

Circuit Court for Montgomery County
Case No. C-15-CV-24-003115

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0483

September Term, 2025

NICHOLAS BROWN, ET AL.,

v.

MONTGOMERY COUNTY BOARD OF
EDUCATION

Wells, C.J.,
Friedman,
Albright,

JJ.

Opinion by Wells, C.J.

Filed: June 5, 2026

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Appellants, Nicholas Brown, Zeina El Debs, José Ramos, Christopher Kneisler, and Waleska Jordan (collectively, “the Parents”), are parents of elementary school children in Montgomery County Public Schools (“MCPS”) who challenged the Montgomery County Board of Education’s (“the Local Board”) decision to incorporate LGBTQ+-inclusive texts into its English Language Arts (“ELA”) curriculum without advance parental notice or an opt-out option. The Parents are appealing the Circuit Court for Montgomery County’s denial of their Petition for Judicial Review of the Maryland State Board of Education’s (“the State Board”) order staying their consolidated administrative appeals pending resolution of federal litigation in *Mahmoud v. Taylor*, 606 U.S. 522 (2025). The Parents present the following questions on appeal, which we have rephrased¹:

- I. Did the Local Board have authority to stay its proceedings pending resolution of federal litigation;
- II. If the Local Board had authority to stay, did that authority extend to staying proceedings pending final resolution of federal litigation in which the Parents were not parties and which did not raise the state law claims at issue here;

¹ The Parents’ questions verbatim were:

“1. Does the State Board of Education have authority to stay its proceedings when its regulations mandate that it promptly issue a decision on an appeal from a local school board and no statute or regulation gives the State Board authority to issue a stay prior to decision?

2. Even if the State Board has inherent authority to stay its proceedings in certain circumstances, do those circumstances include staying pending final resolution of federal litigation not involving Appellants as parties and not raising state law claims Appellants raise?

3. In these circumstances, has exhaustion of administrative remedies been frustrated to the prejudice of Appellants such that exhaustion is excused and judicial review may proceed?

4. If exhaustion is not excused, did the Circuit Court abuse its discretion by not ordering MSBE to issue a prompt decision by a date certain?”

- III. Did the indefinite stay frustrate the Parents’ exhaustion of administrative remedies;
- IV. If exhaustion is not excused, did the circuit court abuse its discretion by declining to order the Local Board to issue a decision by a certain date?

For the reasons that follow, we decline to address the merits of these issues as we conclude the Parents’ notice-and-opt-out claims are moot in substantial part, and while the FLHS-classification issue is unresolved, it is an issue of which the State Board has primary jurisdiction over. We therefore dismiss this appeal and remand to circuit court with instructions to remand to the State Board with instructions to lift its stay and issue a decision on the FLHS-classification argument in the ordinary course.

FACTUAL AND PROCEDURAL BACKGROUND

In the fall of 2022, MCPS placed “LGBTQ+-Inclusive Texts” in its ELA curriculum for elementary school grades. Initially, MCPS permitted parental notice and opt-outs, but around March 2023, the Local Board announced that teachers would not be permitted to notify parents when such texts would be used and that parents would not be allowed to opt their children out of instruction using these materials.

The Parents objected to this policy on multiple grounds. *First*, the Parents contended LGBTQ+-affirming instruction is properly classified as instruction related to Family Life and Human Sexuality (“FLHS”) objectives and under both COMAR 13A.04.18.01.D and MCPS’s own implementing regulation IGP-RA, must be confined to the FLHS unit of the health curriculum, where parents enjoy an absolute right to opt-out. *Second*, the Parents argued the Local Board’s actions violated their parental rights and free exercise rights

under both the United States and Maryland Constitutions and that parents should receive advance notice of, and the right to opt out of, instruction using LGBTQ+-inclusive materials wherever they appear in the curriculum.

The Parents filed mirror-image administrative complaints with their children’s school principals beginning in August 2023. The complaints were denied at each local administrative level: by the principals, the Superintendent’s designee, and the Local Board. In each decision, the Local Board concluded the LGBTQ+-inclusive texts “are not part of the Family Life Human Sexuality curriculum in which direct teaching of family life and human sexuality indicators and objectives occur.”

In their appeals to the State Board, the Parents sought four specific determinations: (1) that the FLHS unit includes objectives and instruction related to LGBTQ+ material and its use is properly considered part of the FLHS unit; (2) that the LGBTQ+-Inclusive Texts prepared for elementary school students are properly considered part of FLHS instruction; (3) that parents have a right to opt out of LGBTQ+-related material and instruction, whether inserted in the ELA curriculum or otherwise; and (4) that parents have a right to review in advance instructional materials that include instruction related to LGBTQ+ topics.

A. The State Board’s Stay Order

The State Board consolidated the Parents’ appeals, and the parties completed full briefing on the merits by April 4, 2024. On May 22, 2024, without issuing a decision on the merits, the State Board entered Order No. OR24-08, staying the consolidated appeal “until such time that the federal case and any appeals are resolved.” The State Board

reasoned that, although the Parents were not parties to the federal *Mahmoud* litigation, that case “involves substantially similar parties, facts, and issues as the instant appeal.” Citing “principles of comity and judicial economy,” the State Board relied on *Smiley v. Arizona Beverages*, 2024 WL 327044, at *2 (D. Md. Jan. 29, 2024), and expressed its “desire to promote judicial efficiency by not proceeding with matters that are part of ongoing litigation.”

B. The Circuit Court’s Decision

The Parents filed a Petition for Judicial Review in the Circuit Court for Montgomery County on June 13, 2024, asserting that the State Board had frustrated exhaustion of their administrative remedies and that the circuit court should proceed to review the merits. On March 24, 2025, the court denied the Petition and concluded that, under Md. Code, State Gov’t § 10-222, a party must be aggrieved by a final decision before seeking judicial review and the State Board’s stay order “does not constitute a final decision for appeal purposes.” The court rejected the Parents’ arguments that exhaustion was excused, finding their reliance on *Dorsey v. Bethel A.M.E. Church*, 375 Md. 59 (2003), to be “misplaced.”

The Parents filed a Rule 2-534 Motion to Alter or Amend Judgment, requesting that the court remand the matter with instructions to the State Board to issue a decision within thirty days. The court again denied the motion on April 30, 2025, without comment. This appeal followed.

C. The *Mahmoud* Decision and Post-Decision Developments

Meanwhile, other MCPS parents who were not parties to the Parents’ administrative proceedings filed a federal action, *Mahmoud v. McKnight*, 688 F. Supp. 3d 265 (D. Md. 2023), challenging the same no-opt-out policy on federal constitutional grounds. The United States District Court denied a preliminary injunction, and the Fourth Circuit affirmed. *Mahmoud v. McKnight*, 102 F.4th 191 (4th Cir. 2024). On June 27, 2025, the United States Supreme Court reversed, ordered entry of a preliminary injunction, and remanded the case for further proceedings. *Mahmoud*, 606 U.S. at 522. The Supreme Court concluded the *Mahmoud* parents demonstrated a likelihood of success on the merits of their free exercise claim and were entitled to preliminary relief, including advance notice and the opportunity to have their children excused from instruction using the challenged texts. *Id.* at 523.

Critically, the Supreme Court’s decision addressed only the free exercise claim. The Parents in this case raised additional state-law arguments, most notably, their lead contention that LGBTQ+-inclusive texts are properly classified as FLHS instruction that must be confined to the FLHS unit of the health curriculum. That issue was not before the Supreme Court in *Mahmoud*. As the Parents observe, and the Local Board does not dispute, the *Mahmoud* parents did not challenge the legality of using these texts in the ELA curriculum as a matter of Maryland regulatory law.

Following the decision in *Mahmoud*, the Local Board adopted Regulation IFD-RA on August 21, 2025, establishing procedures for “Curriculum Transparency and Requests

to Be Excused from Instruction.” Under Regulation IFD-RA, MCPS provides families with comprehensive lists of core instructional materials prior to each marking period, permits parents to review those materials upon request, and allows parents to submit requests to have their children excused from instruction involving materials that substantially interfere with sincerely held religious beliefs. On September 11, 2025, the Local Board filed a Motion to Lift Stay with the State Board, asking it to resume proceedings on the merits. The Parents opposed the motion. As of the date of briefing in this Court, the State Board had not yet acted on that motion.

STANDARD OF REVIEW

When an appellate court reviews a decision in a judicial review of an administrative action, we evaluate the agency’s decision under the same statutory standards that governed the circuit court’s review. *Spencer v. Md. State Bd. of Pharmacy*, 380 Md. 515, 523 (2004). Further, “we review the decision of the agency, not the circuit court[,]” and “in the light most favorable to the agency because it is prima facie correct and entitled to a presumption of validity.” *Chiusano v. Two Farms, Inc.*, 268 Md. App. 322, 337 (2026) (citations and quotations omitted). However, where the appeal presents questions of law, such as “(1) the constitutionality of an agency’s decision; (2) whether the agency had jurisdiction to consider the matter; (3) whether the agency correctly interpreted and applied applicable case law; (4) [or] whether the agency correctly interpreted an applicable statute or regulation[,]” our review is de novo. *Crawford v. Cnty Council of Prince George’s Cnty*,

482, Md. 680, 694-95 (2023) (quoting *Comptroller of Maryland v. FC-GEN Operations Investments LLC*, 482 Md. 343, 360 (2022)).

PARTIES’ CONTENTIONS

The Parents advance four principal contentions on appeal. *First*, they argue that the State Board lacked statutory authority to stay its proceedings, because no statute, regulation, or rule grants the State Board pre-decisional stay power, and the Board’s regulations mandate that it “shall make the final decision in all appeals” and deliver that decision “promptly.” (citing COMAR 13A.01.05.09; Md. Code, SG § 10-201). *Second*, even if the State Board possesses some inherent stay authority, the Parents contend that the Board exceeded it here, because the *Mahmoud* litigation involved different parties and did not address the Parents’ lead state-law argument—that LGBTQ+-inclusive texts are properly classified as FLHS instruction that must be confined to the FLHS unit of the Health curriculum. *Third*, the Parents assert that exhaustion of administrative remedies has been excused by the State Board’s own conduct in delaying a final decision for over seventeen months, causing irreparable harm. (citing *Dorsey*, 375 Md. at 74–75). *Finally*, the Parents request, in the alternative, that this Court remand with an order requiring the State Board to issue a decision within thirty days.

The Local Board contends the State Board properly stayed its proceedings, citing the State Board’s broad visitatorial powers and past practice of issuing stays when parallel proceedings are pending. (citing *Frederick Classical*, 454 Md. at 370; *Balt. City Bd. of Sch. Comm’rs v. City Neighbors Charter Sch.*, 400 Md. 324, 342–43 (2007); *Renaissance*

Centro Columbia, LLC v. Broida, 421 Md. 474, 489–90 (2011)). The Local Board further contends the circuit court properly found the case unripe for review because the State Board had not issued a final decision. Significantly, the Local Board also argues that the Parents’ claims are now moot because, following the United States Supreme Court’s decision in *Mahmoud*, the Local Board adopted Regulation IFD-RA, which provided advance parental notice and opt-out procedures. The Local Board asserts it has now provided the very remedy the Parents sought from the State Board, and that there is accordingly no effective relief this Court can provide.

The Parents contest the mootness argument on several grounds. They maintain that the Local Board’s reading of their complaint is too narrow and that, properly understood, their complaint demands a determination that LGBTQ+-inclusive texts may not be used in the ELA curriculum at all. The Parents further argue that the “Refrigerator Curriculum” implemented under Regulation IFD-RA is inadequate to provide the relief they seek, as it does not address the FLHS-classification issue.²

² According to Montgomery County Public School’s website, the “Refrigerator Curriculum,” is a “one-page overview of the main themes and texts students will study each marking period.” It is nicknamed because “it’s designed to be easy to post on the fridge at home.” *What is Your Child Learning in the Classroom? Here’s What to Know*, MONTGOMERY COUNTY PUBLIC SCHOOLS (Aug. 21, 2025) [<https://perma.cc/9E8Y-TCZ4>].

DISCUSSION

I. The Notice-and-Opt-Out Claims Are Substantially Moot.

We begin by addressing the notice-and-opt-out claims, which we conclude are substantially moot. A case is moot when “no controversy exists between the parties or when the court can no longer fashion an effective remedy.” *D.L. v. Sheppard Pratt Health System, Inc.*, 465 Md. 339, 352 (2019) (internal quotation omitted). While this Court has the constitutional authority to discuss the merits of a moot case, that authority is exercised only in rare instances presenting the most compelling circumstances. *Mercy Hosp., Inc. v. Jackson*, 306 Md. 556, 562 (1986). Accordingly, when a case becomes moot, the general rule is that the appeal is dismissed without any expression of this Court’s views on the merits of the controversy. *Id.* “Appellate courts do not sit to give opinions on abstract propositions or moot questions, and appeals which present nothing else for decision are dismissed as a matter of course.” *Id.* (quoting *State v. Ficker*, 266 Md. 500, 506-07 (1972)).

Here, the record reflects two of the four specific forms of relief sought by the Parents, namely, advance parental notice and the right to opt out of LGBTQ+-related instruction based on sincerely held religious beliefs, have been substantially addressed by the Local Board’s adoption of Regulation IFD-RA. Under the new regulation, MCPS provides families with comprehensive lists of core instructional materials prior to each marking period, permits review of those materials upon request, and allows parents to submit requests to have their children excused from instruction that substantially interferes with sincerely held religious beliefs. These provisions correspond directly to the third and

fourth forms of relief the Parents sought in their administrative complaints: the right to opt out and the right to advance review of instructional materials.

We acknowledge the Parents’ arguments that the new regulations are inadequate in practice. However, questions about the practical adequacy of the new regulation’s implementation are best addressed in the first instance through the administrative process, rather than through judicial intervention in a proceeding where no final administrative decision has been rendered. Any challenge to the sufficiency of Regulation IFD-RA may be pursued through appropriate administrative and judicial channels once the State Board acts.

To the extent the Parents’ claims sought relief in the form of advance notice and opt-out, the Local Board’s voluntary adoption of Regulation IFD-RA has substantially mooted those claims as framed before the State Board. There is no effective relief this Court could provide with respect to those specific requests that has not already been provided by the Local Board’s regulatory action.

II. The FLHS-Classification Argument Remains a Live Controversy Which Shall be Remanded to the State Board.

The mootness analysis does not end there, however. A careful examination of the Parents’ complaint reveals their lead argument presents a distinctly different claim that has not been mooted by any intervening event.

The first two requests for relief in the Parents’ administrative complaint sought determinations that (1) “the FLHS unit includes objectives and instruction related to LGBTQ+ material and its use for instruction is properly considered part of the FLHS unit”

and (2) “the LGBTQ+-Inclusive Texts prepared for elementary school students are properly considered part of the FLHS instruction.” As the Parents explain, these requests amount to a demand for a regulatory determination that LGBTQ+-inclusive texts are misclassified when placed in the ELA curriculum and that, under COMAR 13A.04.18.01.D and MCPS Regulation IGP-RA, such materials “are not to be used in any other instructional program of the school” outside the FLHS unit.

Mahmoud did not address this FLHS-classification argument. That case concerned only the Free Exercise Clause of the United States Constitution. Further, Regulation IFD-RA has largely mooted this case. That regulation provides parental notice and opt-out procedures, but it does not reclassify the challenged texts as FLHS materials or remove them from the ELA curriculum. The Parents’ contention that these materials must, as a matter of law, be confined to the FLHS unit of the health curriculum remains a live legal controversy—one the Local Board expressly rejected when it found that the texts “are not part of the Family Life Human Sexuality curriculum.”

Having determined the FLHS-classification issue is not moot, we must decide the appropriate disposition. The Parents urge us either to find exhaustion excused and remand to the circuit court for review on the merits, or to order the State Board to issue a decision within thirty days. The Local Board asks us to dismiss the appeal and allow the State Board to complete its proceedings.

We recognize the significant delay the Parents have experienced. They initiated their administrative complaints in August 2023, and the State Board’s stay has been in

place since May 2024, marking an effective two-year delay. Notably, however, the Parents opposed the motion filed by the Local Board to lift the stay, which would have allowed the State Board to come to a decision. We are mindful that Maryland courts are “totally committed to the proposition that justice delayed is justice denied,” *Stanford v. District Title Inc. Co.*, 260 Md. 550, 554 (1971), as well as that a purpose of the Administrative Procedure Act is to “promote prompt, effective, and efficient government.” Md. Code, SG § 10-201(2).

At the same time, however, we are also mindful of the State Board’s primary and paramount jurisdiction over the interpretation of Maryland’s public-school laws and regulations. It is important to note this FLHS-classification argument is quintessentially a matter within the primary jurisdiction of the State Board.

Md. Code, Educ. § 2-205(e) provides:

- (1) Without charge and with the advice of the Attorney General, the State Board shall explain the true intent and meaning of the provisions of:
 - (i) This article that are within its jurisdiction; and
 - (ii) The bylaws, rules, and regulations adopted by the Board.
- (2) ...[T]he Board shall decide all controversies and disputes under these provisions.
- (3) The decision of the Board is final.

...

Our Supreme Court has further held that pursuant to § 2-205,

The State Board has very broad statutory authority over the administration of the public school system in this State, and that the totality of its statutory

authority constitutes a visitatorial power of such comprehensive character as to invest the State Board with the last word on any matter concerning educational policy or the administration of the system of public education

...

The broad statutory mandate given to the State Board requires that special deference be given to its interpretation of statutes that it administers. That deference is over and above that generally afforded to other administrative agencies; while administrative agencies generally may interpret statutes, as well as rule upon other legal issues, and while an agency's interpretation of a statute which it administers is entitled to weight, the paramount role of the State Board of Education in interpreting the public education law sets it apart from most administrative agencies.

Frederick Classical Charter School, Inc. v. Frederick Cnty Bd. Of Educ., 454 Md. 330, 370-71 (2017) (internal citations and quotations omitted) (cleaned up). The FLHS-classification question—whether LGBTQ+-inclusive texts used in the ELA curriculum are properly categorized as FLHS instruction under COMAR 13A.04.18.01.D—is a matter squarely within the State Board's expertise and one on which no final administrative determination has been made.

Importantly, the circumstances originally supporting the State Board's issuance of the stay have materially changed. The United States Supreme Court has now issued its decision in *Mahmoud* and the Local Board has itself filed a Motion to Lift Stay, a motion the Parents opposed. The basis for the stay, namely, awaiting resolution of the federal litigation, has been substantially undermined by these developments. *Mahmoud* addressed the free exercise question and remanded the case for further proceedings; it did not resolve the state-law FLHS-classification argument that is the centerpiece of the Parents'

complaint. There is no longer a sound basis for continuing to delay the State Board’s consideration of the Parents’ remaining live claims.

We are persuaded that, rather than finding exhaustion excused and bypassing the State Board entirely, the most appropriate disposition is to remand this matter to the State Board with instructions to lift its stay and proceed to a decision on the FLHS-classification argument. This approach respects the State Board’s primary jurisdiction over educational policy matters, while also ensuring the Parents are not subjected to further indefinite delay.

We need not reach the question of whether the State Board possessed inherent authority to issue the stay in the first instance. Whatever the scope of the State Board’s power to issue the stay, the original justification for the stay—the pendency of the federal *Mahmoud* litigation—has been superseded by the Supreme Court’s decision and the Local Board’s own motion to lift the stay. The continued maintenance of the stay under these changed circumstances would be inconsistent with the State Board’s regulatory mandate to “make the final decision in all appeals” and to deliver decisions “promptly.” COMAR 13A.01.05.09.A, .E.

THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY IS DISMISSED IN PART; REMANDED IN PART WITH INSTRUCTIONS. APPELLANT TO PAY THE COSTS.