.\textsuperscript{107} The middle of
the road application correctly identifies state interest when a child is in public school, and does not claim to give parents
complete control over the curriculum.\textsuperscript{108}

The Gruenke analysis shows that there is a third option in
reading the Meyer-Pierce standard which does not lead to
complete parental control over the curriculum, unlike the
implication in Brown that anything other than a strict

\textsuperscript{107} See C.N. v. Ridgewood Board of Education, 430 F.3d 159, 185 (3d Cir. 2005) (finding that although the survey presented to
students had sensitive information on it, it did not rise to the
level of a Constitutional violation because the school sought
parental consent and the material had little effect on the
students).

\textsuperscript{108} See Gruenke, 225 F.3d at 304-05 (stating that although
students do not enjoy the freedom of an adult while in public
school, there are limitations on intrusions by school
authorities). \textit{But see} Brown v. Hot, Sexy and Safer Productions, Inc., 68 F.3d 525, 534 (1st Cir. 1995) (claiming that if parents
had the fundamental right to control their children then schools
would be forced to cater to each child and each parent causing a
high burden on schools which would be inconsistent with the
purpose of the Constitution).
interpretation of the Meyer-Pierce standard will force the schools to cater a curriculum for each student whose parents had a moral disagreement with the school’s choice of subject matter.\textsuperscript{109} This is guided by fear of a slippery slope leading to too much parental control.\textsuperscript{110} The strict application is justified by courts using a slippery slope argument and an assumption that parental control over sensitive issues in public school will automatically lead to complete control over the entire curriculum, but this is an illogical assumption, as many states have already implemented parental consent requirements.\textsuperscript{111}

\textsuperscript{109} See Brown, 68 F.3d at 534 (claiming that giving parents control over the curriculum of the students would lead to schools having to succumb to every parent’s wish with regard to the curriculum in the school).

\textsuperscript{110} See Brown, 68 F.3d at 534 (asserting that if parents had a fundamental right to dictate what the schools taught their children, the schools would have to relinquish all control to the parents, and further stating that the Constitution did not intend to impose such a heavy burden on the school system).

\textsuperscript{111} See Fields v. Palmdale School District, 447 F.3d 1187, 1191 (9th Cir. 2006) (indicating that parental consent was sought prior to distribution of the survey, with no indication this caused further expansion of parental control); Alfonso v.
Unlike the expansive reading of the *Meyer-Pierce* standard which gives parents control over the curriculum of their children, the *Gruenke* analysis provides for parental control extending only to sensitive and private issues, such as sex education.\(^{112}\) This application allows for parental monitoring and approval of sex education programs and classes so that parents can make informed decisions regarding the introduction of private issues to their children.\(^{113}\)

---

Fernandez, 606 N.Y.S.2d 259, 266 (N.Y. App. Div. 1993) (ruling that the condom distribution program can go forward without interfering with parental rights by sending letters allowing parents to opt-out of the program, allowing the parents to choose without causing a high burden on the State).

\(^{112}\) See *Gruenke v. Seip*, 225 F.3d 290, 304, 306 (3d Cir. 2000) (indicating that it would be appropriate for schools to test urine for drugs, but not for things such as pregnancy and diabetes because these were private conditions, and further holding that the pregnancy was a private family issue which cannot be interfered with by the State).

\(^{113}\) Compare Protection of Pupil Rights Law, N.J.S.A. § 18A:36-34 (requiring prior written consent before a survey with sensitive topics could be issued), *with Brown*, 68 F.3d at 533 (claiming that an expansive reading of the *Meyer-Pierce* standard would
The Gruenke case emphasizes that there are personal and private matters which should not be subjected to state interference without a compelling interest, and the Gruenke court determined that the lack of a compelling state interest in forcing a student to take a pregnancy test necessitated a finding of a constitutional violation.\textsuperscript{114} Like the student’s pregnancy in Gruenke, sex education is a private issue and parents should have the right to monitor the flow of information when dealing with exposure to sex education.\textsuperscript{115} Although the Gruenke court dealt with a personal issue at the level of a pregnancy, it logically follows that sex education, which mean that parents had control over every aspect of their child’s education).

\textsuperscript{114} See Gruenke, 225 F.3d at 306 (indicating that testing for illegal drugs prior to participating in sports is an instance in which the school’s interest in protecting the health of the students trumps the parental rights).

\textsuperscript{115} See Gruenke, 225 F.3d at 303 (asserting that the fundamental liberty interest of parents with regard to the care of their children is well-established, and further concluding that when the swim coach forced the student to take the pregnancy test and spoke about the pregnancy to others, this was a violation of the parents’ familial integrity).
includes information regarding pregnancy and pregnancy prevention, should be controlled by the parents. The Gruenke court identified the importance of familial privacy with regard to pregnancy, as the interference by the swim coach had a negative effect on the ability of the family to deal with the situation; similarly, forcing students to be introduced to sexual information without parental involvement negatively affects a family’s ability to control the situation.

H. Certain Types of Exposure to Sexual Information Rise to the Level of a Constitutional Violation

The courts have determined that providing contraception, such as condom distribution, is a more sensitive topic than exposing children to sexual information and demonstrations.

116 See Gruenke, 225 F.3d at 303 (stating that private issues such as pregnancy are to be dealt with by the family and be free from State involvement); see also White, supra note 1 at 3 (stating that students in grades seven through twelve report an emphasis on AIDS, other STDs, reproduction, and abstinence from sex in their most recent sex education classes).

117 See Gruenke, 225 F.3d at 303 (asserting their disagreement with the lower court’s ruling that the forced pregnancy test did not rise to the level of a constitutional violation because the interference by the swim coach violated the familial integrity).

Condom distribution does not rise to the level of intruding on parental rights, however, exposure to sexual information and demonstrations can rise to the level of a constitutional violation because exposure to sexual information and education is far more sensitive and intrusive than merely providing contraception for students. 119 Although the Gruenke court dealt with a personal issue at the level of a pregnancy, it logically follows that sex education, which addresses private issues including pregnancy, should be monitored by the parents to ensure protection of their parental rights. 120

I. Certain Types of Exposure to Sexual Information Do Not Rise to the Level of a Constitutional Violation

Div. 1993) (outlining the difference between handing out condoms and exposing children to sexual information, finding that the latter is an intrusion on parental rights and not outweighed by the State’s health interest).

119 See id. at 266 (finding that exposure to sexual information intrudes on parental rights without serving a legitimate governmental interest and is a more sensitive approach than contraceptive distribution).

120 See Gruenke v. Seip, 225 F.3d 290, 303 (3d Cir. 2000) (stating that the student’s pregnancy was a private family issue and student’s mother should have been able to control the decision making with regard to the pregnancy).
Courts have found that some issues and exposure to sexual information in schools do not rise to the level of a constitutional violation because they are not severe enough to cause distress and merit strict parental control in monitoring their content.\textsuperscript{121} With regard to exposure to sex education, there is a high impact which can interfere with the parents’ right to make intimate decisions with respect to their children, unlike the case in \textit{Fields v. Palmdale School District} in which the court found that the anonymous survey did not rise to the level of a constitutional violation because it had a minimal impact on students and did not infringe on the parents’ right to make personal decisions.\textsuperscript{122} The \textit{Fields} court rightly recognized that not all issues will rise to the level of a constitutional violation, and by using the \textit{Gruenke} middle of the road analysis, \\
\textsuperscript{121}See \textit{Fields v. Palmdale School District}, 447 F.3d 1187, 1191 (9th Cir. 2006) (concluding that the voluntary and anonymous survey was not a Constitutional violation because it gave the parents the opportunity to opt-out and did not interfere with their ability to make intimate decisions regarding their children).

\textsuperscript{122}See \textit{id.} at 1191 (stating that there were signed consent forms that parents had to return before the survey was distributed and the survey had little effect on the students).
courts can determine what issues are serious enough to warrant parental control by analyzing the effect of the information on the children.\footnote{123}

IV. The Gruenke Analysis is in the Best Interest of the Child as it Supports Consistency in Values and Beliefs

Sex education is a significant component of moral values, and parents ought to have control over the flow of sexual information in public schools, as the Gruenke court correctly recognized the parents' right and responsibility to guide the moral education of their children.\footnote{124} Allowing parents to have control over the type of sexual information their child receives at public school is in the best interest of the child and flows from standards used in child custody cases which emphasize the importance of parental involvement.\footnote{125} Parental influence is

\footnote{123} See id. (finding that there was no private information disseminated by the survey, and therefore no intrusion on parental authority).

\footnote{124} See Gruenke, 225 F.3d at 304 (referring to Wisconsin v. Yoder 406 U.S. 205, 232-33, indicating that the primary role of parents in the raising of their children is to instill moral standards, religious beliefs, and good citizenship).

\footnote{125} See Troxel v. Granville, 530 U.S. 57, 77 (2000) (outlining the best-interest-of-the-child standard and recognizing the importance of parental control in their children’s lives by}
especially critical with regard to sex education, as the court in *Troxel v. Granville* found that it is important for parents to be involved in issues that affect moral and social development.\textsuperscript{126} Because the court also stated that the parents should be the ones to choose whether to expose their children to certain people or ideas, it follows that this control should extend to ideas regarding sex education.\textsuperscript{127}

When determining what is in the best interest of the child in custody cases, courts often focus on maintaining stability and consistency in the child’s life as this promotes their growth and development.\textsuperscript{128} If parents are not allowed to monitor stating “the strength of a parent’s interest in controlling a child’s associates is as obvious as the influence of personal associations on the development of the child’s social and moral character.”).

\textsuperscript{126} See id. at 77 (stressing the importance of parental influence on a child’s social and moral character).

\textsuperscript{127} See id. at 63 (stating that the Washington Supreme Court held that “parents have a right to limit visitation of their children with third persons,” and that between parents and judges, “the parents should be the ones to choose whether to expose their children to certain people or ideas.”).

\textsuperscript{128} See Mastropole v. Mastropole, 436 A.2d 955, 957 (N.J. Super.
the sex education their children are receiving at school, this can disrupt the consistency in beliefs and attitudes that is essential in promoting the well-being and moral development of the child. Further, if a child is exposed to sexual information that the parents were not ready to expose them to, this can cause distress and disrupt the consistency between parental influence and sex education in public school.

The values taught in public school may conflict with the

\[\text{Ct. App. Div. 1981} \] (concluding that the custody arrangement should not be altered to allow for joint custody, and the child should continue to stay with the mother to promote consistency and stability in the child’s life).

\[^{129}\text{See id. at 957} \] (determining that moving the child back and forth between the mother and father would disrupt the consistency in the child’s life, which the court found essential to the child’s well-being).

\[^{130}\text{See id. at 957} \] (indicating that if the child were to have the custody situation change, and disrupt the consistency in his life, this would cause severe damage to the child’s emotional well-being); see also C.N. v. Ridgewood Board of Education, 430 F.3d 159, 185 (3d Cir. 2005) (finding that introducing a child to sensitive topics before the parent has done so can complicate and even undermine parental authority).
parents’ values and create more inconsistency with regard to moral beliefs.\textsuperscript{131} Sex education has a similar impact on emotional development as religion, and the court in \textit{Wisconsin v. Yoder} stated the importance of maintaining stability and consistency with regard to religion when it found that by exposing Amish children to attitudes and values contrary to their religious beliefs the state would be causing inconsistency with regard to an important developmental issue.\textsuperscript{132}

Although the court in \textit{C.N.} determined that parental

\textsuperscript{131} See Jessica Steinmetz, \textit{supra} note 86 (indicating that the Catholic religion believes sexual intercourse before marriage is a sin to be confessed and artificial birth control is unacceptable because married couples ought to be open to having children and birth control takes Jesus Christ out of the picture).

\textsuperscript{132} See \textit{Wisconsin v. Yoder}, 406 U.S. 205, 217 (1972) (indicating that “[B]y exposing Amish children to worldly influences in terms of attitudes, goals, and values contrary to beliefs, and by substantially interfering with the religious development of the Amish child and his integration into the way of life of the Amish faith community at the crucial adolescent stage of development, contravenes the basic religious tenets and practice of the Amish faith, both as to the parent and the child.”).
authority with regard to sensitive issues was an important interest, the court claimed that if a child was exposed to sensitive topics before the parents had done so themselves, the child could later address the topics with the parents and there would be no irrevocable damage.\textsuperscript{133} This claim differs from \textit{Mastropole v. Mastropole}, in which the court recognized that any significant disruption in the stability of the child’s life can cause irrevocable damage and hinder their emotional well-being.\textsuperscript{134} This stability ought to extend to sex education, as the information a child receives in school should be consistent with parental influence and promote a strong basis for moral and social development when it comes to sexual issues.\textsuperscript{135}

\textsuperscript{133} See \textit{C.N. v. Ridgewood Board of Education}, 430 F.3d 159, 185 (3d Cir. 2005) (claiming that a student who is exposed to sensitive matters in school is free to discuss these matters with their parents and add to the information they received at school).

\textsuperscript{134} See \textit{Mastropole v. Mastropole}, 436 A.2d 955, 957 (1981) (identifying that any disruption which affects the consistency and stability of a child’s life can have irrevocable damaging effects).

\textsuperscript{135} See \textit{Yoder}, 406 U.S. at 217 (stating that because Amish children would be exposed to views conflicting with their
V. Tort Law Cases of Defamation Delineated Certain Private Issues Which are Subject to Special Protection, Including Sex and Promiscuity

There are certain issues that are so private and so sensitive as to warrant the courts finding per se defamation, such as sex and promiscuity, which do not require a showing of damages because the statements themselves, regarding sensitive and private issues, are defamatory due to the nature of the issue involved.\(^{136}\) The Slander and Libel Act enlarged the

\(^{136}\) See Bryson v. News Am. Publs., 672 N.E.2d 1207, 1213 (Ill. 1996) (identifying under common law there are four categories of statements which are considered actionable per se in defamation cases because of the nature of the comments, and they give rise to a cause of action for defamation without a showing of special damages. They are: (1) words that impute the commission of a criminal offense; (2) words that impute infection with a loathsome communicable disease; (3) words that impute an inability to perform of want of integrity in the discharge of duties of office or employment; or (4) words that prejudice a
classifications to include accusations of fornication and adultery, further emphasizing the private nature of sex and related issues and awarding them special treatment by allowing a cause of action for defamation without a showing of damages.\textsuperscript{137}

The court in \textit{Stanton v. Metro Corp.} indicated that a publication of photos next to an article regarding a study of teen sexuality, implying that the teenagers in the photo were participants in the study, amounted to defamation because the article had the ability to hold the plaintiff up to scorn, ridicule, or contempt for the information which was in the article.\textsuperscript{138} Sex education involves private issues including

\textsuperscript{137} See \textit{id.} at 1213 (stating that the four common law categories of per se defamation still exist unless changed by statute, and the Slander and Libel Act extended the list to include any accusations of fornication and adultery).

\textsuperscript{138} See \textit{Stanton v. Metro Corp.}, 438 F.3d 119, 125 (1st Cir. 2006) (indicating that “a communication is susceptible to a defamatory meaning if it would tend to hold the plaintiff up to scorn, hatred, ridicule, or contempt in the minds of any considerable and respectable segment of the community,” further showing that issues of sex are able to cause scorn and ridicule from members
sexual activity, and like the court found in *Stanton* that statements implying sexual activity rose to the level of defamation, sex education deserves the same treatment as a private issue.¹³⁹ Sex education involves information regarding sexual activity and contraception, similarly, the article containing statements of “hooking up,” referring to sexual activity going on between the teenagers, falls under the category of a private issue involving sex which is subject to special treatment.¹⁴⁰

The court in *Bryson* found that when a magazine published an article which referred to a female as a “slut” and implied she was unchaste and promiscuous, these statements were per se defamation because according to the Slander and Libel Act, any

---

¹³⁹ See id. at 122 (indicating that the article had a headline which read “They hook up online. They hook up in real life. With prom season looming, meet your kids—they might know more about sex than you do,” referring to teens engaging in sexual activity).

¹⁴⁰ See id. at 123 (finding that the term “hooking up” could mean anything from “intercourse to oral sex to serious touching or kissing,” referring to teenage sexual activity, and further implying that the teenagers were more promiscuous).
accusations of fornication or adultery would give rise to a per se defamation claim.\textsuperscript{141} Like accusations of fornication, sex education which includes information regarding sexual activity is a private issue and should be treated similarly.\textsuperscript{142} As courts find that the act or implication of premarital sex is a private issue, it follows that sex education classes which address these issues deserve the same protection.\textsuperscript{143}

VI. Conclusion

Sex education is a significant component of moral values,

\textsuperscript{141} See Bryson, 672 N.E.2d at 1215 (finding that the statements referring to the woman as a “slut” fell under the statute because there was no innocent construction of the word and it implied that the woman was fornicating, and further holding that the action was per se defamation because of the private nature of the issue).

\textsuperscript{142} See Bryson v. News Am. Publs., 672 N.E.2d 1207, 1217 (Ill. 1996) (finding that the natural meaning of the word “slut” referred to the woman’s sexual proclivities, and this was an issue covered under the statute).

\textsuperscript{143} See id. at 1213 (indicating that by printing the word “slut” in a magazine, it implied that the woman was unchaste and had premarital sex, further protecting the private nature of sexual issues).
and parents ought to have control over the flow of sexual information in public schools, as the Gruenke court correctly recognized the parents’ right and responsibility to guide the moral education of their children.⁴⁴⁴ Allowing parents to have control over the type of sexual information their child receives at public school is in the best interest of the child and flows from standards used in child custody cases which emphasize the importance of parental involvement.⁴⁴⁵

The polar opposite views of the Meyer-Pierce standard, including a strict reading of the Meyer-Pierce standard which gives parents control only of sending their children to either public or private school,⁴⁴⁶ and an expansive application which

⁴⁴⁴ See Gruenke, 225 F.3d at 304 (referring to Wisconsin v. Yoder 406, U.S. 205, 232-33, indicating that the primary role of parents in the raising of their children is to instill moral standards, religious beliefs, and good citizenship).

⁴⁴⁵ See Troxel v. Granville, 530 U.S. 57, 77 (2000) (outlining the best-interest-of-the-child standard and recognizing the importance of parental control in their children’s lives, further comparing the choice of the child’s associates with the choice of the child’s education).

⁴⁴⁶ See Brown v. Hot, Sexy and Safer Productions, Inc., 68 F.3d 525, 533 (1st Cir. 1995) (asserting that the state does not have
gives parents control over the entire curriculum,\textsuperscript{147} fail to recognize a workable middle of the road interpretation that gives parents limited control with regard to private issues.\textsuperscript{148} A strict view of the Meyer-Pierce standard fails to protect the rights of the parents to control the rearing of their children with regard to sensitive issues including sex education.\textsuperscript{149}

the power to "standardize its children" by completely eliminating parents' choice of the type of educational institution their child attends).

\textsuperscript{147} See id. at 533-34 (stating that an expansive reading of the Meyer-Pierce standard would give parents a fundamental right to control everything the school teaches their children).

\textsuperscript{148} See Gruenke v. Seip, 225 F.3d 290, 303 (3d Cir. 2000) (finding that a swim coach's interference with a student's pregnancy violated the family's right to privacy and the parents' right to guide the daughter in pregnancy-related decisions).

\textsuperscript{149} See Symposium: Education and the Constitution: Shaping Each Other and the Next Century: The Contemporary Significance of Meyer and Pierce for Parental Rights Issues Involving Education, 34 Akron L. Rev. 177, 186 (2000) (indicating that both federal and state courts have generally refused to read Meyer and Pierce cases as allowing for parental control with regard to private
The middle of the road analysis balances the state’s interest while still protecting parental rights by giving parents control over their children beyond the decision to send them to either public or private school, and still putting limitations on the control so as not to overly burden the public school system.\(^{150}\) If the courts adopted the Gruenke analysis with regard to sex education, it would allow parents to monitor their children’s exposure to sensitive issues and protect their Constitutionally-granted interest, while posing only a slight burden on the school system.\(^{151}\)

\(^{150}\) See White, supra note 1 at 3 (finding that most states have been able to align their interests with the interests of the community with regard to sex education, with no indication of a high burden on the State).

\(^{151}\) See Fields, 447 F.3d at 1991 (holding that the survey was not a Constitutional violation because the school sent out parental consent forms and there was no indication of a burden on the State).