Circuit Court for Montgomery County
Case No. C-15-CV-24-003195

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0484

September Term, 2025

STEPHANIE PATE

v.

MONTGOMERY COUNTY BOARD OF EDUCATION

Wells, C.J.,
Friedman,
Albright,

JJ.

Opinion by Wells, C.J.

Filed: June 5, 2026

Appellant, Stephanie Pate, is the parent of an elementary school child 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. Pate is appealing the Circuit Court for Montgomery County's denial of her Petition for Judicial Review of the Maryland State Board of Education's ("the State Board") order staying her administrative appeal pending resolution of federal litigation in *Mahmoud v. Taylor*, 606 U.S. 522 (2025). Pate presents the following questions on appeal, which we have rephrased[1]:

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] Pate's 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 the 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 need not address the merits of these issues as we conclude Pate's notice-and-opt-out claims are moot in substantial part, and while the FLHS-classification issue remains viable, it is an issue of which the State Board has primary jurisdiction. 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.

Pate objected to this policy on multiple grounds. *First*, Pate contended that 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*, Pate argued the Local Board's actions violated her parental 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.

Pate filed an administrative complaint with her child's school principal in August 2023. The complaint was denied at each local administrative level: the principal, the Superintendent's designee, and the Local Board, which issued its adverse "Decision & Order" on October 27, 2023. In its 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 her appeal to the State Board, Pate 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

Pate timely filed her appeal with the State Board, and full briefing on the merits was completed by February 2024. On May 21, 2024, without issuing a decision on the merits, the State Board entered Order No. OR24-09, staying Pate's appeal "until such time as the federal [*Mahmoud*] case and any appeals are resolved." The State Board reasoned that,

although Pate was not a party to the federal *Mahmoud* litigation, that case "raises the same 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

Pate filed a Petition for Judicial Review in the Circuit Court for Montgomery County on June 20, 2024, asserting that the State Board had frustrated exhaustion of her 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 Pate's arguments that exhaustion was excused, finding her reliance on *Dorsey v. Bethel A.M.E. Church*, 375 Md. 59 (2003), to be "misplaced."

Pate 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 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 Pate's administrative proceeding filed a separate 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—a claim Pate does not raise. Pate's lead argument—that LGBTQ+-inclusive texts are properly classified as FLHS instruction that must be confined to the FLHS unit of the health curriculum—was not before the Supreme Court in *Mahmoud*. As Pate observes, 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 *Mahmoud* decision, 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 lists of core instructional materials prior to each marking period 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. Pate 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

Pate advances four principal contentions on appeal. *First*, she argues 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, Educ. Art. § 2-205(e)(2)). *Second*, even if the State Board possesses some inherent stay authority, Pate contends the State Board exceeded it here, because the *Mahmoud* litigation involved different parties and did not address her 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*, Pate asserts 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. *Fourth*, Pate requests, 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. 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 Pate's 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 Pate sought from the State Board, and that there is accordingly no effective relief this Court can provide.

Pate contests the mootness argument on several grounds. She maintains the Local Board's reading of her complaint is too narrow and that, properly understood, her

complaint demands a determination that LGBTQ+-inclusive texts may not be used in the ELA curriculum at all. Pate further argues that the opt-out procedures implemented under Regulation IFD-RA are limited to parents with "sincerely held religious beliefs" and therefore do not provide her relief, as she does not object on religious grounds. She also contends the "Refrigerator Curriculum" is inadequate to provide the relief she seeks, as it does not address the FLHS-classification issue. [2]

DISCUSSION

It is well established under Maryland law that administrative agencies are creatures of statute whose powers are limited to those affirmatively granted by the General Assembly. *See Adamson v. Correctional Medical Services, Inc.*, 359 Md. 238, 250 (2000). While the Parents emphasize that no statute, regulation, or provision of the Administrative Procedure Act expressly authorizes the State Board to stay the issuance of a final decision, the State Board nonetheless possesses broad visitatorial power over the administration of public education under Section 2-205 of the Education Article. *See Frederick Classical Charter Sch., Inc.*, 454 Md. at 370 ("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

[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].

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.") (cleaned up).

Furthermore, our Supreme Court has consistently held that:

> [W]here the Legislature has delegated such broad authority to a state administrative agency to promulgate regulations in an area, the agency's regulations are valid under the statute if they do not contradict the statutory language or purpose. We have repeatedly rejected the argument, similar to that made by Lussier here, that the Legislature was required expressly or explicitly to authorize the particular regulatory action.

Lussier v. Maryland Racing Com'n, 343 Md. 681, 688 (1996). See also *Christ by Christ v. Maryland Dept. of Natural Resources*, 335 Md. 427, 437-38 (1994) ("In numerous situations where the General Assembly has delegated similar broad power to an administrative agency to adopt legislative rules or regulations in a particular area, this Court has upheld the agency's rules or regulations as long as they did not contradict the language or purpose of the statute.")

This broad supervisory authority, together with the State Board's established regulatory powers to manage the procedural aspects of appeals before it supports the conclusion that the State Board retains an inherent authority to stay its proceedings in appropriate circumstances, even in the absence of an express statutory grant. This is especially true where doing so serves the sound administration of the matters before it. Thus, the State Board was authorized to issue a stay pending the *Mahmoud* case.

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

We now turn to the notice-and-opt-out claims, which we determine 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 Pate—advance parental notice and the right to opt out of LGBTQ+-related instruction—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 Pate sought in her administrative complaint (the right to opt out and the right to advance review of instructional materials).

We acknowledge Pate's arguments that the new regulations are inadequate in practice, particularly her contention that the opt-out procedures are limited to parents with sincerely held religious beliefs and therefore do not extend to her, as she does not object on religious grounds. 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 Pate's 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 Pate's complaint reveals her lead argument presents a distinctly different claim that has not been mooted by any intervening event.

The first two requests for relief in Pate's 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 Ms. Pate explains, 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.

This FLHS-classification argument has not been addressed by *Mahmoud*, which concerned only the Free Exercise Clause of the United States Constitution, a claim Pate does not raise, nor has it been mooted by Regulation IFD-RA, which provides parental notice and opt-out procedures but does not reclassify the challenged texts as FLHS materials or remove them from the ELA curriculum. Pate's 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 and 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 argument is not moot, we must decide the appropriate disposition. Pate urges 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 Pate has experienced. She initiated her 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, Pate 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. The 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, namely, 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, which Pate opposed. The Board's stated basis for the stay, resolving the federal litigation, has been substantially undermined by these developments. While *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 Pate's 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 powers in issuing stays, 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 AFFIRMED; REMANDED IN PART WITH INSTRUCTIONS. APPELLANT TO PAY THE COSTS.