Circuit Court for Baltimore County
Case No. C-03-CV-21-002393

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0162

September Term, 2022

IN THE MATTER OF
BERNARD MCFADDEN

Nazarian,
Tang,
Albright,

JJ.

Opinion by Nazarian, J.

Filed: December 8, 2022

In June 2019, after fifteen years of working for Woodlawn Motor Coach ("Woodlawn") driving school charter buses for Baltimore County Public Schools ("BCPS"), Bernard McFadden was informed by Woodlawn that BCPS had decided to ban him from driving for BCPS and to seek his disqualification from driving school vehicles in Maryland. BCPS reached this decision after requiring Mr. McFadden to complete a background check application and determined, after reviewing the completed application, that he had failed to disclose criminal convictions that disqualified him from working as a school vehicle driver under Maryland Code (1978, 2022 Repl. Vol.) § 6-113 of the Education Article ("ED") and COMAR 13A.06.07.07C, and under the terms of BCPS's contract with Woodlawn. Mr. McFadden appealed the decision within the Department of Education, which affirmed BCPS's decision at every stage and culminated in an opinion from the Maryland State Board of Education (the "State Board") upholding BCPS's decision. Mr. McFadden then sought judicial review of the State Board's decision, arguing, as he did on appeal to the agency, that neither the statute, the regulation, nor the contract provided grounds for the ban and disqualification. The Circuit Court for Baltimore County affirmed the State Board's decision and so do we.

I. BACKGROUND[1]

Until June 2019, Mr. McFadden worked as a bus driver for Woodlawn, which contracts with BCPS to supply drivers for school field trips. The buses Mr. McFadden

[1] With minimal deviation, we restate here the uncontested facts and procedural history of this case as articulated in the State Board's Opinion issued on June 22, 2021.

drove were marked as charter buses, as required by Maryland Code (1977, 2020 Repl. Vol.), § 13-420(c) of the Transportation Article ("TR"), and always had one or more chaperones on board when he was driving. Mr. McFadden had been employed in this role for approximately fifteen years without incident.

In 2019, Woodlawn and BCPS entered into a new contract under which Woodlawn would provide drivers for field trips. The following provision in Section 15 of the new contract requires any employee of Woodlawn to complete a criminal background check before they can drive for BCPS:

> All Vendor's employees working on BCPS property are required to be fingerprinted by the Maryland Criminal Justice Information System, or by an authorized private provider acceptable to BCPS . . . . BCPS reserves the right to reject the Vendor's employees based on information received from said background investigations. In accordance with Md. Ed. Code Ann., § 6-113 (b), the contractor shall not knowingly assign any employee to work on school premises if the employee has been convicted of a crime identified in Md. Ed. Code Ann., §6-113 (a).
>
> Vendor's employees who have unsupervised, uncontrolled or direct access to children or who are assigned duties in a school where unsupervised contact with children is likely are required to have a complete fingerprint-based background check at BCPS's direction . . . .

On June 25, 2019,[2] pursuant to Woodlawn's contract with BCPS, Mr. McFadden was required to complete a background check application for non-BCPS employees, and the

[2] As the State Board noted in its June 22, 2021 opinion, the record is unclear as to why Mr. McFadden was not asked to complete a criminal background check before this date. The State Board is correct, though, that in Maryland, an alleged past failure of a state

Continued . . .

application asked several questions about his criminal history. One of the questions asked "Have you ever been convicted, or placed on probation before judgment (PBJ), found not criminally responsible, or have pending criminal charges against you without a final disposition for an offense other than a minor traffic violation?" Mr. McFadden checked the box marked "No" in response, but nevertheless disclosed two convictions—one for Controlled Dangerous Substance ("CDS") Possession and one for CDS Possession with intent to distribute, both from 1990—elsewhere on the application. Mr. McFadden also initialed under the following warning:

> WARNING: Failure to report criminal convictions, Probation Before Judgment (PBJ) dispositions, or pending charges may result in termination of your employment with [BCPS]. Any individual who fails to disclose prior conviction(s) or the existence of pending charge(s) shall be guilty of perjury. This is a misdemeanor offense and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding 1 year or both.

That same day, Mr. McFadden also signed an "Authorization and Release" form that allowed BCPS to procure a background report on him, and he circled "Yes" in response to the question "Have you disclosed all your previous criminal convictions unless you have received confirmation that they have been expunged?" This form advised that applicants who "are not sure about certain information that may be in [their] criminal history record"

agency to enforce a prohibition does not bar the state or agency from enforcing it. *See Salisbury Beauty Schs. v. State Bd. of Cosmetologists*, 268 Md. 32, 65 (1973) ("[T]he mere acquiescence, laches, lapse of time or non action on the part of the public agents or officers will not be imputed to the government to work an estoppel." (citations omitted)).

should refrain from completing the accompanying background check application until they've contacted "the court(s) and/or Department of Social Services (DSS)" or the "attorney who handled your case." The form also contained a warning that failure to disclose required information would "result in the termination of your employment with [BCPS]."

On June 27, 2019, BCPS received Mr. McFadden's background report from the Criminal Justice Investigations Service ("CJIS"). The report showed that Mr. McFadden had been convicted of the following charges: in 1974, murder, for which he was sentenced to ten years' incarceration and paroled in 1976; in March 1990, CDS possession, for which he was sentenced to six months' incarceration; in July 1990, CDS possession with intent to manufacture and distribute, for which he was sentenced to fifteen years' incarceration; and, in July 1991, possession and intent to distribute cocaine, for which he was sentenced to fifteen years' incarceration. After reviewing this report, on June 28, 2019, an investigations and records representative in the BCPS Office of Human Resources ("OHR") advised Woodlawn that Mr. McFadden was not allowed to drive buses for BCPS because of his convictions. That same day, BCPS filed a disqualification form with the Maryland State Department of Education, and Mr. McFadden was thereafter prevented from driving a school vehicle in Maryland. On or about July 2, 2019, Woodlawn advised Mr. McFadden of these actions.

On July 26, 2019, Mr. McFadden appealed OHR's decision to the BCPS Superintendent, who appointed the manager of employee and student appeals as his

Designee to make a decision on his behalf. On September 5, 2019, through counsel, Mr. McFadden informed the Designee that the CJIS report that BCPS had received contained errors and that a revised report would remove convictions for crimes BCPS relied on in banning Mr. McFadden as a driver. He also argued that the regulations on which OHR based its decision didn't apply to him because he drove only school charter buses with chaperones and thus was not a "school vehicle driver," as defined in the regulations.

In a decision issued on January 17, 2020, the Designee concluded that it was not arbitrary, unreasonable, or illegal for BCPS to bar Mr. McFadden from driving school charter vehicles for BCPS. She found that Mr. McFadden had failed to disclose his criminal background fully, as the forms he submitted to BCPS pursuant to the contract between BCPS and Woodlawn required, and that this failure alone provided a basis for BCPS to ban him from driving buses. The Designee also found that ED § 6-113(a) and (b) bar BCPS from retaining Mr. McFadden as a charter bus driver due to his conviction of a crime of violence as defined by Maryland Code (2002, 2021 Repl. Vol.), § 14-101 of the Criminal Law Article ("CR"). She also concluded that under COMAR 13A.06.07.07C, BCPS was mandated to disqualify Mr. McFadden from driving any school buses in Maryland. Additionally, while recognizing Mr. McFadden's argument that as a charter bus driver he never drove without a chaperone, she concluded nonetheless that "it is reasonable to find

that Mr. McFadden could be alone with students with direct, unsupervised, and uncontrolled access to students."

On February 14, 2020, Mr. McFadden appealed the Designee's decision to the Board of Education of Baltimore County (the "Local Board"), and a Hearing Examiner was appointed to review the appeal. By this time, the parties agreed that CJIS had reported incorrectly that Mr. McFadden had been convicted of murder and that he actually had been convicted of manslaughter instead. On October 14, 2020, the Hearing Examiner issued an opinion recommending that the Local Board uphold the Designee's finding that Mr. McFadden was ineligible to serve as a contractual bus driver for BCPS and that he met the criteria for disqualification from driving school buses in the state.

After receiving the Hearing Examiner's recommendations, Mr. McFadden sought oral argument before the Local Board. The Local Board heard arguments via video conference on January 26, 2021, then issued an Order on February 9, 2021 adopting the Hearing Examiner's findings. Mr. McFadden timely appealed this matter to the State Board, which affirmed the Local Board's decision on June 22, 2021, finding that the Local Board "acted consistent with the law" and its decision was "not arbitrary, unreasonable or illegal." Mr. McFadden filed a Petition for Judicial Review with the Circuit Court for Baltimore County on July 22, 2021, and the circuit court issued its opinion affirming the State Board's decision on February 22, 2022. Mr. McFadden then filed a timely notice of appeal to this Court.

II. DISCUSSION

We are asked to decide whether the State Board's decision to affirm the Local Board in banning Mr. McFadden from driving buses for BCPS and disqualifying him as a school bus driver in Maryland were improper under Maryland's Education Article, the state education regulations, *and* Woodlawn's contract with BCPS.[3] He challenges the State Board's decision under all three authorities, but if it was authorized by any of them, the decision stands. And although Mr. McFadden's actual track record as a charter bus driver might suggest that the policies underlying the statute, the regulation, and the contract cast too wide a prohibitive net, all three authorities nevertheless authorized the decision to ban and disqualify him.

It is the State Board's decision, not the decision of the circuit court, that is before us. *See Mihailovich v. Dep't of Health & Mental Hygiene*, 234 Md. App. 217, 222 (2017) ("It is because an appellate court reviews the agency decision under the same statutory standards as the circuit court . . . that we analyze the agency's decision, not the circuit

[3] Mr. McFadden phrased his Question Presented as follows:

> In consideration of the factual and legal arguments set forth [in Mr. McFadden's brief], was the State Board's decision:
>
> (1) unsupported by substantial evidence,
>
> (2) arbitrary or capricious, and/or
>
> (3) fatally flawed by errors of law such that it should be reversed by this Court?

The Board of Education of Baltimore County phrased its Question Presented as "Whether the Maryland State Board of Education properly interpreted § 6-113 of the Education Article?"

court's ruling." (cleaned up)). In reviewing that decision, we may consider "only the materials that were in the record before the agency at the time it made its final decision." *Bd. of Educ. v. Heister*, 392 Md. 140, 147 n.5 (2006) (citation omitted).

Two standards of review apply when a court reviews State Board rulings and decisions: "[t]here is ultimately the question of what standard the court is to apply in reviewing the [State Board] decision, but" there is also "the question of what standard should [have] be[en] applied by [the State Board] when, in an appellate capacity, it reviews the decision of a county board of education." *Baltimore City Bd. of Sch. Comm'rs v. City Neighbors Charter Sch.*, 400 Md. 324, 342 (2007). The standards that the State Board applies to decisions by local school boards are articulated in COMAR 13A.01.05.06:

> A. General. Decisions of a local board involving a local policy or a controversy and dispute regarding the rules and regulations of the local board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal.
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> * * *
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> D. The appellant shall have the burden of proof by a preponderance of the evidence.
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> E. State School Laws and Regulations. The State Board shall exercise its independent judgment on the record before it in the explanation and interpretation of the public school laws and State Board regulations.

Mr. McFadden argues generally that the State Board's decision was "(1) unsupported by substantial evidence, (2) arbitrary or capricious, and/or (3) fatally flawed by errors of law such that it should be reversed by this Court," and he does not appear to suggest that the State Board applied the wrong standard of review to the Local Board's decision. Rather,

we understand his arguments as contending that the State Board, in applying the correct standard of review, reached the wrong conclusions.

The standard of review that a *court* applies when reviewing an agency decision depends upon whether the issues on appeal are issues of fact or issues of law. *Hurl v. Bd. of Educ.*, 107 Md. App. 286, 305 (1995). Issues of fact are reviewed against the substantial evidence test. *Id.* "Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support an agency's conclusion." *Id.* (citation omitted). When applying this test, "a court is not to substitute its judgment for the expertise of an agency, rather the test is a deferential one, requiring restrained and disciplined judicial judgment so as not to interfere with the [agency's] factual conclusions." *Board of Sch. Comm'rs v. James*, 96 Md. App. 401, 419 (1993) (cleaned up). Courts must defer to both the agency's fact-finding and the inferences the agency drew from the facts. *Id.* (citations omitted). Accordingly, when a court exercises judicial review of an agency's factual conclusions, the court will not overturn the agency's decision "if a reasoning mind could reasonably have reached the conclusion" that the agency reached. *Id.* (citation omitted).

On the other hand, we review an agency's conclusions of law *de novo*. *Mihailovich*, 234 Md. App. at 222. However, "[a]n administrative agency's legal conclusions are given deference to the extent that they are 'premised upon an interpretation of the statutes that the agency administers and the regulations promulgated for that purpose.'" *Broadway Servs., Inc. v. Comptroller*, 478 Md. 200, 214–15 (2022) (*quoting Frey v. Comptroller*, 422 Md. 111, 138 (2011)). And where, as here, the decision at issue was made by the State

Board of Education on matters related to state education policy, the decision is entitled to heightened deference:

> Pursuant to § 2–205,[4] the State Board "has very broad statutory authority over the administration of the public school system in this State, [and] . . . 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." *City Neighbors*, 400 Md. at 342–43, 929 A.2d 113 (2007) (quoting *Bd. of Educ. of Prince George's Cty. v. Waeldner*, 298 Md. 354, 359–62, 470 A.2d 332 (1984)). . . .
>
> "[T]he broad statutory mandate given to [the State Board] requires that special deference be given to its interpretation of statutes that it administers." *City Neighbors*, 400 Md. at 343, 929 A.2d 113. That deference is over and above that generally afforded to other administrative agencies; "[w]hile 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." *Id.* (quoting *Bd. of Educ. for Dorchester Cty. v. Hubbard*, 305 Md. 774, 790–91, 506 A.2d 625 (1986) (footnote omitted)).

Frederick Classical Charter Sch., Inc. v. Frederick Cnty. Bd. of Educ., 454 Md. 330, 370–71 (2017). Mr. McFadden's challenge to the State Board's decision includes arguments that are both factual and legal in nature.

[4] ED § 2-205(e)(1) grants the State Board the authority to "explain the true intent and meaning" of the Education Article and the "bylaws, rules, and regulations adopted by the Board."

A. ED § 6-113 Provided Grounds For Banning Mr. McFadden From Driving for BCPS And Disqualifying Him As A School Charter Bus Driver Because Mr. McFadden Had "Direct, Unsupervised, And Uncontrolled Access To Children" And Had Been Convicted Of A Crime Of Violence.

Mr. McFadden *first* takes issue with the State Board's finding that ED § 6-113 provided adequate grounds for his dismissal. He argues that he does not meet the disqualification criteria laid out in the statute, which prohibits people convicted of certain crimes from working in jobs that give them direct, unsupervised, and uncontrolled access to children:

> (a) A county board may not knowingly hire or retain any individual who has been convicted of a crime involving:
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> * * *
>
> (3) A crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in this State.
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> (b) A local school system contract shall provide that a contractor or subcontractor for the local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of a crime identified under subsection (a) of this section.

ED § 6-113. The parties agree that Mr. McFadden was a "contractor for the local school system," so if he both (1) had "direct, unsupervised, and uncontrolled access to children" and (2) has ever been convicted of a crime of violence as defined in CR § 14-101, ED § 6-113 disqualifies him from working as a school charter bus driver in Maryland. There is no disagreement about the meaning of the statute. Rather, Mr. McFadden challenges the

State Board's determination that it was reasonable for the Local Board to conclude that Mr. McFadden had been convicted of a relevant crime and could, in his role as a driver, have direct, unsupervised, and uncontrolled access to children. Mr. McFadden's quarrel is therefore with the State and Local Boards' conclusions of fact, so we look at whether substantial evidence in the record supports those conclusions. And it does.

With respect to whether he had "direct, unsupervised, and uncontrolled access to children" in his role as a charter bus driver, Mr. McFadden views as dispositive the Local Board stipulation that "[w]hen he drove for the school system, . . . Mr. McFadden operated only charter buses, and always did so with one or more chaperones on board." Although he doesn't dispute that he had direct access to children, he believes the stipulation "render[s] nonsensical" the State and Local Boards' conclusions that his access to children could have also been unsupervised and uncontrolled. But the stipulation and the Board's conclusions aren't mutually exclusive. In its opinion, the State Board noted that despite the stipulation, the Hearing Examiner and the Superintendent's Designee both concluded on the record that "there could be situations where it is reasonable to find that Mr. McFadden could be alone with students with direct, unsupervised, and uncontrolled access to students." Indeed, the Hearing Examiner gave specific examples of when this might occur:

> On the issue of [Mr. McFadden's] access to students, while field trips for which [Mr. McFadden] serves as a bus driver are routinely chaperoned events, there may be potential situations when a bus driver could still have direct access or interaction with students, such as when students exit or enter a bus and no other adult person is present, or if a bus driver interacts with students, outside of the bus, and no other adult persons are in the immediate vicinity of the interaction.

These examples are not farfetched, and Mr. McFadden failed to demonstrate on the record that they couldn't occur. It was reasonable on this record for the State Board to conclude that Mr. McFadden could have direct, unsupervised, and uncontrolled access to children.

Mr. McFadden also contends that the record does not support a finding that he has been convicted of a crime of violence, as that term is defined in CR § 14-101. Section 14-101(a) defines the term "crime of violence" to include "murder,"[5] as well as "manslaughter, except involuntary manslaughter." Mr. McFadden admits that he was convicted of manslaughter in 1974, but he claims that he cannot recall whether he was convicted of voluntary or involuntary manslaughter, and his corrected CJIS report sheds no light on this mystery. Given this information vacuum, Mr. McFadden believes that the burden should lie with the State and Local Boards to prove that his conviction was for voluntary manslaughter. But that's not the law. On appeal to the State Board, it was Mr. McFadden's burden to show that no reasoning mind could have concluded, as the Local Board did, that Mr. McFadden had been convicted of voluntary manslaughter. *See* COMAR 13A.01.05.06A–D. By failing to produce any evidence that he was convicted of involuntary manslaughter, Mr. McFadden failed to meet that burden. It was reasonable for

[5] Mr. McFadden notes that "[a]t the time the initial decision was made in the summer of 2019 to ban Mr. McFadden from driving charter buses, the Baltimore County school system was under the mistaken impression that Mr. McFadden had been convicted of murder." (Emphasis removed.) This is true as far as it goes, but even had the original report been accurate, the result would have been the same since voluntary manslaughter is also a CR § 14-101 crime of violence. On appeal to the State Board, Mr. McFadden did not make any arguments or provide any evidence that would support a conclusion to the contrary.

the State Board to conclude that Mr. McFadden had a conviction for a crime of violence as defined by CR § 14-101.

For these reasons, we affirm the State Board's determination that ED § 6-113 authorized BCPS to ban Mr. McFadden from driving for the school system and disqualify him from working as a school charter bus driver in Maryland. And since ED § 6-113 provides an adequate and independent ground for the ban and disqualification decisions, we could stop there, but we will address Mr. McFadden's other contentions as well.

B. The State Board Did Not Err In Concluding That COMAR 13A.06.07.07 Applies To School Charter Bus Drivers.

Mr. McFadden also challenges the State Board's determination that COMAR 13A.06.07.07 provided grounds for his ban and disqualification. As the circuit court explained, "[t]he [Maryland State Department of Education] and the Motor Vehicle Administration are authorized to establish standards for the safe operation of school buses. *See* ED § 2-205 and § 8-410 & TR §[ ]25-110." Under this authority, the State Board promulgated COMAR 13A.06.07.07, which sets forth criteria for the disqualification of school vehicle drivers including, among other reasons, for past convictions:

> C. Disqualification for Criminal Conduct.
>
> (1) A local school system shall disqualify an individual school vehicle driver or trainee from operating a school vehicle if the individual:
>
> (a) Has been convicted of a crime or if criminal charges are pending against the individual for a crime involving:
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> * * *
>
> (iv) An alcohol or controlled substances offense defined in federal or State law,

> unless the supervisor of transportation determines and reports the determination in writing, to the Department's Office of Student Transportation, that the permanent disqualification should not apply because mitigating circumstances exist;
>
> (v) A crime of violence as set forth in Criminal Law Article, § 14-101, Annotated Code of Maryland . . . .

Mr. McFadden contends that this regulation doesn't apply to him because he drives a "school *charter* vehicle" (emphasis added), which, he argues, is not the same as a "school vehicle driver" which is governed by the statute. He cites COMAR 13A.06.07.01B, which provides different definitions for "school charter vehicle" and "school vehicle." This argument asks us to interpret a regulation, so we review it *de novo*. *Concerned Citizens v. Montgomery Cnty. Plan. Bd.*, 254 Md. App. 575, 605 (2022) ("It is well established that the interpretation of a regulation is akin to the interpretation of a statute. It is an issue of law which, ultimately, the court must decide." (cleaned up)).

We look first to the regulation's plain meaning. *Id.* at 605–06. COMAR 13A.06.07.01B(26)–(27) explains that "'[s]chool charter vehicle' has the meaning stated in Transportation Article, § 13-420(c), Annotated Code of Maryland," and "'[s]chool vehicle' has the meaning stated in transportation Article, § 11-154, Annotated Code of Maryland." Additionally, COMAR 13A.06.07.01B(29)(b) defines "[s]chool vehicle driver" as including individuals who are "employed by a school system or with an entity contracting with a school system as a school vehicle driver." COMAR 13A.06.07.01B does

not define the term "school charter vehicle driver." Turning to the referenced statutes, we see that TR § 11-154 provides a detailed definition for the term "[s]chool vehicle," while TR § 13-420 merely lays out registration requirements for school vehicles based on the purposes for which those vehicles are used. In pertinent part, TR § 13-420(b)–(c)(1) states that "a Type I school vehicle (school bus)" that is "operated for any purpose in addition to" use for "the transportation of children, students, or teachers for educational purposes or in connection with a school activity or . . . to provide transportation for persons 60 years old or older to civic, educational, social, or recreational activities" must "display distinctive 'school charter' registration plates issued by the Administration." We agree with the circuit court that "[w]hen reading the statutes contemporaneously, it becomes clear that a school charter vehicle is merely a type of a school vehicle, not an entirely different class of vehicle," and that when COMAR 13A.06.07.07 refers to and sets standards for "school vehicle drivers," the term also encompasses "school charter vehicle drivers."

Even if we were to find that the statutes and regulations were ambiguous as to whether a "school charter vehicle driver" is different from and not encompassed in the term "school vehicle driver," the next step in our analysis would be to "'look to the agency's interpretation of its own regulation.'" *Concerned Citizens*, 254 Md. App. at 606 (*quoting Board of Liquor License Comm'rs v. Kougl*, 451 Md. 507, 517 (2017)). Indeed, "[i]t is well-settled that an administrative agency is entitled to deference in the interpretation of its own propounded regulations unless the agency's interpretation is clearly erroneous or inconsistent with the regulation." *Id.* (citations omitted). And as discussed above, the level

of deference due to the State Board in interpreting its own regulations and governing statutes is even greater than that generally due to an agency's legal conclusions. Against that backdrop, it was not clearly erroneous or inconsistent with the law or education regulations for the State Board to conclude, as it did, that "the school charter vehicle designation under [TR § 13-420] relates to the registration of types of school vehicles but does not impact or change the underlying requirements for a driver to be qualified to transport students," and we agree that COMAR 13A.06.07.07C "hold[s] the driver of a 'school vehicle' and a 'school charter vehicle' to the same safety standards and requirements (other than registration)." And because COMAR 13A.06.07.07C(1)(a)(iv) disqualifies drivers who have controlled substance convictions[6] and COMAR

[6] Although he admits to having CDS convictions, Mr. McFadden suggests that the State Board lacks the "legal authority" to "restrict the driving of school buses" in the manner provided for under COMAR 13A.06.07.07C(1)(a)(iv). Specifically, he claims that this regulatory provision conflicts with and thus is preempted by ED § 6-113(b), which does not disqualify school contractors on the basis of CDS convictions. But although it's true that in Maryland, when a regulation conflicts with state law, the regulation "is preempted by the State law and is rendered invalid," *Worton Creek Marina, LLC v. Claggett*, 381 Md. 499, 513 (2004) (citations omitted), there is no such conflict here. "The crux of conflict preemption is that a political subdivision may not prohibit what the State by general public law has permitted, but it may prohibit what the State has not *expressly* permitted." *Montgomery County v. Complete Lawn Care, Inc.*, 240 Md. App. 664, 688 (2019) (cleaned up). ED § 6-113(b) doesn't expressly require that those who have been convicted of CDS possession be allowed to work as school contractors, so COMAR 13A.06.07.07C(1)(a)(iv) does not conflict with the state law by disqualifying these candidates. Indeed, school systems can comply easily with both the state law and the regulation by hiring school vehicle drivers who have neither violent criminal nor CDS convictions. Thus, the regulation is valid and not preempted. And because Mr. McFadden failed to demonstrate on the record, in the manner required by the regulation, that "mitigating circumstances exist," he was properly subject to disqualification under COMAR 13A.06.07.07C(1)(a)(iv).

13A.06.07.07C(1)(a)(v) disqualifies drivers who have CR § 14-101 violent crime convictions, both subsections of the regulation provided independent and adequate grounds for Mr. McFadden's ban and disqualification.

C. The Contract Between BCPS And Woodlawn Provided Adequate Grounds For BCPS To Ban Mr. McFadden On The Basis Of Their Background Checks And Required Compliance With ED § 6-113.

Mr. McFadden's final argument is that the State Board erred in concluding that the Local Board had the authority to ban Mr. McFadden from driving for BCPS on the basis of its contract with Woodlawn. He appears to concede that BCPS's contract with Woodlawn allowed BCPS to conduct a background investigation on him and to ban him from driving for BCPS based on his failure to disclose past convictions and on other information gleaned from the investigation. He argues nevertheless that his dismissal was improper under the contract because his failure to disclose all of his prior convictions was due to the fact that the wording on the background check application was "objectively confusing."[7] Specifically, Mr. McFadden claims that he was confused by the question on the background check application that asked, "Have you ever been convicted, or placed on probation before judgment (PBJ), found not criminally responsible, or have pending

[7] Mr. McFadden also argues that his dismissal was improper under the contract because his failure to disclose all of his prior convictions did not inflict any "appreciable harm" on BCPS, since it was able to receive his full CJIS report within twenty-four hours after he completed the application. This argument isn't grounded in the language of the contract or supported by any authority, though, and can't overcome the language of the contract itself.

criminal charges against you without a final disposition for an offense other than a minor traffic violation?" In response to this question, he answered "No."

The decision of whether to credit Mr. McFadden's claim that he was confused by the form was a factual one and is subject to substantial evidence review. And the facts on the record amply support a finding that Mr. McFadden either was not confused by this question at all or, even if he was, that he nevertheless was aware of his obligation to disclose all his prior convictions and still failed to do so. Although Mr. McFadden answered "No" to the question with which he takes issue, he still disclosed his two CDS convictions on the application but left out his manslaughter conviction. He also circled "Yes" in response to the question, "Have you disclosed all your previous criminal convictions unless you have received confirmation that they have been expunged?" It's not clear that the State and Local Boards actually made any determination about whether or not Mr. McFadden was in fact confused by the form or that his omission was the result of this confusion, but they didn't have to—it was up to the Local Board to determine the meaning of its contract with Woodlawn, *see* COMAR 13A.01.05.06A, and it concluded that, confused or not, Mr. McFadden's omission of his manslaughter conviction on the background check application was grounds for banning him from driving for BCPS under the terms of the contract.[8] Because the Local Board's interpretation of its contract was not

[8] In the Designee's decision letter to Mr. McFadden, which the Local Board affirmed, the Designee stated, "I find that Mr. McFadden did not disclose all that he was required to disclose on the Background Check Application. . . . For this reason alone, BCPS could have declined to allow Mr. McFadden to work as a contractor for the school system."

"arbitrary, unreasonable, or illegal," the State Board was required to uphold the Local Board's determination, *see id.*, and we affirm the State Board's decision to do so.

Mr. McFadden points out correctly that, even if his failure to disclose all his criminal convictions on the background check paperwork for BCPS was grounds for BCPS to ban him from driving for BCPS, it did not create a basis for his disqualification from driving school charter buses in the State of Maryland. This argument is of no consequence, however, because the State and Local Boards also concluded that Section 15 of the contract, which required compliance with ED § 6-113, provided grounds for Mr. McFadden's ban and disqualification under the terms of the contract. And in any case, the contract was just one of the independent and adequate grounds on which the State Board based its decision to affirm the Local Board. We recognize that the convictions that formed the basis for Mr. McFadden's dismissal are in the distant past, and that, in light of his unblemished fifteen-year history of driving school charter vehicles in Maryland, this decision seems unfair on a practical real-life level. Unfortunately, the law authorized the State and Local Boards to reach the conclusions they did in this case and requires us to affirm their decisions.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. APPELLANT TO PAY COSTS.