

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2221

September Term, 2024

IN THE MATTER OF TIMOTHY JANSS, ET AL.

Arthur,
Ripken,
Hotten, Michele D.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: February 20, 2026

This appeal concerns the efforts of appellants, Timothy and Dagmar Janss (“Parents”), to opt their child out of a high school health education class administered by appellee, Montgomery County Public Schools (“MCPS”). Following changes that went into effect in the 2022–2023 school year, Parents commenced formal efforts to obtain an opt-out, or effectuate an alternative, in early 2023. MCPS declined to allow Parents to opt their child out of the health class and declined Parents’ proposals to obtain credit for the health class through alternative means. Parents sought relief through administrative review, and when that was denied, they sought judicial review in the Circuit Court for Montgomery County, which also denied their request. Parents have now timely appealed to this Court.

FACTUAL AND PROCEDURAL BACKGROUND

COMAR Regulations and Graduation Requirements

The governmental structure for oversight of primary and secondary education in the state of Maryland “is the State Department of Education,” created by Maryland Code section 2-101 (1978, Repl. Vol. 2022) of the Education Article (“Educ.”). *Donlon v. Montgomery Cnty. Pub. Schools*, 460 Md. 62, 85 n.11 (2018) (quoting *Chesapeake Charter, Inc. v. Anne Arundel Cnty. Bd. of Educ.*, 358 Md. 129, 137 (2000)). Within the Department of Education is the State Board of Education (“MSBE”), which serves as the head of the Department. *Id.* (quoting *Chesapeake Charter, Inc.*, 358 Md. at 137); *see also* Educ. § 2-102(a). The MSBE “is vested with ultimate supervisory authority for determining educational policy in Maryland and administering the public school system[.]” *Donlon*, 460 Md. at 85 n.11 (quoting *Chesapeake Charter, Inc.*, 358 Md. at 137); *see also* Educ. § 2-205. In addition to its power to determine and administer the educational policy

of the State, the MSBE is also charged with establishing high school curriculum and graduation requirements, and with adopting bylaws, rules and regulations for the administration of the public schools. Educ. § 2-205(c); Educ. § 7-205(b); Educ. § 7-205.1(b)(1).

To fulfill its mandate, the MSBE has adopted regulations regarding educational policy and school administration which can be found in the Code of Maryland Regulations (“COMAR”). These include the requirements for high school graduation. COMAR 13A.03.02.03. Per those requirements, students who entered the ninth grade in the 2021–2022 school year must earn one credit in health education. COMAR 13A.03.02.03C. As it has done for other specific subjects, the MSBE has also issued comprehensive regulations explaining what must be covered in the health instruction programs. COMAR 13A.04.18.01. The regulations dictate that students be taught concepts “related to health promotion and disease prevention[,]” including on such topics as mental and emotional health; substance abuse prevention; family life and human sexuality (“FLHS”); safety and violence prevention; healthy eating; and disease prevention and control. COMAR 13A.04.18.01C. The regulations further direct that local school systems make available procedures “for student opt-out regarding instruction related to [FLHS] objectives.” COMAR 13A.04.18.01D(2)(e). In addition to these regulations, the State Department of Education has issued guidance discussing the comprehensive health education regulation and its basis in “health education and equity education[.]” MD. STATE DEPT. OF ED., MARYLAND COMPREHENSIVE HEALTH EDUCATION FRAMEWORK: PRE-KINDERGARTEN THROUGH HIGH SCHOOL, 6 (June 2021) (available at <https://perma.cc/9ULP-CBFW>).

The local school board at issue in this case—the Montgomery County Board of Education—issued regulations to implement the MSBE’s comprehensive health education requirements. MCPS Reg. IGP-RA. These regulations provided that “Maryland FLHS instruction shall represent all students regardless of ability, sexual orientation, gender identity, and gender expression.” MCPS Reg. IGP-RA III.E. It further required that parents be notified of the FLHS unit and provided procedures for parents to attend informational meetings regarding FLHS instruction and to excuse their student from the unit. *Id.* The regulation further stated that “FLHS materials are not to be used in any other instructional program of the school.” *Id.*

MCPS Policies and Parents’ Initial Complaint

The student here was enrolled at Damascus High School. Prior to the commencement of the student’s sophomore year in the fall of 2022, Parents obtained a portion of the teacher training materials that stated one of the training objectives was for teachers to: “Review LGBTQ+ resources to incorporate more inclusive language in the Health Education classroom throughout the ENTIRE course[.]” (Emphasis in original). Parents sought information regarding their ability to review the health class curriculum; however, they were informed that they would only be able to review the curriculum for the FLHS unit, and they would not be able to review the curriculum for the remainder of the health class.¹ Parents ultimately withdrew their daughter from the Fall 2022 health class.

¹ Parents separately requested from Montgomery County Public Schools, under the Maryland Public Information Act, “[a]n electronic copy of the ‘Tier 1 Training, High School Health Training, PDO Course #90924’” from the dates of July 11, 12, 19, and 21, 2022. Parents specifically requested a student link associated with that training and with

In March of 2023, Parents filed their initial administrative Complaint from the Public to MCPS. In the complaint, Parents asserted that the health class “forces [their] daughter into coerced actions associated with the intersectionality theory, abortion option[,] and LGBTQ movement in order to obtain a passing grade and graduate high school.” Parents claimed that their child’s participation in the class, particularly considering parents’ inability to review the health class curriculum, violated their parental autonomy; they further claimed that the inclusion of theories contrary to the student’s religious beliefs infringed on her free speech and free exercise of religion. Parents did not identify what specific element of the class constituted “coerced actions associated with the intersectionality theory, abortion option[,] and LGBTQ movement” or provided instruction related to such elements. Parents requested that their student be excused from the requirement to take and pass a health class to graduate. In the same month, the principal of Damascus High School—Principal Yates—denied the request, as did MCPS in a subsequent administrative review.

In June of 2023, following a request by Parents for further review, the Montgomery County Board of Education (“MCBE”) issued a decision denying a waiver of the entire

the health class. In September of 2022, MCPS responded to Parents’ request by stating that the records sought would take an estimated 100 hours and more than thirty days to prepare, and therefore indicated that Parents would need to pay \$6,494.00 in labor costs for the request to be completed. Parents responded, noting that they had previously asked Damascus High School for the health class lesson plan information and been informed that teachers were not provided with scripted lessons; this, Parents claimed, led to them seeking the teacher training material, which they understood already existed electronically. Parents sought a waiver of the sums MCPS required to complete the request. The record in this case does not reveal the outcome of Parents’ public information act request and we are not asked to resolve this issue.

health class because the COMAR regulations require students to complete one credit of health education to graduate. The MCBE noted that the student could earn the health credit in an alternate fashion, including through independent study or enrolling in a college course. Notably, the MCBE did not indicate that the alternatives were limited to only the two options mentioned. The MCBE directed the staff at Damascus High School to “fully inform” the family regarding “all alternative means” by which the student could obtain her health credit.²

Subsequent to the MCBE’s decision, Parents made a written request to Principal Yates that their daughter be allowed to obtain her health credit class from a local private school. According to Parents, this would be permitted by MCPS’s regulation ISB-RA III.C because Damascus High School did not have a health course that would not infringe on the student’s religious freedom. Principal Yates responded that there were two alternatives to the student obtaining a health credit—either enrollment in a college course or by independent study. Principal Yates noted that “[i]f the decision is to complete an independent study project, a proposal would need to be submitted for approval by school [h]ealth staff/administration that meets the Health A&B requirements.” In a subsequent email, Principal Yates indicated that based on the MCBE decision, these were the only two approved alternatives available to obtain the required health credit, and therefore the private school course would not be approved.

² Parents noted an appeal of this decision to the MSBE; however, the appeal was noted late and was not considered on its merits.

At the end of July 2023, Parents sent another email message to Principal Yates, indicating that they had located a potential instructor to supervise the student’s independent study to replace the health class. They submitted a letter from the potential instructor which identified that instructor’s credentials and experience.³ Parents also attached the instructor’s resume and a reference. Following receipt of these materials, Principal Yates responded seeking submission of “[a] detailed syllabus” that would include “[c]ourse objectives and goals” as well as “[p]rojects that will address the Maryland state health education standards.” He then stated that “[o]nce these items are submitted, I will appoint a Damascus [High School] teacher who will be responsible for reviewing the materials and guiding [the student] while she engages in independent study.”⁴

In August of 2023, Parents responded to Principal Yates’ message. Parents asserted that the regulation’s reference to oversight by professional staff was in reference to objectives and standards, which already exist for the health class. They contended that the regulation does not require the instructor of the class be an MCPS employee—Parents

³ Included in the information presented to Principal Yates was the representation that the prospective instructor held a Ph.D. in Global Health Promotion, as well as several additional degrees in physical education and other health-related fields. The prospective instructor indicated familiarity with MCPS objectives for the health course, and that the proposed independent study would cover these objectives. She wrote that additional material could be added to the course to the extent the MCPS objectives were not initially covered. She indicated that she had developed a syllabus to cover the proposed independent study which was provided to Mr. Janss.

⁴ Principal Yates identified as support for this response MCPS Regulation ISB-RA, which states that in relation to independent study, “[o]pportunities for independent study and eligibility requirements are established by the professional staff of the school, with appropriate involvement with students and parents/guardians.”

asserted that the regulation only required the instructor to be appropriately qualified, noting that the regulation encourages use of community resources. Parents declined to provide a syllabus, claiming it was not needed because the independent study proposed was intended to replace a class taught in the normal course of the school. Parents requested that Principal Yates approve the independent study based on the materials provided. The record does not contain any further response from Principal Yates to this request.

The Subject Complaint

In October of 2023, Parents filed a new Complaint from the Public, to which they attached previous correspondence demonstrating requests for waiver of the course and for the opportunity to earn credit through alternative means. Principal Yates denied the complaint, noting that the issues had been discussed previously and were decided in the first MCBE appeal. MCPS also denied the complaint. Parents appealed to the MCBE, which upheld the denial, incorporating its prior decision and noting that waiver of the entire health class was not possible because the COMAR regulations require students to earn one health credit to graduate. The MCBE did not address Principal Yates’ handling of the alternatives to the health credit, other than to indicate that “there are several ways” for the student to earn her health credit by alternative means, and to again direct the staff at Damascus High School to “fully inform” the family regarding “all alternative means” for earning the credit.

Appeal to the MSBE

The Parents appealed the decision of the Montgomery County Board of Education. They indicated that their arguments would primarily rely on incorporating materials

previously communicated to the MSBE in relation to the first complaint. Parents expressed their understanding was that “LGBTQ+ materials” were required to be isolated to the FLHS unit, which permitted an opt-out; Parents asserted that Montgomery County Public Schools had circumvented the opt-out by “telling its teachers to spread LGBTQ+ materials”—which Parents claimed constituted FLHS instruction—“throughout the ‘ENTIRE’ health curriculum as it is taught.” Parents asserted that their student should be excused from the health class, either based on the FLHS opt-out or based on a religious exception. Parents further claimed that MCPS’s refusal of Parents’ proposal for an independent study on the basis that it would not be taught or supervised by an MCPS teacher was unreasonable.

Although Parents attached multiple correspondences which they had submitted during and after the initial complaint, they did not include materials supporting their assertion that LGBTQ+ materials were FLHS materials which were being spread beyond the FLHS unit. The only material attached that represented a document generated for school purposes was a screenshot of what appeared to be a training for teachers. This screenshot contained several objectives, one of which was to “Review LGBTQ+ resources to incorporate more inclusive language in the Health Education classroom throughout the ENTIRE course[.]” (Emphasis in original).

MCPS responded, asserting that Parents had not met their burden of showing that the MCBE’s decision was arbitrary, unreasonable, or illegal. MCPS argued that Parents had not produced any evidence to support Parents’ assertion that their religion was being labeled as oppressive. In addition, MCPS claimed that an exemption was not required under the Free Exercise Clause because any interference with Parents’ religion was incidental, as

the contested regulations were neutral. MCPS further noted that Parents’ assertion that their daughter’s free speech would be impeded was likewise unsupported by any evidence, particularly considering MCPS’s Guidelines for Respecting Religious Diversity, which notes that students have a right to express their religious beliefs and practices. Finally, MCPS posited that Parents’ argument regarding parental autonomy lacked merit because it was not clear what information Parents claimed was withheld or how that would impact their decision making; and further, Parents had been offered alternatives to the health education coursework.

Parents responded, asserting that the health class was in fact discriminatory towards their religion. To support this assertion, Parents identified aspects of the teacher training materials, including: 1) the objective from the Tier 1 Training that stated “Review LGBTQ+ resources to incorporate more inclusive language in the Health Education classroom throughout the ENTIRE course”; 2) a teacher’s guide to inequity that identified groups as “Privileged” and “Oppressed” and which included “Christian” in the privileged category, and “Non Abrahamic Religions/Spiritualities” in the oppressed category; 3) a sample lesson slide that listed potential groups that could be impacted by health inequity, from which Parents highlighted “[p]eople who identify with non-Christian faith”; and 4) an excerpt from a slide, apparently from a “Rolling Staff Meeting[]” that, according to Parents, associated “Worship of the Written Word” with white supremacy culture.⁵ Parents

⁵ Parents attached the slide in question to their response. The slide defines the concept of “Worship the Written Word” as “[h]onoring only what is written and even then only what is written to a narrow standard, even when what is written is full of misinformation and lies. An erasure of the wide range of ways we communicate with each other and all living

then contended that MCPS was religiously discriminating against them by not allowing a religious opt-out for curricular activities. They claimed that the MCPS’s implementation of the class was illegal because it violated their religious freedom; that MCPS’s handling of the alternative options was arbitrary and unreasonable because the reasoning for denying the alternatives was inconsistent with MCPS’s regulations; and that MCPS’s limitation of the FLHS opt-out was arbitrary.

MCPS responded that the elements of the curriculum identified by Parents were not discriminatory or targeted at religion, “but rather essential components of a comprehensive educational approach.” MCPS stated that the incorporation of LGBTQ+ resources and the portrayal of various religious beliefs within the curriculum served to reflect broader perspectives and backgrounds present among the community. It further noted that the lessons served to provide “insights into the cultural and historical context of different belief systems” and were conducted in a neutral manner. MCPS next noted that the changes to the health education credit requirement and the Comprehensive Health Education Framework were provided to the public and that MCPS’s opt-out policy complied with the COMAR regulations. MCPS further responded that the health education curriculum was not arbitrary, illegal, or unreasonable because it was developed in accordance with the COMAR requirements, as was the alternative options policy.

After briefing was complete, the MSBE issued a decision. The MSBE described the history of, and statutory authority for, Maryland’s health education instructional program.

things.” The slides presented examples of how this concept could present in the classroom, school, and in home life.

It explained that the General Assembly of Maryland had gradually enacted laws regarding educational programs to be added to curriculum. Included with these additions, the MSBE noted, was a requirement that the Department and local board “develop educational programs to prevent bullying, harassment, and intimidation in schools against students because of their sex, sexual orientation, and gender identity.” The MSBE further noted the 2019 revision of the health education regulation, which was done simultaneous to the adoption of the education equity regulations—the purpose of which was to establish “an equity lens” in the context of “reviews of staff, curriculum, pedagogy, professional learning, instructional materials, and assessment design.” The MSBE also noted the development of the Comprehensive Framework, and the Montgomery County Board of Education’s implementation of these in its curriculum changes.

The MSBE determined that the local board was correct in determining that the COMAR regulations and MCPS regulations did not allow exemption from the entire health class credit requirement.

In relation to Parents’ claim that the implementation of the health class was arbitrary, unreasonable, and illegal, the MSBE concluded that mere mention or discussion of LGBTQ+ resources was not required to be confined to the FLHS unit. This was so, the MSBE reasoned, because incorporation of LGBTQ+ resources assisted in achieving other educational goals required by Maryland’s comprehensive health education mandate, including for topics such as “mental and emotional health, substance abuse prevention, and safety and violence prevention.” In addition, the MSBE noted that the instruction to teachers, and associated incorporation of LGBTQ+ resources throughout the health class,

served to foster an inclusive environment. Finally, the MSBE observed that the health class was required for all students, and the course’s implementation followed the procedures provided by the local regulations; it also observed that inclusion of LGBTQ+ resources throughout the class—rather than being arbitrary, unreasonable or illegal—was consistent with the equity regulations found in COMAR.

The MSBE next examined Parents’ claim that MCPS’s non-waiver policy violated the constitutional rights of both Parents and their daughter. The MSBE cited *Mahmoud v. McKnight*⁶—an opinion from the United States District Court for the District of Maryland that was subsequently overturned while this case remained pending—for the proposition that mere exposure to ideas that contradict the religious beliefs of students or their parents was not a burden on free exercise where the instruction did not impose a coercive requirement that the student violate the student’s faith, or otherwise indoctrinate them, during classroom instruction. The MSBE then noted support for the proposition that while parents had the constitutional right to decide whether to send their child to a public school, they could not direct that school system on how to teach their child, including on issues of school curriculum, as well as a vast array of other school administrative tasks. The MSBE then observed that MCPS had attempted to accommodate Parents’ concerns by presenting them with alternatives to the health class. The MSBE noted that Parents had refused these alternatives “because they refused any involvement of MCPS staff as required by local

⁶ See *Mahmoud v. McKnight*, 688 F. Supp. 3d 265, 298 (D. Md. 2023), *aff’d*, 104 F.4th 191 (4th Cir. 2024), *rev’d sub nom. Mahmoud v. Taylor*, 606 U.S. 522 (2025).

board policy.” The MSBE did not identify which regulation or policy it relied on for this conclusion.

Based on that analysis, the MSBE determined that there was “no factual or legal basis to conclude that the local board’s decision was arbitrary, unreasonable, []or illegal.”

Subsequent Procedural History

Parents then sought judicial review in the Circuit Court for Montgomery County. The circuit court affirmed the MSBE’s decision. Parents noted a timely appeal to this Court.

ISSUES PRESENTED FOR REVIEW

The Parents have presented the following issues for review, which we have rephrased:⁷

- I. Whether the MSBE misinterpreted the COMAR regulations and the MCPS regulations in determining that the FLHS waiver did not apply to the entire health class.
- II. Whether the MSBE’s acceptance of MCPS’s handling of alternatives to completing the health class credit was arbitrary, illegal, or capricious.

⁷ Rephrased from:

1. Can MCPS’s inclusion of instruction related to Family Life and Human Sexuality objectives about the approval of LGBT-SOGI in other parts of the [h]ealth course curriculum be justified by the Equity Regulations, as MSBE did, when that makes meaningless the regulatory mandate that parents may opt out their children from instruction related to FLHS topics, and that FLHS topics not be taught in any other part of the curriculum?
2. Were MCPS’s refusals to accept the alternatives suggested by the [Parents] for their daughter to be instructed in the course curriculum arbitrary and capricious when the reasons MCPS gave were contrary to MCPS’s own regulation?

For the reasons to follow, we shall affirm in part and vacate in part the judgment of the circuit court.

DISCUSSION

I. THE MSBE DID NOT ERR IN INTERPRETING THE COMAR REGULATIONS WITH RESPECT TO WAIVER OF THE HEALTH CLASS REQUIREMENT

A. Parties' Arguments

Parents argue that instruction about LGBTQ+ topics constitutes an objective of the FLHS unit, and therefore, must be contained to that unit; if such instruction is not contained in the FLHS unit, Parents assert that the FLHS opt-out should apply wherever such objectives are taught. Parents' argument is premised on the assertion that LGBTQ+ resources that constitute FLHS materials were being taught throughout the entire course—an assertion that Parents contend is supported by the record. Parents claim that the MSBE incorrectly summarized their argument as an objection to any mention of LGBTQ+ topics, when they contend their objection was to instruction regarding FLHS objectives—a distinction which Parents claim renders the MSBE's analysis arbitrary and capricious. Based on these assertions, Parents claim that the MSBE erred in construing the health regulations and in determining that the equity regulations permitted inclusion of LGBTQ+ resources beyond the FLHS unit.

MCPS responds that the MSBE, as an agency vested with broad power in interpreting its own regulations, correctly construed its regulations together when it determined that the inclusion of LGBTQ+ resources fulfilled the educational equity requirements and did not conflict with the FLHS opt-out requirement. MCPS suggests that

Parents’ reliance on canons of statutory interpretation is unnecessary because it assumes a conflict existed between the equity regulations and health regulations that would require one of those regulations to control, when the MSBE did not find a conflict and instead harmonized the regulations. MCPS asserts that based on these arguments and the neutral application of the health class requirement to all students, the MSBE’s decision not to excuse the student from the requirement was not arbitrary, illegal, or capricious.⁸

B. Standard of Review

This Court, in reviewing the final decision of an administrative agency, “looks through” the circuit court’s decision, and, applying the same legal standard as the circuit court, “evaluates the decision of the agency.” *Kor-Ko Ltd. v. Md. Dep’t of the Env’t*, 451 Md. 401, 409 (2017) (quoting *People’s Counsel for Balt. Cnty. v. Surina*, 400 Md. 662, 681 (2007)). Appellate review is limited to a determination of whether the administrative agency’s decision is “in accordance with the law or whether it is arbitrary, illegal, and capricious.” *Md. Dep’t of the Env’t v. Ives*, 136 Md. App. 581, 585 (2001) (internal citation and quotation marks omitted). The inquiry is thus two-fold: first, we examine “whether there is substantial evidence in the record to support the agency’s findings and

⁸ MCPS further examined the MSBE’s decision regarding Parents’ earlier constitutional claims, examining with approval the Fourth Circuit’s decision in *Mahmoud v. McKnight*, 102 F.4th 191 (4th Cir. 2024). Parents have expressed that they are not seeking review of the MSBE’s constitutional analysis, and they did not devote argument to this topic in their opening brief. We note that the Supreme Court of the United States overturned *Mahmoud*, identifying a different standard by which to evaluate free exercise rights when those conflict with school instruction. This standard is different from what was applied by the MSBE and what is suggested by MCPS; however, we do not examine this further as the issue is not before us and this opinion is not intended to make any constitutional inference.

conclusions”; and second, we examine “whether the agency’s decision is premised upon an erroneous conclusion of law.” *Hayden v. Md. Dep’t of Nat. Res.*, 242 Md. App. 505, 520 (2019) (quoting *McClellan v. Dep’t of Pub. Safety & Corr. Servs.*, 166 Md. App. 1, 18 (2005)).

An administrative decision may be arbitrary, illegal, or capricious if the decision is “contrary to law or unsupported by substantial evidence” or is made without consideration of the facts and circumstances presented. *Hurl v. Board of Educ. of Howard Cnty.*, 107 Md. App. 286, 306 (1995) (citations omitted). “In applying the substantial evidence test, a reviewing court decides whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Donlon v. Montgomery Cnty. Pub. Schools*, 460 Md. 62, 74 (2018) (quoting *Motor Vehicle Admin. v. Shea*, 415 Md. 1, 14 (2010)) (further citations omitted). As the reviewing Court, we view the agency’s decision in the light most favorable to the agency and defer to the agency’s fact-finding and the inferences drawn therefrom if they are supported by the record. *Id.* (citing *Shea*, 415 Md. at 14). Even when reviewing legal issues, “an administrative agency’s interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.” *Id.* (quoting *Shea*, 415 Md. at 14–15). In the context of reviewing decisions from the State Board of Education, “special deference” is afforded to that agency’s interpretation of statutes that it administers considering “the paramount role of the State Board of Education in interpreting the public education law[.]” *Balt. City Bd. of Sch. Comm’rs v. City Neighbors Charter Sch.*, 400 Md. 324, 343 (2007) (citations omitted). This means that “[MSBE] rulings must be given heightened, not less, deference.” *Id.*

However, when reviewing an agency decision, this Court “may not uphold the agency order unless it is sustainable on the agency’s findings and for the reasons stated by the agency.” *United Steelworkers of Am. AFL-CIO, Loc. 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984) (citations omitted).

C. Analysis

i. The MSBE’s findings and conclusions

Parents have posed two issues that require examination of the MSBE’s findings and conclusions. The first is whether the MSBE impliedly found that FLHS materials were being spread through the health course. The second is whether the MSBE’s summary of Parents’ essential argument—which the MSBE described as the position that “any mention of sexual orientation, gender identity, or gender expression in any area of education must be avoided in the curriculum even if that curriculum does not pertain to FLHS”—was arbitrary and capricious.

We first examine Parents’ contention that because the MSBE did not, according to Parents, deny Parents’ assertion that FLHS materials were being spread throughout the entire health class for instruction, the MSBE impliedly found Parents’ contention to be correct.

The record before the MSBE contained little information regarding instructional material taught in the health class. However, it did include three items presented by Parents. First, the record contained a portion of a slide deck representing teacher training for the high school health class, with a list of objectives that included a goal for teachers to “[r]eview LGBTQ+ resources to incorporate more inclusive language in the Health

Education classroom throughout the ENTIRE course[.]” Second, the record contained a photograph of a slide—which Parents explained was from a “Teachers Guide to Inequity”—that listed categories of “[p]rivileged” groups and “[o]ppressed” groups; within these categories were a large variety of characteristics, including descriptive traits such as age, gender, religion, race, education, ability, and wealth. Also included within these categories were traits such as “[c]isgender”; “[h]eterosexual”; “[t]rans, nonbinary”; and “[q]ueer[.]” Finally, the record contained a slide containing what appeared to be talking points related to class discussion on “groups of people” who “may be impacted by health inequality[.]” The slide listed several groups, two of which were “[p]eople who are trans[] or gender-expansive” and “[p]eople who identify as LGBTQ+[.]”⁹

The MSBE’s conclusions regarding inclusion of LGBTQ+ resources contained the following:

[Parents] argue that MCPS’s instruction to teachers to use more inclusive LGBTQ+ resources throughout the entire health curriculum is unreasonable and not permitted by local board policy because the inclusion of such resources must be confined to the FLHS portion of the curriculum pursuant to local board regulation IGP-RA which states that FLHS instructional materials are not to be used in any other instructional program of the school. IGP-RA III.E. The [Parents] also argue that our regulation that provides that FLHS must represent all students regardless of ability, sexual orientation, gender identity, and gender expression requires the local board to confine any mention or discussion of LGBTQ+ resources to the FLHS portion of the curriculum. In essence, [Parents] are arguing that any mention of sexual orientation, gender identity, or gender expression in any area of education must be avoided in the curriculum even if that curriculum does not pertain to FLHS. Despite their argument, Maryland’s comprehensive health education regulations require education surrounding mental and emotional

⁹ Because of the lack of information in the record, it is not clear where the documents that were presented originated and what meaning, if any, can be attributed to this limited information.

health, substance abuse prevention, and safety and violence prevention. The incorporation of LGBTQ+ resources would assist in that curriculum’s primary objective to help students adopt and maintain behaviors that protect and promote health and avoid or reduce health risk. COMAR 13A.04.18.01B.

In reaching this conclusion, the MSBE impliedly determined that “incorporation of LGBTQ+ resources” in a course was not equivalent to teaching FLHS instructional material to students. Each of the materials contained in the record appear to be resources for teachers, not instructional materials for students. This supports the MSBE’s conclusion that MCPS’s incorporation of LGBTQ+ resources—and specifically the directives to teachers—was not equivalent to spreading FLHS instructional materials throughout the course. Hence, the MSBE’s conclusion, viewed in a light most favorable to the MSBE, *see Donlon*, 460 Md. at 74, was supported by the record.¹⁰

¹⁰ In addition to the documents provided to the MSBE, Parents present several premises which they contend support their claim that the record demonstrated FLHS objectives were being instructed throughout the health course. Many of these premises are Parents’ legal arguments or interpretations of MCPS’s arguments. For example, Parents assert that MCPS never denied spreading FLHS objectives throughout the course, and therefore suggest that this point is conceded. They later reframe this assertion, identifying as a separate point that MCPS acknowledged using LGBTQ+ resources throughout the course. This argument does not reflect MCPS’s position before the MSBE, which acknowledged incorporation of LGBTQ+ resources throughout the course, but did not equate those resources with FLHS materials. Next, Parents focus on the MSBE’s use of the word “materials” and, without any factual support, assert that because the MSBE used this word, it is equivalent to the term “FLHS materials” from the MCPS regulation which are not to be used in other instructional programs. We decline to make that inferential leap, as nothing in the MSBE’s findings suggests that Parents’ definition was intended by the board. Parents subsequently make a legal argument relating to their interpretation of overlap between COMAR’s equity regulations and the FLHS definitions. Parents’ interpretation of MSBE regulations does not qualify as facts that can support what they contend to be the MSBE’s conclusion. *See Hurl*, 107 Md. App. at 306–07. Finally, Parents argue that an adverse inference is appropriate against MCPS because it did not respond to their MPIA request. That is a determination left to the factfinder, which is not our role here. *See Carriage Hill Cabin*

For these reasons, we disagree with Parents’ assertion that the record supports the claim that FLHS materials were spread throughout the health course or that the MSBE made such a finding.

We next examine Parents’ assertion that the MSBE mischaracterized their essential argument. The MSBE described Parents’ position as an objection to “any mention of sexual orientation, gender identity, or gender expression in any area of education must be avoided in the curriculum even if that curriculum does not pertain to FLHS.” Parents assert that this was not their argument and point to several places in the appeal record wherein Parents articulated their position as objection to LGBTQ+ instruction not being isolated to the FLHS unit. Parents acknowledge in their brief that LGBTQ+ topics could be mentioned in other units, specifically identifying the safety and violence prevention unit and the disease prevention and control unit.¹¹ However, Parents did not make this argument before the MSBE. In addition, the documents Parents supplied to the MSBE do make brief mention of LGBTQ+ topics as part of the broader materials being discussed, which included issues such as privilege and health inequality.

Hence, the MSBE’s interpretation of Parents argument was supported by the record and was not arbitrary and capricious. *See Donlon*, 460 Md. at 74.

John, Inc. v. Maryland Health Res. Plan. Comm’n, 125 Md. App. 183, 212–13 (1999) (noting that in reviewing agency decisions, this Court “must not engage in judicial fact-finding,” as factual findings and inferences reasonably drawn therefrom are left to the agency) (citations omitted).

¹¹ Parents later contradict this argument, suggesting that allowing the “mention” of LGBTQ+ “terms and topics throughout the curriculum,” cannot be reconciled with the FLHS opt-out.

- ii. *The MSBE's interpretation of the COMAR Regulations and the Local Board's regulations is consistent with the law.*

Parents next assert that the MSBE misinterpreted the COMAR regulations as well as the MCPS's regulations. We first examine the MSBE's ruling and then address Parents' specific arguments. As discussed *supra*, the MSBE identified Parents' arguments, and then wrote the following:

In essence, [Parents] are arguing that any mention of sexual orientation, gender identity, or gender expression in any area of education must be avoided in the curriculum even if that curriculum does not pertain to FLHS. Despite their argument, Maryland's comprehensive health education regulations require education surrounding mental and emotional health, substance abuse prevention, and safety and violence prevention. The incorporation of LGBTQ+ resources would assist in that curriculum's primary objective to help students adopt and maintain behaviors that protect and promote health and avoid or reduce health risk. COMAR 13A.04.18.01B.

We agree with the local board that incorporation of the LGBTQ+ resources throughout the entire health classroom fulfills MCPS'[s] fundamental responsibility to include instructional materials that reflect the diversity of the local and global community. Incorporation of LGBTQ+ resources acknowledge[s] the diverse identities and experiences present within the student body and it aims to foster inclusivity and understanding. [Parents] recognize that MCPS is attempting to foster an inclusive environment. We agree that such inclusive policies help foster a safe, supportive, and inclusive environment that benefits all students, consistent with Maryland's equity in education regulation and the local board policies implementing these requirements.

Because the health course is required of all students, we conclude that the local board's denial of the waiver is not arbitrary, unreasonable, or illegal. Moreover, the local board regulation IGP-RA, *Comprehensive Health Instructional Program*, that provides the procedures for implementing the comprehensive health education instructional program for MCPS students is consistent with our regulations. Finally, we do not find that the local board's decision to include LGBTQ+ resources throughout the entire health class is arbitrary, unreasonable, or illegal. It is consistent with our equity regulations[.] COMAR 13A.01.06.03 and COMAR 13A.01.06.04C(8).

When this Court construes an agency’s rule or regulation, the principles governing statutory interpretation apply. *Matter of Sulerzyski*, 257 Md. App. 215, 233 (2023) (quoting *Concerned Citizens of Cloverly v. Montgomery Cnty. Plan. Bd.*, 254 Md. App. 575, 605 (2022) (further citation omitted)). “We will give effect to the regulation as it is written so long as the words of the regulation, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning.” *Id.* (internal quotation marks, alterations, and citations omitted). “Where the language of the regulation is ambiguous, ‘we look to the agency’s interpretation of its own regulation.’” *Id.* (quoting *Concerned Citizens of Cloverly*, 254 Md. App. at 606). When it is necessary to interpret an ambiguous regulation, “a great deal of deference is owed an administrative agency’s interpretation of its own regulation”; in addition, “an agency’s interpretation of an administrative regulation is of controlling weight unless it is plainly erroneous or inconsistent with the regulation[.]” *Adventist Health Care Inc. v. Maryland Health Care Comm’n*, 392 Md. 103, 119–20 (2006) (quoting *Maryland Transp. Auth. v. King*, 369 Md. 274, 288–89 (2002) (alterations omitted)).

In conducting a plain language analysis of agency regulations,

We do not read regulatory language in a vacuum, nor do we confine strictly our interpretation of a regulation’s plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the regulatory scheme to which it belongs, considering the purpose, aim, or policy of the agency in enacting the regulation. We presume that the agency intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a regulation, to the extent possible consistent with the regulations object and scope.

GenOn Mid-Atl., LLC v. Maryland Dep't of the Env't, 248 Md. App. 253, 270 (2020) (quoting *Lockshin v. Semsker*, 412 Md. 257, 275–76 (2010) (alterations omitted)).

With these guideposts in mind, we turn to the regulations at issue in this matter. The COMAR regulations promulgated by the MSBE require that the local school systems offer a comprehensive health education program. COMAR 13A.04.18.01A. The comprehensive health education program is required to undertake two mandates: first, to “help students adopt and maintain healthy behaviors and skills that contribute directly to a student’s ability to successfully practice behaviors that protect and promote health and avoid or reduce health risks”; and second, to “provide for the diversity of student needs, abilities, and interests at the elementary, middle, and high school learning years,” while including “the Maryland Health Education Standards with related indicators and objectives” identified within the regulation. COMAR 13A.04.18.01B. As part of the comprehensive health education standards, the regulations dictate several outcomes students must display, including comprehension of concepts related to “health promotion and disease prevention to enhance health”; the ability to “analyze the influence of family, peers, culture, media, technology, and other factors on health behaviors”; and the ability to “advocate for personal, family, and community health.” COMAR 13A.04.18.01C.

The regulation also notes special requirements for certain units. COMAR 13A.04.18.01D. In reference to family life and human sexuality, the regulation notes that “Maryland family life and human sexuality instruction shall represent all students regardless of ability, sexual orientation, gender identity, and gender expression.” COMAR 13A.04.18.01D(2)(a). The regulation further provides that local school systems establish

procedures “for student opt-out regarding instruction related to family life and human sexuality objectives” and for determining alternate replacement education. COMAR 13A.04.18.01D(2)(e). In addition, the regulation requires that local school systems “provide age-appropriate instruction on the meaning of ‘consent’ and respect for personal boundaries as part of the family life and human sexuality curriculum in every grade in which the curriculum is taught.” COMAR 13A.04.18.01D(2)(f).

In addition to the comprehensive health regulations, the MSBE has also issued regulations requiring local school systems to develop educational equity regulations which, among other things “[r]equire that an equity lens^[12] be used in reviews of staff, curriculum, pedagogy, professional learning, instructional materials, and assessment design[.]” COMAR 13A.01.06.04C(8). The MSBE defined “[e]ducational equity” as meaning “that every student has access to the opportunities, resources, and educational rigor they need throughout their educational career to maximize academic success and social/emotional well-being and to view each student’s individual characteristics as valuable.” COMAR 13A.01.06.03B(2). It also defined “[i]ndividual characteristics” as “the characteristics of each individual student,” for which the MSBE then listed potential examples, including among others ability, ethnicity, race, gender identity and expression, and sexual orientation. COMAR 13A.01.06.03B(5).

¹² The MSBE explained that an “[e]quity lens” meant that “for any program, practice, decision, or action, the impact on all students is addressed, with strategic focus on marginalized student groups.” COMAR 13A.01.06.03B(4).

In context of the entire comprehensive health education regulation, *see GenOn Mid-Atl., LLC*, 248 Md. App. at 270, it is clear that the goal of the regulation is to “help students adopt and maintain healthy behaviors and skills that contribute directly to a student’s ability to successfully practice behaviors that protect and promote health and avoid or reduce health risks”; and to “provide for the diversity of student needs, abilities, and interests[.]” COMAR 13A.04.18.01B. The MSBE concluded that inclusion of resources that contain LGBTQ+ references would help to fulfill MCPS’s obligation under the comprehensive health education regulation and the equity in education regulation. We discern no error in this plain reading of the regulations. The MSBE did not make an error of law in applying the regulations as written and concluding that they worked in harmony.

Parents argue, based on their reading of the FLHS opt-out regulation, that there is a conflict between that regulation and the equity regulations. They assert that because the health regulations affirmatively require that the FLHS unit instruct on topics of sexual orientation, gender identity, and gender expression—an instruction that is not made for the other units—it must be so that the FLHS unit is the only unit under which LGBTQ+ topics may be raised. We disagree with this reading of the regulation. Parents’ reading injects into the regulation language that is not present and creates a conflict where none otherwise exists. *See 75-80 Props., L.L.C. v. Rale, Inc.*, 470 Md. 598, 624 (2020) (quoting *Walzer v. Osborne*, 395 Md. 563, 572 (2006)) (“we ‘neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected’” in the plain language of the statute; nor do we “engage in forced or subtle interpretation in an attempt to extend or limit the statute’s meaning”); *see also GenOn Mid-Atl., LLC*, 248 Md. App. at 269 (noting that the

interpretation of an agency rule is governed by the same principles that govern statutory interpretation).¹³

Because the MSBE’s findings and conclusions were supported by the record, and because the decision was not premised upon an erroneous conclusion of law, we affirm the MSBE’s decision with respect to the FLHS opt-out. *See Hayden*, 242 Md. App. at 535–36.

II. THE MCPS’S HANDLING OF ALTERNATIVES TO COMPLETION OF THE HEALTH CLASS CREDIT WAS ARBITRARY AND CAPRICIOUS

A. Parties’ Arguments

Parents assert that the MSBE misinterpreted MCPS’s alternative credit regulations, resulting in a decision that was arbitrary and capricious because it was an error of law. Parents claim that both MCPS and the MSBE arbitrarily and capriciously failed to analyze their request to enroll their child in a health class at a private school. Likewise, Parents

¹³ Parents assert that various canons of construction support their interpretation. They first assert that the MSBE’s interpretation renders the FHLS opt-out to be of no effect (i.e., the surplusage canon). This argument fails because it is premised on the presumption that topics constituting FLHS instruction are equivalent with the inclusion of LGBTQ+ discourse, which, as we have discussed *supra*, was not demonstrated before the board. Parents next assert that the harmonious reading canon requires LGBTQ+ content to be confined to the FLHS unit, which they contend fulfills the objectives of both the health and equity regulations. This argument fails because it is premised on the addition of language into the FLHS regulation that does not exist; in addition, the MSBE did harmonize the health and equity regulations. Parents next assert that the general/specific canon requires the health regulations to take precedence over the equity regulations. This argument fails because there is not a conflict between the health and equity regulations. Finally, Parents argue that the constitutional-doubt canon applies in this situation because interpreting the FLHS opt-out in the manner Parents suggest avoids the “constitutional problem” of whether MCPS violated Parents’ constitutional rights. This argument likewise fails because the question of whether Parents were entitled to an FLHS opt-out does not place the constitutionality of the FLHS opt-out itself into doubt.

posit that the MSBE erred in determining that MCPS regulations require involvement of MCPS staff to approve an independent study when the MCPS regulations contain no such requirement.

MCPS does not substantially address Parents’ arguments, noting only that Parents were given the option of having the student satisfy the health credit either through enrollment in a college course or an independent study program. MCPS states, without elaborating or expressing an argument, that the MSBE “found from the record, ‘[Parents] refused these options because they refused any involvement of MCPS staff *as required by local board policy.*’” (Emphasis added).

B. Standard of Review

When the MSBE sits in review of a local school board’s decision, it applies a deferential standard to review of purely local policies, and unless the review involves the explanation and interpretation of public school laws and MSBE regulations, its review is limited to whether the local board’s decision was “arbitrary, unreasonable, or illegal.” *Frederick Classical Charter Sch., Inc. v. Frederick Cnty. Bd. of Educ.*, 454 Md. 330, 373 (2017) (citations omitted). As stated *supra*, this Court, in reviewing the final decision of an administrative agency decision, “looks through” the circuit court’s decision, and, applying the same legal standard as the circuit court, “evaluates the decision of the agency.” *Kor-Ko Ltd.*, 451 Md. at 409 (citations omitted). Appellate review is limited to a determination of whether the administrative agency’s decision is “in accordance with the law or whether instead it is arbitrary, illegal, and capricious.” *Ives*, 136 Md. App. at 585 (citation omitted). An administrative decision may be arbitrary, illegal, or capricious if the decision is

“contrary to law or unsupported by substantial evidence” or without consideration of the facts and circumstances presented. *Hurl*, 107 Md. App. at 306 (citations omitted). “In applying the substantial evidence test, a reviewing court decides whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.” *Donlon*, 460 Md. at 74 (citations omitted). As the reviewing Court, we view the agency’s decision in the light most favorable to the agency and defer to the agency’s fact-finding and the inferences drawn therefrom if they are supported by the record. *Id.* (citations omitted). This Court “may not uphold the agency order unless it is sustainable on the agency’s findings and for the reasons stated by the agency.” *Bethlehem Steel Corp.*, 298 Md. at 679 (citations omitted).

C. Analysis

i. Denial of Credit from Private School

MCPS has promulgated regulations regarding implementation of high school graduation requirements, including a procedure for students to obtain credit for courses taught at institutions other than through MCPS. MCPS Reg. ISB-RA III.C.2. Under this regulation, students may earn credit for coursework at other institutions, provided they obtain principal approval. *Id.* Principal approval “is dependent” on certain factors.¹⁴ First, the course must be unavailable “because it is not part of the MCPS curriculum, it is not offered at the student’s school, or it does not fit into the student’s schedule.” *Id.* Second, if

¹⁴ While four items are listed in the regulation, the fourth item is not a factor that lends itself to consideration of whether credit should be granted; it only states that MCPS would not contribute to tuition costs except in limited circumstances. MCPS Reg. ISB-RA III.C.2.

the course is intended to achieve credit “for a comparable MCPS course,” the student must demonstrate that the course will fulfill equivalent content standards and is as rigorous as the comparable MCPS course. *Id.* Third, the course provider must be accredited. *Id.*

When Parents sought to enroll their child in a health class at their selected private, accredited, school, they contended that their selection met the requirements for approval because a health class that met their religious needs was not available at MCPS; the proposed course would meet the educational requirements; and the institution was accredited. Principal Yates denied this request, yet not based on the MCPS regulation; rather, he stated that based on the MCBE’s decision in the prior appeal, there were only two available options approved as alternatives for the health class. However, the MCBE’s initial decision was not so limited; nor are we suggesting it ought to have been. The initial decision stated that “there are several ways that [the student] can earn her health credit, which include independent study and enrolling in a college course. The Board directs that the staff at Damascus is to inform the Janss family regarding all alternative means by which [the student] can earn her health credit.”

Principal Yates’ decision to limit the alternatives available as was done here was not based on the regulation;¹⁵ nor was it based on the MCBE’s direction given at the conclusion of the first appeal. The MCBE did not address the denial. The MSBE discussed Parents’ request and Principal Yates’ response in summarizing the facts; however, the

¹⁵ Nor do we observe anything in MCPS’s regulation on high school graduation requirements that would require the denial of Parents’ proposal. *See generally* MCPS Reg. ISB-RA.

MSBE conducted no analysis other than to state that MCPS’s attempts to facilitate alternatives to the health class demonstrated its “efforts to meet [Parents’] concerns and offer flexibility[.]” Principal Yates’ decision was divorced from the regulation and the facts, and the MSBE accepted this explanation without analysis. We see nothing in the record to support a conclusion that a reasoning mind could have reached the conclusion that Principal Yates reached and which the MSBE accepted, *see Donlon*, 460 Md. at 74; hence, the decision was unsupported. *See Hurl*, 107 Md. App. at 306. Because Principal Yates’ decision is not sustainable based on the facts and conclusions stated in the record, the MSBE’s decision on this issue must be vacated. *See Bethlehem Steel Corp.*, 298 Md. at 679.

ii. Denial of Independent Study

In addition to its regulations on obtaining credit outside school institutions, MCPS has also promulgated regulations regarding independent study. MCPS Reg. ISB-RA III.E. Under this regulation, independent study “is an opportunity to provide educational experiences” beyond traditional “course objectives, goals, or standards.” MCPS Reg. ISB-RA III.E.1. While the regulation mandates that opportunities for independent study and eligibility requirements be established “by the professional staff of the school, with appropriate involvement of students and parents/guardians[.]” the regulation notes that “the school should make use of community resources when appropriate” in developing an independent study program. MCPS Reg. ISB-RA III.E.1; MCPS Reg. ISB-RA III.E.3. In addition, the regulation states the following:

Students are responsible for initiating and planning their independent study program, in cooperation with an appropriately certified teacher and parents/guardians, and producing evidence of learning under the supervision of an appropriately certified teacher.

MCPS Reg. ISB-RA III.E.4. The regulation does not state that an “appropriately certified teacher” is an MCPS teacher; nor does it state that MCPS teachers are the only personnel authorized to supervise an independent study.

When Parents attempted to pursue development of an independent study—and provided the inclusion of an instructor with what appears to be an extensive background in health-related fields, and who was also a former MCPS teacher—Principal Yates responded requiring submission of “[a] detailed syllabus” that would include “[c]ourse objectives and goals” as well as “[p]rojects that will address the Maryland state health education standards.” He then stated that “[o]nce these items are submitted, I will appoint a Damascus [High School] teacher who will be responsible for reviewing the materials and guiding [the student] while she engages in independent study.” Principal Yates identified as support for this response MCPS Regulation ISB-RA, which states that in relation to independent study, “[o]pportunities for independent study and eligibility requirements are established by the professional staff of the school, with appropriate involvement with students and parents/guardians.”

Parents objected, explaining that the regulation’s reference to oversight by professional staff was in reference to the course’s objectives and standards, which already exist for the health class. They added that the regulation does not require the instructor of the class be an MCPS employee—they asserted that the regulation only required the

instructor to be appropriately qualified, noting that the regulation encourages use of community resources. Parents also declined to provide a syllabus on the basis that the independent study proposed was intended to replace a class taught in the normal course of the school, and therefore course objectives already existed for this class; however, in the materials they presented, it was evident that a syllabus could be made available. Parents requested that Principal Yates approve the independent study based on the materials provided. There is no record of a further response by Principal Yates.

The MSBE, in reviewing the record, accepted without analysis that Parents had refused the independent study option because “they refused any involvement of MCPS staff as required by local board policy.” Based on the facts in the record before the MSBE, no reasoning mind could have reached the conclusion that Parents’ refusal of MCPS staff supervision in place of the professional they selected to instruct the independent study was equivalent to refusal of “any involvement of MCPS staff[.]” *See Donlon*, 460 Md. at 74. The summary in the record also fails to consider the facts and circumstances present. *See Hurl*, 107 Md. App. at 306. In addition, it was contrary to law for the MSBE to affirm, without any analysis, Principal Yates’ determination that the MCPS independent study regulations required independent study to be instructed by current MCPS teachers. *See id.* Because the MSBE’s decision was not in accordance with the law, and because its findings were unsupported by the evidence in the record before it, the decision was arbitrary, illegal, and capricious, and must therefore be vacated. *See Ives*, 136 Md. App. at 585.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED IN PART, WITH ADDITIONAL DIRECTIONS TO THAT COURT TO REMAND THE CASE TO THE STATE BOARD OF EDUCATION FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY ONE HALF BY APPELLANT AND ONE HALF BY APPELLEE.