

BRIAN DAVISON, ET AL.,

BEFORE THE

Appellant

MARYLAND

v.

STATE BOARD

BALTIMORE COUNTY
BOARD OF EDUCATION,

OF EDUCATION

Appellee

Opinion No. 99-32

OPINION

In this appeal, a group of parents dispute what they claim is a decision by the local board denying a request for bus transportation from Catonsville Presbyterian Church Family Day Care Center (“CPCF”) to Westchester Elementary School. The local board has filed a Motion to Dismiss maintaining that Appellants have failed to exhaust their administrative remedies. Appellant’s have filed a response opposing the motion.

BACKGROUND

Appellants are a group of parents whose children currently attend or will be attending CPCF for day care service for the 1999-2000 school year, and would like the school system to provide bus service from the day care center to Westchester Elementary School. The day care facility is situated approximately 1.5 miles from Westchester Elementary, however it is not located in the Westchester Elementary School district.¹ This dispute involves a local board policy which was enacted in 1989, prohibiting bus transportation outside of school district boundaries. The policy, however, has a “grandfather clause” for transportation arrangements that had already existed prior to the effective date of the policy. Westchester Elementary was built in 1998, and thus is not covered under the grandfather clause.²

By letter dated March 17, 1998, the Director of Transportation for Baltimore County Public Schools advised Appellant Cynthia Pender that bus services from the day care center to Westchester would be provided for a grace period of one year, but that service would be discontinued after the 1998-99 school year.³

¹The facility is located in the Hillcrest Elementary School district.

²Bus services are provided from CPCF to Catonsville Elementary and to Westowne Elementary.

³This correspondence from the Director of Transportation was in response to various communications from Ms. Pender on the issue of bus transportation.

Thereafter, Ms. Pender sent correspondence dated January 24, 1999, to Paul Cunningham, a local board member, and correspondence dated February 16, 1999, to Dunbar Brooks, President of the local board, requesting that the local board provide bus transportation between CPCF day care and Westchester. Ms. Pender suggested that the local board either interpret the policy as allowing bus transportation between the two facilities because the day care facility existed at the time the policy was enacted, or that an exception be made in this case for transportation based primarily on the short distance between the two facilities.

In response to Ms. Pender's February 16, 1999 letter to Dunbar Brooks, Ms Pender received correspondence dated February 26, 1999, from Thomas R. Hensley, Area Superintendent in the Division of Fiscal and Support Services. In that letter, Mr. Hensley explained the general intent of the board policy and advised Ms. Pender that he was unable to grant her request for an exception under the policy.⁴ This appeal followed.

ANALYSIS

The local board has moved to dismiss this appeal because the local board has not issued a final decision in the matter. The State Board has consistently held that an appellant must pursue and exhaust statutorily prescribed administrative remedies in the appropriate manner. See *Richard Stewart v. Board of Education of Prince George's County*, MSBE Opinion No. 98-56 (December 9, 1998); *Deborah A. Jackson-Nesmith v. Board of Education of Charles County*, MSBE Opinion No. 98-49 (September 24, 1998); *Joshua Peacock v. Baltimore County Board of Education*, MSBE Opinion No. 98-43 (July 29, 1998); *Hopkins v. Board of Education of Montgomery County*, 4 Op. MSBE 370, 371 (1986). The procedures of the State Board require that a matter must first be decided by the local board of education before it is submitted to the State Board on appeal. See Md. Code Ann., Educ. § 4-205(c)(4).

In this case, Appellants appear to have mistaken the letter dated February 26, 1999, from Mr. Hensley to Appellant Pender as a decision of the local board of education. The confusion stems from language in Mr. Hensley's letter which states that "[o]n behalf of Mr. Dunbar Brooks, President of the Board of Education, I am responding to your letter of February 16, 1999 . . .", and from a handwritten note on a copy of Ms. Pender's February 16, 1999 letter which appears to have been written by the local superintendent to Mr. Hensley. It reads: "Please review this matter and advise me. We will need to do a response for the board."

Having reviewed the record, we do not find that the correspondence from Mr. Hensley can be construed as representing a formal decision of the local board of education concerning an appeal. It is not framed as a formal decision of the board, nor is the letter signed by any member of the board. At best, it might be construed as a decision by the superintendent's designee. The

⁴The correspondence from Mr. Hensley to Ms. Pender, however, did not include reference to the procedures Appellant was to follow in the event that she disagreed with the denial of her request.

regular process in such matters requires a decision by the superintendent or his designee prior to an appeal to the local board. *See* Md. Code Ann., Educ. § 4-205. Nowhere in Ms. Pender's letters to Paul Cunningham and to Dunbar Brooks does she indicate that she is appealing a decision of the superintendent. Nor have Appellants presented any other evidence demonstrating a formal local board decision in this matter.

CONCLUSION

Because Appellants have failed to exhaust the available administrative remedies before the local board, we are remanding the appeal to the Board of Education of Baltimore County for its review and decision.

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June 30, 1999