**IN THE COURT OF COMMON PLEAS, LUCAS COUNTY, OHIO**

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| JENNIFER A SWIECH, et. al.,<br>Plaintiffs | * | Case No. G-4801-CI-0202203761-000 |
| v. | * | |
| BOARD OF EDUCATION OF THE SYLVANIA CITY SCHOOL DIST., et. al.,<br>Defendants. | * | **OPINION AND JUDGMENT ENTRY**<br><br>JUDGE STACY L COOK |

This matter is before the Court upon the parties' cross motions for summary judgment. Plaintiffs filed "Plaintiffs' Motion for Summary Judgment" on December 26, 2023. In response the Defendants' (hereinafter "Defendants" or "District") submitted their "Defendants' Opposition to Plaintiff's Motion for Summary Judgment" on January 22, 2024. On January 29, 2024 Plaintiffs replied with their "Plaintiffs' Reply in Support of Summary Judgment.

Defendants filed their own "Defendants' Motion for Summary Judgment and Memorandum in Support" on December 26, 2023. Then on January 22, 2024 the Plaintiffs filed their "Plaintiffs' Opposition to Defendant's Motion for Summary Judgment." And in reply the Defendants submitted their "Defendants' Reply in Support of Motion for Summary Judgment" on January 29, 2024.

The Motions are now decisional. The Court finds against Plaintiffs and for Defendants as explained below.

## I. BACKGROUND

This Plaintiffs filed their Complaint in this matter on September 16, 2022 as a class-action complaint for injunctive relief. No class has been certified. The named Plaintiffs, parents of a number of children residing within the Sylvania City School District who attend Saint Joseph Catholic School in Sylvania, seek injunctive relief relative to the District's transportation plan for non-public and community school students. They claim that their children are being unlawfully treated different with respect to school transportation.

The relevant facts relating to Plaintiffs' claims are largely not in dispute. According to Plaintiff's Motion, in Sylvania "all public school students are transported directly to and from their school with a maximum ride time of about 30 minutes for the first public school student picked up on a given bus in the morning until delivery at school, with each successive public school student picked up on a given rout having a lesser and lesser ride time * * *." But on the other hand, according to Plaintiffs, the "plaintiffs' children * * * are picked up in the morning *much* earlier relative to their morning bell time, taken with high school students to a high school, transferred to another bus, and then taken to their grade school at Sylvania St. Joseph elementary." Thus many nonpublic school students spend a significant amount of time from

pickup to drop off as compared to public school students. The transportation of Sylvania students is therefore different depending on whether the student attends Sylvania public schools or a private school/community school. Plaintiffs claim these differences are unlawful. Defendants argue the differences are lawful, necessary, and reasonable due to budget restraints and efficiency factors.

Defendants claim that "[t]he District bases its plan largely on geography, factoring in the overriding goal of safety for all students." According to Defendants, "[d]uring the 2022-2023 and 2023-2024 school years, Sylvania transported students to and from the District's 12 public schools plus 17 different nonpublic schools." Defendants do not appear to dispute the fact that public elementary school students who attend the neighborhood school assigned to their residence are transported directly from a nearby stop to their school. But, as Defendants acknowledge, "[t]hose students residing in the Sylvania School District who choose to attend *non*public schools, such as St [Joseph's], Maumee Valley Country Day School, or Toledo School for the Arts, are picked up near their homes which may be located in any attendance zone throughout the District and transported to a centralized hub, where they board buses that take them directly to their nonpublic school of choice."

With the operative facts not in dispute the parties' motions present the Court with three questions of law relative to Plantiffs' claims:. 1) Whether the District's transportation plan for nonpublic students violates the requirements of R.C. 3327.01; 2) whether the plan violates the guarantee of equal protection under Article I, Section 2 of the Ohio Constitution; and 3) whether

the plan violates the Free Exercise Clause of Article I, Section 7 of the Ohio Constitution. The Court will address these legal questions as well as certain procedural issue below.

## II. SUMMARY JUDGMENT STANDARD

Both parties are asking the Court to grant their respective motions for summary judgment. A motion for summary judgment is a motion asking a court to grant judgment on the claims involved without holding a trial. "Summary judgment is a procedural device to terminate litigation, so it must be awarded cautiously with any doubts resolved in favor of the nonmoving party. *LaSalle Bank, N.A. v. Tirado*, 5th Dist. Delaware No. 2009-CA-22, 2009-Ohio-2589, ¶17, citing *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 604 N.E.2d 138 (1992).

In Ohio summary judgment is governed by Civil Rule 56. Pursuant to Civ.R. 56(C):

> A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

Thus summary judgment is proper under Civ.R. 56 when: (1) no genuine issues of material fact exists; (2) the moving party is entitled to judgment as a matter of law; and (3) construing the evidence in the light most favorable to the non-moving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the non-moving party. *Harless v. Willis Day Warehousing Company, Inc.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46, 8 Ohio Op.3d 73 (1978).

At summary judgment the moving party bears the initial burden of demonstrating that no genuine issue of material fact exists as to an essential element of the claims involved in the case. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107, 662 N.E.2d 264 (1996). The Supreme Court of Ohio held in its seminal *Dresher v. Burt* opinion that

> [A] party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. Id.

## III. INJUNCTIVE RELIEF

The Plaintiffs are asking the Court for a permanent injunction against the Board's transportation plan. They ask that the Court "fix" the transportation issues by crafting a permanent order that would result in their children being bussed directly to their school without an interim drop off point and at a time much closer to the opening bell. Plaintiffs suggest that one way the Court could achieve their goals would be to order the District to stop offering bus services to high school students. Plaintiffs also suggest that the Court could order the District to employ a fleet of school transportation vans to transport nonpublic school students.

An injunction is defined as "[a] court order commanding or preventing an action." Black's Law Dictionary 904 (10th Ed.2014). An injunction is directed at preventing a future

injury; it is not designed to redress past wrongs. *Lemley v. Stevenson*, 104 Ohio App.3d 126, 136, 661 N.E.2d 237 (6th Dist.1995), citing *State ex rel. Great Lakes College*, Inc. v. State Medical Bd., 29 Ohio St. 2d 198, 280 N.E.2d 900 (1972). "An injunction is an extraordinary remedy in equity where there is no adequate remedy available at law." *Mack v. City of Toledo*, 2019-Ohio-5427, 151 N.E.3d 151, ¶ 29 (6th Dist.), citing *Garono v. State*, 37 Ohio St.3d 171, 173, 524 N.E.2d 496 (1988).

Parties seeking an injunction have a relatively high burden: "[a] party seeking a permanent injunction 'must demonstrate by clear and convincing evidence that they are entitled to relief under applicable statutory law, that an injunction is necessary to prevent irreparable harm, and that no adequate remedy at law exists.'" *McDowell v. Gahanna*, 10th Dist. No. 08AP-1041, 2009-Ohio-6768, ¶ 9, quoting *Acacia on the Green Condominium Assn., Inc. v. Gottlieb*, 8th Dist. No. 92145, 2009-Ohio-4878, ¶ 18. See also *P&G v. Stoneham*, 140 Ohio App.3d 260, 267-268, 747 N.E.2d 268 (1st Dist.2000); and *Vineyard Christian Fellowship of Columbus v. Anderson*, 10th Dist. No. 15AP-151, 2015-Ohio-5083, ¶ 11, 53 N.E.3d 910 (holding that party seeking a permanent injunction must show that (1) it prevails on the merits, (2) it will suffer irreparable injury if the injunction is not granted, (3) no third parties will be unjustifiably harmed if the injunction is granted, and (4) the public interest will be served by the injunction). All this must be shown by clear and convincing evidence. Clear and convincing evidence is more than a preponderance of the evidence but less than evidence beyond a reasonable doubt; it consists of evidence "which will produce in the mind of the trier of facts a firm belief or conviction as to the

facts sought to be established." *Cross v. Ledford*, 161 Ohio St. 469, 120 N.E.2d 118 (1954), paragraph three of the syllabus.

## IV. PUBLIC BOARDS OF EDUCATION

A public school board, such as the Sylvania Board of Education, is a political subdivision of the State. See *Stanfield v. Reading Bd. of Edn.*, 2018-Ohio-405, 106 N.E.3d 197, ¶ 6. (1st Dist.). The Supreme Court of Ohio has recognized that Ohio has a rich tradition of local control of its public school districts. *In re Huffer from Circleville High School*, 47 Ohio St.3d 12, 546 N.E.2d 1308 (1989). This local control is ultimately vested in the voters of the public school district under Section 3, Article VI of the Ohio Constitution.

The Ohio Supreme Court has also long recognized that courts should not interfere with school board policy unless a policy violates the law. Over a century ago the Ohio Supreme Court held that "[a] court has no authority to control the discretion vested in a board of education by the statutes of this state, or to substitute its judgment for the judgment of such board, upon any question it is authorized by law to determine" and that "[a] court will not restrain a board of education from carrying into effect its determination of any question within its discretion, except for an abuse of discretion or for fraud or collusion on the part of such board in the exercise of its statutory authority." *Brannon v. Bd. of Edn.*, 99 Ohio St. 369, 124 N.E. 235, paragraphs two and three of the syllabus (1919).

The Court cannot pass judgment as to whether the District's transportation plan is good

public policy or the most efficient way to transport the school children of Sylvania. Accordingly, the only question before this Court is whether the Board's plan is lawful. The Court begins that analysis by first turning to the applicable statutes found in Ohio Revised Code chapter 3327.

## V. BREACH OF DUTIES UNDER R.C. 3327.01

Plaintiffs' first argument concerns the statute that governs bussing nonpublic students by public boards of education. In particular paragraph 40 of Plaintiffs' complaint asserts that "Defendants have a statutory obligation under R.C. 3327.01 to transport students 'to and from' their school, which implies no transfers or layovers at [a] school where the students do not attend class and defendants' are directly and indirectly violating the statutory thirty-minute rule." There are two points of contention in this assertion: 1) that Defendants violate R.C. 3327.01 by having a "transfer or layover" point for nonpublic students; and 2) that Defendants violate R.C. 3327.01 by taking more than 30 minutes to transport children to school. The Court will consider each of these argument in turn. The starting point is the text of the relevant statute.

### A. "To and From" School Requirement

R.C. 3327.01 provides in relevant part that

> In all city, local, and exempted village school districts where resident school pupils in grades kindergarten through eight live more than two miles from the school for which the director of education and workforce prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code and to which they are assigned by the board of education of the district of residence or *to and from* the nonpublic or community

> school which they attend, the board of education shall provide transportation for such pupils to and from that school except as provided in section 3327.02 of the Revised Code. (Emphasis added).

The exact meaning of this simple statutory phrase "to and from" is crucial. Courts are required to apply statutes according to the plain meaning of their words. *Judy v. BMV*, 6th Dist. Lucas No. L-01-1200, 2004-Ohio-5673, ¶ 8 (6th Dist.), citing *State v. Krutz*, 28 Ohio St. 3d 36, 38, 502 N.E.2d 210 (1986). The Court may look to prior decisions of other courts to assist it in making that determination. Interestingly, this Court can find no Ohio authority applying the phrase "to and from" school in the context of whether that means that bussing must be done directly to a student's school as opposed to an interim collection point.

The Court has found one federal appellate decision construing a similar phrase—"to and from school"—in a bus related case. In *Chicago Transit Auth. v. Adams*, 607 F.2d 1284 (7th Cir.1979), the United States Court of Appeals for the Seventh Circuit interpreted the phrase "to and from school" as found in a federal school bus safety regulation and considered whether it implied a requirement for direct to school transportation. At issue in *Chicago Transit* was the phrase "to and from school" found in 23 CFR 1204.4 which defined a Type I vehicle as "any motor vehicle used to carry more than 16 pupils to and from School" and a Type II vehicle as vehicle "used to carry 16 or less pupils to or from school." *Chicago Transit Auth* at 1288. The trial court interpreted the phrase "to and from school" to "encompass only home to school transportation and not the school to school services * * *." Id. at 1289. The court of appeals disagreed, finding "[t]he ordinary meaning of 'to and from school' in describing vehicles used to

transport students would seem to be transportation for purposes of school attendance at the beginning and end of the school day." Id. That phrase is broad, according to the appellate court, and the plain meaning encompasses school to school services "since students are taken 'to' their schools of regular attendance each morning and 'from' their schools of regular attendance each afternoon." Id.

The Court finds this plain meaning application of "to and from school" in *Chicago Transit* persuasive and finds that the plain meaning of "to and from" in R.C. 3327.01 does not imply that a school district is required to directly transport a student to their school as opposed to using an interim drop off and pickup point. The phrase "to and from" is broad enough to encompass the interim drop offs employed by the Defendants in this case since the students are taken "to" their school in the morning and "from" their school in the afternoon.

### B. 30 Minute Transportation Time Requirement

Plaintiffs also argue that the District's transportation plan as it is implemented for nonpublic school students violates R.C. 3327.01 because it often requires total transportation time in excess of 30 minutes. They assert that the following provisions in R.C. 3327.01 imply a requirement that a students' total transportation be 30 minutes or less to or from school to home:

> A board of education shall not be required to transport elementary or high school pupils to and from a nonpublic or community school where such transportation would require more than thirty minutes of direct travel time as measured by school bus from the public school building to which the pupils would be assigned if attending the public school designated by the district of residence.

* * *

> The operator of every school bus or motor van owned and operated by any school district or educational service center or privately owned and operated under contract with any school district or service center in this state shall deliver students enrolled in preschool through twelfth grades to their respective public and nonpublic schools not sooner than thirty minutes prior to the beginning of school and to be available to pick them up not later than thirty minutes after the close of their respective schools each day.

The Court can find no case holding that there is an implied 30 minute total transportation time requirement in R.C. 3327.01. Thus the Court must look to the rules of statutory construction in order to determine whether there is an implied 30 minute time limit for school districts to bus children from home to school and from school to home.

There are particular rules that a court must following when determining the meaning of a statute. The Supreme Court of Ohio has held that "[i]f the meaning of [a] statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary." *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.* (1996), 74 Ohio St. 3d 543, 545, 660 N.E.2d 463, 465. It has also held that unambiguous statutes are to be applied according to the plain meaning of the words used, *Roxane Laboratories, Inc. v. Tracy*, 75 Ohio St. 3d 125, 127, 661 N.E.2d 1011, (1996), and courts are not free to delete or insert other words, *State ex rel. Cassels v. Dayton City School Dist. Bd. of Edn.*, 69 Ohio St. 3d 217, 220, 631 N.E.2d 150 (1994). Along these same lines the state high court has said that courts "'do not have the authority' to dig deeper than the plain meaning of an unambiguous statute 'under the guise of either statutory

interpretation or liberal construction.'" Id., quoting *Morgan v. Ohio Adult Parole Auth.*, 68 Ohio St.3d 344, 347, 1994-Ohio-380, 626 N.E.2d 939 (1994). In other words, courts cannot look beyond the language of an unambiguous statute to determine its meaning. See *Jones v. Action Coupling & Equip.*, 98 Ohio St.3d 330, 2003-Ohio-1099, 784 N.E.2d 1172, ¶ 12.

With the foregoing principles in mind the Court finds that the meaning of R.C. 3327.01 is clear and unambiguous. The Court finds that the plain meaning of the foregoing provisions only relates to 1) the geographic boundary where school districts are required to transport nonpublic school students; and 2) a limitations upon when students must be dropped off at school in the morning and picked up from school in the afternoon. Because the plain meaning of the statute is clear and unambiguous the court cannot go any further in attempting to find an implied additional meaning. Thus there can be no implied 30 minute total transportation time requirement read into the plain language of R.C. 3327.01.

The Court finds that Plaintiffs have not demonstrated that the Defendants' transportation plan violates any requirement of R.C. 3327.01 on the grounds argued. There is a presumption, in the absence of evidence to the contrary, that public officers and public authorities have properly performed their duties in a legal and lawful manner and that they did not act illegally or unlawfully. *Spencer v. Heise*, 107 Ohio App. 505, 507, 158 N.E.2d 570 (10th Dist.1958). Further, in the absence of any evidence to the contrary, administrative officers and public boards are presumed to have properly performed their duties in a lawful, impartial manner. *State ex rel. Cydrus v. Ohio Pub. Emples. Ret. Sys.*, 127 Ohio St.3d 257, 2010-Ohio-5770, 938 N.E.2d 1028 ¶

34; *West Virginia v. Ohio Hazardous Waste Facility Approval Bd.*, 28 Ohio St.3d 83, 86, 502 N.E.2d 625 (1986). Having found that Plaintiffs failed to establish any violation of R.C. 3327.01 the presumption of lawfulness applies to the Board's transportation plain with respect to the challenged statutory requirements. Accordingly, the Court finds for Defendants with respect to the requirements of R.C. 3327.01.

## VI. VIOLATION OF EQUAL PROTECTION

Plaintiffs argue that the District's transportation plan violates the guarantee of equal protection under Article I, Section 2 of the Ohio Constitution. They assert that "defendants have concocted a logistical plan that treats plaintiffs' children—who all attend Sylvania St. Joseph, a chartered nonpublic Catholic school in the heart of the City of Sylvania—dissimilarly to pupils who attend public school in Sylvania." Here Plaintiffs are referring to the fact that nonpublic school students are often picked up relatively earlier, dropped off at an interim hub, and frequently have a longer total transportation time as compared to public school students.

### A. Equal Protection

A public school board is a political subdivision of the State. See *Stanfield v. Reading Bd. of Edn.*, 2018-Ohio-405, 106 N.E.3d 197, ¶ 6. (1st Dist.). Thus it is subject to the aforementioned equal protection clause of the Ohio Constitution. That clause provides "[a]ll political power is inherent in the people" and that "[g]overnment is instituted for their equal

protection and benefit ***."

The standard for determining violations of equal protection is essentially the same under Ohio and federal law. *Beatty v. Akron City Hosp.*, 67 Ohio St.2d 483, 491, 424 N.E.2d 586 (1981), quoting *Kinney v. Kaiser Aluminum & Chem. Corp.*, 41 Ohio St.2d 120, 322 N.E.2d 880 (1975). Under the equal protection clause the state may not treat people differently under its laws on an arbitrary basis. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 86 S.Ct. 1079, 16 L. Ed. 2d 169 (1966). The equal protection clause is therefore "essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985). The Equal Protection Clause, however, does not prevent classifications; it simply forbids laws which treat differently persons who are in all relevant respects alike. *State v. Walker*, 6th Dist. Lucas Court of Appeals No. L-98-1211, 1998 Ohio App. LEXIS 6038, *6 (Dec. 18, 1998), citing *Nordlinger v. Hahn*, 505 U.S. 1, 120 L. Ed. 2d 1, 112 S. Ct. 2326 (1992).

Challenging a law or policy on constitutional grounds such as on equal protection grounds is often a difficult task. Duly enacted laws are entitled to a strong presumption of constitutionality. *Yajnik v. Akron Dept. of Health, Hous. Div.*, 101 Ohio St.3d 106, 2004-Ohio-357, 802 N.E.2d 632, ¶ 16, citing *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 57 O.O. 134, 128 N.E.2d 59 (1955). See, also, *State v. Rober*, 2015-Ohio-5501, 55 N.E.3d 641 (6th Dist.), ¶ 17. To overcome this presumption, the party challenging the law must prove the law unconstitutional beyond a reasonable doubt. *Taxiputinbay v. Village of Put-In-Bay*, 2023-

Ohio-1237, 212 N.E.3d 1215, ¶ 9 (6th Dist.), citing *Yajnik* at ¶ 16. A court thus begins a challenge to the constitutionality of a law with the strong presumption that that law is constitutional. See *Rober* at ¶ 17.

### B. Tests for Determining a Violation of Equal Protection

The Court must begin by determining what legal test applies to Plaintiffs' claim. "When legislation infringes upon a fundamental constitutional right or the rights of a suspect class, strict scrutiny applies." *Montgomery v. Leffler*, 6th Dist. Huron No. H-08-011, 2008-Ohio-6397, ¶ 34, citing *Arbino v. Johnson and Johnson*, 116 Ohio St.3d 468, 2007 Ohio 6948, P 64, 66, 880 N.E.2d 420. Strict scrutiny demands that for a classification, implicating a fundamental right or involving a suspect class, to be legal it must be narrowly tailored to serve a compelling state interest. *State v. Thompson*, 95 Ohio St.3d 264, 2002-Ohio-2124, 767 N.E.2d 251, ¶ 13, citing *United States v. Playboy Ent. Group, Inc.*, 529 U.S. 803, 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865(2000). But if neither a fundamental right nor a suspect class is involved the rational-basis test is used. *Leffler* at ¶ 34. The rational basis test requires that a statute with a classification be upheld as constitutional if it is rationally related to a legitimate government purpose. Id.

#### 1. Strict Scrutiny for Distinctions Involving a Suspect Class or Fundamental Rights

Thus when determining whether a statute, ordinance, or policy violates the constitutional

right to equal protection a court must begin by determining whether the class distinction drawn by legislation involves a suspect class or fundamental right. *Roseman v. Firemen & Policemen's Death Benefit Fund*, 66 Ohio St. 3d 443, 447, 613 N.E.2d 574 (1993). A suspect class is a group of persons that courts have recognized as having been "saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 28, 36 L. Ed. 2d 16, 93 S. Ct. 1278 (1973). "Suspect class" has been consistently applied to groups pertaining to race, national origins and alienage. *State v. Melching*, 7th Dist. Jefferson CASE NO. 96 JE 41, 1997 Ohio App. LEXIS 4300, *5 (Sep. 15, 1997). See, also, *Wells Fargo Bank, N.A. v. Herman*, 2d Dist. Montgomery No. 27854, 2018-Ohio-3700, ¶ 32, citing *State v. Melms*, 2018-Ohio-1947, 101 N.E.3d 747, ¶ 30 (2d Dist.), quoting *State v. Williams*, 88 Ohio St.3d 513, 530 728 N.E.2d 342 (2000) (stating that "[T]he only classifications recognized as 'suspect' are those involving race, alienage, and ancestry").

In this case the classification drawn for differential treatment turns upon whether a student is enrolled in public school versus a nonpublic or a community school. This classification does not involve race, national origin, or alienage. Nor do such students or their parents meet the general definition for being part of a suspect class: having a history of purposeful unequal treatment or having been relegated to a position of political powerlessness. The Court finds no Federal or Ohio case law recognizing private/nonpublic school students,

religious school students, or catholic school students as a suspect class. Accordingly, the Court finds that no suspect class is implicated in this matter.

The Court next considers whether a fundamental right is implicated. This case concerns the Plaintiffs' students and ultimately their education. Therefore the question before the Court is whether the Plaintiffs' children's right to their education is considered "fundamental" for purposes of equal protection. The United States Supreme Court has found that there is no fundamental right to an education. See *Plyler v. Doe*, 457 U.S. 202, 223, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982) ("Nor is education a fundamental right."); see also *Bryant v. N.Y. State Educ. Dep't*, 692 F.3d 202, 217 (2d Cir. 2012) (holding that "[t]he right to public education is not fundamental"). Thus, while the right to an education is an important right, it is not a "fundamental right" such as to require strict scrutiny review. *Goe v. Zucker*, 43 F.4th 19, 19 (2d Cir.2022). See, also *Novak v. Revere Local School Dist.*, 65 Ohio App.3d 363, 367, 583 N.E.2d 1358 (9th Dist.1989) (stating that as there is no fundamental constitutional right to an education itself there can be no fundamental right to transportation to school).

### 2. Rational Basis for Distinctions Not Involving a Suspect Class or Fundamental Rights

The District's transportation scheme is to be reviewed under the rational-basis test because no suspect class or fundamental rights are implicated. Under rational-basis review, a state action will be upheld "if it is rationally related to a legitimate government interest." *State v.*

*Williams*, 126 Ohio St.3d 65, 2010-Ohio-2453, ¶ 39, 930 N.E.2d 770, citing *Eppley v. Tri-Valley Local School Dist. Bd. of Edn.*, 122 Ohio St.3d 56, 2009-Ohio-1970, ¶ 15, 908 N.E.2d 401; *In re Vaughn*, 12th Dist. Butler No. CA89-11-162, 1990 Ohio App. LEXIS 3456, *14 (Aug. 13, 1990). That is to say, when applying the rational-basis test to a state action, a distinction between those within a designated class and those who are not, "'must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.'" *American Assn. of Univ. Professors v. Central State Univ.*, 87 Ohio St.3d 55, 58, 1999-Ohio-248, 717 N.E.2d 286 (1999), quoting *Fed. Communications Comm. v. Beach Communications, Inc.*, 508 U.S. 307, 313, 113 S.Ct. 2096, 124 L. Ed. 2d 211 (1993).

Legislative enactments that do not involve a suspect classification are "presumptively rationally related to legitimate social and economic goals, unless the 'varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [a court] can only conclude that the legislature's actions were irrational.'" *McCrone v. Bank One Corp.*, 107 Ohio St.3d 272, 2005-Ohio-6505, 839 N.E.2d 1, ¶ 30, quoting *State ex rel. Doersam v. Indus. Comm.*, 40 Ohio St.3d 201, 203, 533 N.E.2d 321 (1988), quoting *Vance v. Bradley*, 440 U.S. 93, 97, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979). It is only where a distinction is wholly arbitrary that the scrutiny applied under a rational-basis review fails. *Pickaway Cty. Skilled Gaming, L.L.C. v. Cordray*, 127 Ohio St.3d 104, 2010-Ohio-4908, ¶ 31, 936 N.E.2d 944, citing *New Orleans v. Dukes*, 427 U.S. 297, 304, 96 S.Ct. 2513, 49 L. Ed. 2d 511 (1976).

A court must grant substantial deference to the state when conducting a rational-basis

review of a state's distinction (or classification) that is being challenged on equal protection grounds. *State v. Burkhart*, 12th Dist. Clermont No. CA2015-01-004, 2015-Ohio-3409, 37 N.E.3d 220, ¶ 12, citing *State v. Williams*, 126 Ohio St.3d 65, 2010-Ohio-2453, 930 N.E.2d 770, ¶ 40. Therefore, under the rational-basis test, reviewing a state's action "'is not subject to courtroom fact-finding and may be based on rational speculation unsupported by evidence or empirical data.'" *State v. Batista*, 151 Ohio St.3d 584, 2017-Ohio-8304, 91 N.E.3d 724, ¶ 22, quoting *Beach Communications*, 508 U.S. at 315. Rational-basis review thus tolerates overinclusive classifications, underinclusive ones, and other imperfect means-ends fits. *Heller v. Doe*, 509 U.S. 312, 319-320, 113 S. Ct. 2637, 125 L. Ed. 2d 257 (1993); *Gregory v. Ashcroft*, 501 U.S. 452, 473, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991); *Vance v. Bradley*, 440 U.S. 93, 107-09, 99 S. Ct. 939, 59 L. Ed. 2d 171 (1979).

### C. Analysis of Equal Protection Claim

A government has a legitimate interest in the conservation of limited fiscal resources. *Menefee v. Queen City Metro*, 49 Ohio St.3d 27, 29, 550 N.E.2d 181 (1990). In *Hensley v. Toledo Area Regional Transit Auth.*, 121 Ohio App.3d 603, 700 N.E.2d 641 (6th Dist.1997), the Ohio Sixth District Court of Appeals recognized in a school bussing case that there is a legitimate governmental interest "in providing a means of access to educational facilities for students, while not unduly burdening the resources of the school district." *Hensley* at 612, citing *Novak v. Revere Local School Dist.* (1989), 65 Ohio App. 3d 363, 583 N.E.2d 1358.

Plaintiffs claim that "Plaintiffs' children are similarly situated to other children eligible for transportation * * *." They also claim that "[w]hether a student attends a public or nonpublic school is *not relevant* under R.C. 3327.01 and is hence ipso facto also not relevant to the 'similarly-situated' analysis." Defendants dispute the characterization of public and nonpublic students as being similarly situated in all relevant respects. On the other hand Defendants argue that the nonpublic school students differ in important factors such as 1) school start and end times; 2) length of the instructional day; and 3) they do not attend their nearby neighborhood school. Defendants' assert that "[t]he geographic dispersion of nonpublic students is the most impactful and relevant distinction in transportation planning." Because of this geographic dispersion of nonpublic students the District uses the so-called "hub and spoke" model of transportation to transport nonpublic school student. This "hub and spoke" model of transportation is used, according to Defendants, to address the logistical issues caused by the geographic dispersion of nonpublic students who may live anywhere within the school district. Defendants claim that this model is an efficient use of the District's finite resources.

Plaintiffs argue that Defendants could better address the logistical difficulties posed by the geographic dispersion of the nonpublic schools students by opting not to transport any secondary students and/or using smaller dedicated vans for each of the nonpublic schools. These suggestions, however, go to whether the transportation policy is good or efficient policy. The Court does not make such considerations when evaluating whether a policy scheme

Under the rational basis test the Court is to give the District substantial deference in its

policy making decisions regarding transportation. It is not up to this Court to decide whether the District's plan is the most efficient plan in transporting both the public and nonpublic students under rational basis review. Instead, the Court may only consider whether there is any reasonably conceivable state of facts that could provide a rational basis for the classification.

First, the Court must note that it is well-established that the District has a legitimate interest in the conservation of its limited financial resources. This interest extends to how the District implements its transportation plan. Defendants assert that "[t]he District bases its plan largely on geography * * *." This is reasonable because geographic factors are inherently a primary aspect of creating a transportation plan. Transportation also takes time. It is an undisputed fact in this case that the District's nonpublic school students are geographically dispersed throughout the District, as opposed to the public school primary students who are clustered geographically according to their assigned neighborhood school.

It therefore appears reasonable that it is more efficient for Defendants to have the dispersed nonpublic and community school students—who attend 17 different schools—taken to a central collection point before transporting them to their individual schools. This extra step, of course, takes additional time leading to earlier pickups and longer total transportation time for the nonpublic school students. Although there might be a better way to do things, the rational basis test only requires rational speculation that the means used is related to a legitimate governmental interest. The Court finds that Defendants' transportation plan meets the rational basis test.

The Court finds against Plaintiffs as to their equal protection claim under the Ohio Constitution. Accordingly, the presumption that a legislative act is constitutional applies to the Board's transportation plan. With this presumption the Court finds in favor of Defendants as to Plaintiffs' equal protection claim.

## VII. VIOLATION OF FREE EXERCISE OF RELIGION

Section 7, Article I of the Ohio Constitution provides that "[a]ll men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience." Ohio courts traditionally mirrored federal jurisprudence as to protection of religious freedom. *Humphrey v. Lane*, 89 Ohio St.3d 62, 67, 728 N.E.2d 1039 (2000). In *Emp. Div. v. Smith*, 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), the United States Supreme Court held that generally applicable, religion-neutral laws that have an incidental effect of burdening religious practice need not be justified by a compelling state interest. The Supreme Court of Ohio, however, imposed a higher standard under the state constitution and held that pursuant to Section 7, Article I of the Ohio Constitution, "the standard for reviewing a generally applicable, religion-neutral state regulation that allegedly violates a person's right to free exercise of religion is whether the regulation serves a compelling state interest and is the least restrictive means of furthering that interest." *Humphrey v. Lane*, 89 Ohio St.3d 62, 67, 2000-Ohio-435, 728 N.E.2d 1039, syllabus.

The Ohio Supreme Court's decision in *Humphrey* thus establishes that "the Ohio

Constitution's Free Exercise Clause 'goes beyond that provided by the federal Constitution's Free Exercise Clause.'" *State v. Sobel*, 2023-Ohio-2247, 221 N.E.3d 44, ¶ 25 (6th Dist.), citing *State v. Cook*, 3d Dist. Hancock No. 5-19-26, 2020-Ohio-432, ¶ 27, quoting *State v. Mole*, 149 Ohio St.3d 215, 2016-Ohio-5124, ¶ 84, 74 N.E.3d 368. The difference, according to the Ohio Supreme Court, is that we "vary from the federal test for religiously neutral, evenly applied government actions." *Humphrey* at 68.

### A. Prima Facie Case

A plaintiff must establish a prima facie free exercise claim before a court may proceed to determine whether a law or policy serves a compelling state interest through the least restrictive means. *State v. Cook*, 3d Dist. Hancock No. 5-19-26, 2020-Ohio-432, ¶ 28. A prima facie case is the minimum amount of evidence that a party must initially offer in order to be eligible to proceed with their entire claim. In order to state a prima facie free exercise claim, the plaintiff must show that his or her religious beliefs are truly held and that the governmental enactment has a coercive affect against him in his practice of his or her religion. *Humphrey* at 68, citing *State v. Whisner*, 47 Ohio St.2d 181, 200, 351 N.E.2d 750 (1976). If the plaintiff makes this prima facie showing, then the burden shifts to the government to prove that the regulation furthers a compelling state interest. Id. at 69. Once that "aspect has been satisfied, the state must prove that its regulation is the least restrictive means available of furthering that state interest." Id.

### B. Coercive Effect Upon Religious Practice

Defendants do not appear to dispute Plaintiffs claims of sincerely held religious belief. Thus the Court must consider whether Plaintiffs have met their burden to demonstrate that the Board's transportation plan has a coercive effect upon Plaintiffs' practice of their religion.

It does not appear that any Ohio case has defined "coercion" in the context of the government imposing a burden on the free exercise of religion. However, the United States Court of Appeals for the Sixth Circuit has stated that:

> It is clear that governmental compulsion either to do or refrain from doing an act forbidden or required by one's religion, or to affirm or disavow a belief forbidden or required by one's religion, is the evil prohibited by the Free Exercise Clause. *Mozert v. Hawkins Cty. Bd. of Edn.*, 827 F.2d 1058, 1066 (6th Cir.1987). See, also, *Nikolao v. Lyon*, 875 F.3d 310, 316 (6th Cir.2017)

It is essential when making a prima facie free exercise claim in Ohio that the plaintiff show that the governmental policy or action had a coercive effect against him or her in their practice of their religion.

The evidence submitted by plaintiffs consist of several affidavits by the parties and a non-party spouse. These affidavits recite that they choose Catholic education because of their personal Catholic faith. The affidavits also recite the various inconveniences the Plaintiffs and their children face because of the District's transportation scheme. However, the Court finds that

Plaintiffs have offered no evidence of any coercive effects on their religious practice: there is no evidence that the transportation plan has compelled Plaintiffs to do anything forbidden by their religion or that it has caused them to refrain from doing something required by their religion. Plaintiffs have also not offered any evidence that the transportation plan has compelled them to affirm or disavow a belief forbidden or required by their religion. Accordingly, the Court finds that Plaintiffs have failed to demonstrate any coercive effect upon their religious practice. The Plaintiffs have therefore failed to show that Defendants' transportation plan violates their right to free exercise of religion under the Ohio Constitution.

The Court finds against Plaintiffs as to their claim that Defendants' transportation plan violates their right to free exercise of religion under the Ohio Constitution. Again, the presumption that a legislative act is constitutional applies to the Board's transportation plan: With this presumption the Court finds in favor of Defendants as to Plaintiffs' free exercise claim.

## VIII. CONCLUSION

The Court has carefully considered the Motion, all of the evidence offered by the parties, and is otherwise fully advised in the premises. A party seeking a permanent injunction must demonstrate that it can prevail on the merits of its underlying claim. Here the Court has found against Plaintiffs on all three of their claims that the Defendants' transportation plan is unlawful. Accordingly the Court finds that the Plaintiffs are not entitled to injunctive relief.

The relevant operative facts in this case are, again, not in dispute. Upon the parties' cross-

motions for summary judgment the Court therefore was presented with more or less pure questions of law. The Court finds that Plaintiffs have failed to meet their burden of demonstrating that they are entitled to judgment as a matter of law. Having found that Plaintiffs failed to meet their burdens with respect to their various arguments the Court finds that the presumptions of legality and constitutionality apply. As such the Court finds for Defendants as to their motion for summary judgment.

**JUDGMENT ENTRY**

It is therefore ORDERED that "Plaintiffs' Motion for Summary Judgment" filed on December 26, 2023 is found not well-taken and is DENIED. It is further ORDERED that "Defendants' Motion for Summary Judgment and Memorandum in Support" filed on December 26, 2023 is found well-taken and is GRANTED. Plaintiff's Complaint is therefore dismissed with prejudice.

Dated: 3/19/24

**JUDGE STACY L. COOK**