

LINDA KEMP,
Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 01-14

OPINION

Linda L. Kemp, a Montgomery County Public Schools (“MCPS”) bus operator, appeals the Department of Transportation’s (“MCPS-DOT”) determination that her bus accident was “preventable.” The local board has filed a Motion to Dismiss maintaining that Appellant has failed to exhaust her administrative remedies. Appellant has filed a reply in opposition to the request for dismissal of the appeal.

BACKGROUND

Linda L. Kemp has been certified as a bus operator since 1998 and has been employed by the MCPS for approximately two and one-half years. On May 22, 2000, Ms. Kemp was backing a school bus into a parking space at the West Farm Bus Depot in Silver Spring, Maryland, when she struck a parked car. The parked car was located in the parking space Ms. Kemp attempted to back into. The collision made a dent in the car approximately 6 inches long and about an inch deep. The MCPS-DOT classified the incident as a preventable accident.¹ After the MCPS-DOT determination, Ms. Kemp was decertified as a bus operator and was demoted to a bus attendant. MCPS paid \$1,749.41 to repair the damages caused by the collision.

Pursuant to MCPS administrative regulation EBI-RA, “Review of Preventable Accidents and Bus Accidents Review Board (“BARB”),” section III.E.1, Ms. Kemp appealed the preventable accident finding to the BARB. On September 26, 2000, the BARB upheld the determination that the accident was preventable. Ms. Kemp next appealed the BARB determination to the Accident Review Board (“ARB”), pursuant to EBI-RA, section III.E.2. Ms. Kemp appeared before the ARB on December 19, 2000, and presented arguments about why the incident should not be treated as a preventable accident. On December 20, 2000, the ARB concluded that Ms. Kemp “contributed to the accident by failing to verify a clear path for backing the bus, and by not practicing defensive driving, regardless of weather conditions.” The ARB upheld the determination that her accident was preventable. The December 20, 2000 letter from

¹This is the second accident Ms. Kemp has had that has caused damage to another vehicle. The previous accident occurred February 10, 2000. That accident was also classified as preventable.

ARB advised Ms. Kemp to contact the Safety/Training Unit Supervisor by January 4, 2001, if she wanted to appeal further. In early January 2001, Ms. Kemp asked the supervisor of the Training and Safety Unit to submit her appeal to the Safety Council of Maryland. On January 19, 2001, the State Board of Education received Ms. Kemp's appeal. On February 1, 2001, the Safety Council sent a letter to the Transportation Training and Safety Supervisor that indicated agreement with the ARB's findings that the May 22nd accident was preventable.

ANALYSIS

The local board has moved to dismiss this appeal because Appellant has bypassed both the county superintendent and the county board with her appeal to the State Board. Ms. Kemp states in her letter to the State Board that she has had two unsuccessful appeals with the MCPS-Department of Transportation and was not given a fair and just opportunity to present her case. Ms. Kemp does not claim that the county superintendent or the local board of education has reviewed this matter.

The procedures of the State Board require that a matter must first be decided by the local superintendent and local board of education before it is submitted to the State Board on appeal. *See* Md. Code Ann., Educ. § 4-205(c). Accordingly, 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*, 7 Op. MSBE 1358 (1998); *Deborah A. Jackson-Nesmith v. Board of Education of Charles County*, 7 Op. MSBE 1320 (1998); *Joshua Peacock v. Baltimore County Board of Education*, 7 Op. MSBE 1287 (1998); *Hopkins v. Board of Education of Montgomery County*, 4 Op. MSBE 370, 371 (1986).

Ms. Kemp exercised three levels of appeal of the preventable accident finding as provided by MCPS regulation EBI-RA, section III.E. However, none of the three appeals to the BARB, ARB, or the Safety Council of Maryland represents a formal decision of the local superintendent or local board of education. Accordingly, we agree with the local board that Ms. Kemp has not pursued the applicable administrative review process to the local superintendent and then the local board before seeking review by the State Board.

Despite Ms. Kemp's failure to exhaust her administrative remedies before requesting this appeal, we do not believe that it was for lack of trying. The three tiered appeal process provided by regulation EBI-RA is extensive and may well lead a bus operator to believe that the three stated levels were sufficient to exhaust the local administrative review procedures. However, even after completing the three levels of review of the bus accident determination, Ms. Kemp is still required by Md. Code Ann., Educ. § 4-205(c) to present the dispute to the local superintendent and local board before she can appeal to the State Board. Consequently, we find that the State Board does not have jurisdiction over this matter until the local superintendent has reviewed the dispute and the local board of education has had the opportunity to review the local superintendent's decision.

CONCLUSION

Because Appellant has failed to exhaust the available administrative remedies before the local superintendent and local board, we are remanding the appeal to the Board of Education of Montgomery County for appropriate review and decision.

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April 24, 2001