SANDRA H.,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
PRINCE GEORGE'S COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee.	Opinion No. 10-32

OPINION

INTRODUCTION

On May 13, 2010, the Appellant filed an appeal challenging the denial of admission of her daughter to the John Hanson Montessori Program. The Prince George's County Board of Education (local board) filed a Motion to Dismiss. The Appellant responded to the Motion. The local board filed a Reply.

FACTUAL BACKGROUND

In March 2009, the Appellant entered her three-year-old and four-year-old daughters into the lottery for the John Hanson Montessori Program. In May, 2009, she received two letters from Charlotte Stokes, Coordinator Supervisor, Office of Enrichment and Speciality Programs. One letter advised the Appellant that her three-year-old daughter was accepted in the John Hanson Montessori Program for the 2009-2010 school year. (Appeal, Ex. 6). The other letter advised Appellant that her four-year-old was wait listed. (Appeal, Ex. 7).

Thereafter, the Appellant contacted various persons in the Prince George's County School System (PGCPS). (Appeal, Ex. 14, Linda Thomas, February 23, 2010; Ex. 15, G. Harris, February 23, 2010; and Ex. 18, Edward Burroughs, January 6, 2010). She also wrote to various State Senators and Delegates. (Appeal, Ex's. 2, 13, 16, and 17). She requested their help in getting her four-year-old daughter accepted to the John Hanson Montessori Program under the sibling enrollment preference. The Appellant asserts that she also contacted various local board members, all to no avail.

On April 16, 2010, the Appellant e-mailed Shauna Battle, Deputy General Counsel to Prince George's County Public Schools, alleging unfair treatment during the 2009-2010 Montessori Program lottery process. Ms. Battle responded on April 27, 2010 with a comprehensive explanation of the lottery process and admission policies for the Montessori Program. Ms. Battle concluded that the "lottery application was treated fairly and equitably."

She also explained:

> "Moreover, because [your daughter] is now five years old and will start kindergarten in the fall, she will not be offered sibling placement for the 2010-2011 school year. The placement guidelines for entry into the Montessori program state that a child older than five can only be placed into a Montessori program via lottery if they have previous Montessori experience."

Shortly, thereafter, the Appellant filed this appeal to the State Board.

STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered *prima facie* correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.03E(1).

LEGAL ANALYSIS

Before considering the parties arguments, we must define the issue here. The 2009-2010 lottery and school year are long over. The fact that Appellant's then four-year-old daughter was not admitted to the Montessori Program in 2009-2010 cannot be remedied on appeal.

It appears that the Appellant wants her daughter (who is now five-years-old) admitted to the Montessori Program for the 2010-2011 school year. Ms. Battle, in her letter of April 27, 2010, stated that the placement guidelines for entering into the Montessori Program would preclude that admission. That apparently is the decision from which the Appellant appeals to this Board.

The local board has moved to dismiss this appeal because the Appellant failed to appeal to the local board and, thus, there is no decision of the local board for this Board to review. We have consistently ruled that Md. Educ. Code Ann. §4-205 requires an Appellant to pursue and exhaust prescribed administrative remedies in the appropriate manner. *See Kemp v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 01-14 (2001); *Stewart v. Bd. of Educ. of Prince George's County*, 7 Op. MSBE 1358 (1998); *Jackson-Nesmith v. Charles County Bd. of Educ.*, 7 Op. MSBE 1320 (1998); *Hopkins v. Bd. of Educ. of Montgomery County*, 4 Op. MSBE 370 (1986).

The Appellant argues, however, that pursuant to Md. Educ. Code Ann. §2-205, this Board can rule on this case even absent a local board decision.

In another Opinion issued today, *Sartucci v. Montgomery County Board of Education*, we explained the two avenues of appeal to the State Board and the jurisdictional boundaries of each.

That same explanation is applicable here.

Two parts of the State statute establishing the State Board's quasi-judicial jurisdiction address the Board's authority to hear and decide cases. They are §4-205 and §2-205. Section 4-205 establishes the State Board's authority to hear and decide appeals from decisions of local boards. That authority arose by statute in 1969. Prior to that date, there was "no appeal . . . to the State Board from the action of a County Board . . . ." *Robinson v. Board of Education of St. Mary's County*, 143 F. Supp. 481, 491 (D.MD. 1956) (citing Art. 77 §143, the predecessor to §4-205). Likewise, there was no appeal to the county board from a local superintendent's decision. An appeal would lie from the local superintendent's decision only to the State Board. *Id.* In 1969, an appeal to the county board and a subsequent appeal to the State Board was added to the statute.

But that change did not eliminate the State Board's jurisdiction under §2-205. Under §2-205(e), the State Board is given the power to determine the true intent and meaning of state education law and to decide all cases and controversies that arise under the State education statute and State Board rules and regulations. That authority has existed in statute since 1870.

The Court of Appeals has explained the interplay between §2-205(e) and §4-205. Section 2-205 was intended by the General Assembly as a grant of "original jurisdiction" to the State Board allowing an appellant a direct appeal to the Board "without the need to exhaust any lower administrative remedies", while §4-205 vests the State Board with "appellate jurisdiction" over decisions of local boards. *See Board of Education for Dorchester County v. Hubbard*, 305 Md. 774, 789 (1986), *Board of Education of Garrett County v. Lendo*, 295 Md. 55, 65-66 (1982). Section 4-205 requires an appellant to exhaust administrative remedies.

When §2-205 provides jurisdiction for our review of the local board's decision, that statute also defines the contours of our authority. Specifically, the law confines matters subject to review to those involving State education law, regulations, or a policy that implicates State education law or regulations on a statewide basis.

Because the issue, as we see it, is whether a local enrollment policy is applicable here, this is not a case that can arise under our §2-205 jurisdiction. The case must arise under §4-205 because it involves a dispute over a local policy. Unless there are unique circumstances, such cases require that the Appellant obtain a decision of the local board for review on appeal.

We do not find unique circumstances here. The Appellant was persistent in her inquiries and contacts. While we recognize that none of her contacts pointed out her appeal rights or directed her to the proper appeal procedures, we believe that a person who has a dispute with a local school system has a responsibility to research and identify her legal options. This Appellant has demonstrated by her filings in this case that she is skilled and capable of doing so.

CONCLUSION

For this reason stated herein, this appeal is dismissed.

James H. DeGraffenreidt, Jr.
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ABSENT

Ivan C.A. Walks

Kate Walsh

August 24, 2010