

IN THE MATTER OF
ALLEGANY COUNTY
TEACHERS' ASSOCIATION (ACTA)

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 15-24

OPINION

On May 11, 2015, the Allegany County Teachers' Association ("ACTA"), through its Director, Evan E. West, filed a letter with the State Board stating that it was appealing, pursuant to §2-205 of the Education Article, questions related to the application of the Quality Teacher Incentive Act of 1999 ("the Act"). ACTA argued that the statute had "been improperly applied by certain departments of the Maryland State Department of Education." ("MSDE").

FACTUAL BACKGROUND

Section 6-306(b)(4) of the Education Article, Annotated Code of Maryland, sets forth the Quality Teacher Incentive Act of 1999. It states:

A classroom teacher who holds an advanced professional certificate and teaches in a public school identified by the State Board as a school having comprehensive needs shall receive a stipend from the State in the amount of \$1500 for each year that the performs satisfactorily in the classroom.

Prior to filing this appeal, Mr. West wrote to Jean Satterfield, then Assistant State Superintendent for the Division of Educator Effectiveness, expressing disagreement about the use of the metric used to identify schools as "having comprehensive needs" and questioning why some teachers in Allegany County did not receive a stipend under the Act even though ACTA believed that they were qualified. (ACTA Letter, 2/13/15). In response, Ms. Satterfield explained that the statute has been in effect since 1999 without much change and that MSDE's responsibility was limited to processing the stipends for the school systems. She also referred Mr. West to the Allegany County Chief of Human Resources to address the issue of teachers who did not receive the stipends. (Satterfield Letter, 2/25/15).

On March 30, 2015, Mr. West again wrote to Ms. Satterfield reiterating ACTA's concerns about the metric used to identify comprehensive needs schools. He also stated that he had been in touch with the Allegany Chief of Human Resources and that it was clear that MSDE had guided the school system's eligibility determination. Mr. West stated ACTA's intent to file an appeal to the State Board to address the concerns.

By letter dated April 29, 2015, Sarah Spross, Acting Assistant State Superintendent for the Division of Educators Effectiveness, explained that pursuant to the statutory language of the

Act, MSDE's role in dispensing the stipends is to identify the schools "having comprehensive needs." She stated that, pursuant to the directive, the State Board had identified schools in strands 4 and 5 of the School Progress Index ("SPI") as being "comprehensive needs" schools, and that MSDE had given guidance to the school systems to this effect. (Spross Letter).

Ms. Spross further explained that the local school systems are responsible for identifying which teachers hold advanced professional certificates ("APC"), teach at schools identified by the State Board as "having comprehensive needs," and have performed satisfactorily. *Id.* She enclosed guidance dated September 10, 2014 from MSDE on APC Stipends for Qualified Teachers. That guidance states, in pertinent part:

Eligible Teachers: Classroom teachers (for definition see Attachment II) who worked for the 2013-2014 school year (9 months or more) in schools identified by the State Board as having "Comprehensive Needs" and held an Advanced Professional Certificate for the entire 2013-2014 school year are entitled to a \$1,500 stipend if the performed satisfactorily in their assignment.

Submission of the names of those classroom teachers holding an Advanced Professional Certificate and verification of satisfactory classroom performance are necessary to process the grant (see Attachment III). At your request, attachment III is an Excel Spreadsheet.

In considering eligibility, please monitor teaching assignments (e.g., classroom teachers defined in Attachment II); guidance counselors and library media specialists, for example, are not eligible. Please monitor validity period of the APC; teachers who obtained an APC in January, 2014 or later are not eligible.

Attachment II to the guidance was a list of classroom teaching positions as set forth in COMAR 13A.12.02.

Thereafter, ACTA filed this appeal to the State Board. ACTA raises two issues, First, it finds the mechanism of utilizing the School Progress Index to determine which schools fit the description of "having comprehensive needs" to be a flawed metric. ACTA bases this on its claim that in Allegany County several schools that score well on State mandated tests and are not considered challenging to staff, qualified under the Act because they did not show "growth" on the SPI. ACTA asks the State Board to explain when the metric changed and why.¹ Second, ACTA believes that there were teachers at comprehensive needs schools that should have qualified for the stipend under the Act but did not. ACTA questions who deemed these teachers ineligible and why. (Appeal).

¹ It is our understanding that the metric for calculating the SPI did not change, but that the SPI for each school is recalculated each year. Thus, a school that identified as "having comprehensive needs" one year may not continue to have that designation in successive years.

STANDARD OF REVIEW

The State Board may dismiss an appeal if the State Board has no jurisdiction over the appeal. COMAR 13A.01.05.03C. The Board exercises its independent judgment on the record before it in the explanation and interpretation of its own regulations. *See* COMAR 13A.02.05.05E; *Thompson v. Montgomery County Bd. of Educ.*, MSBE Op. No. 12-43 (2012); *Williams v. Prince George's County Board of Educ.*, MSBE Op. No. 12-27 (2012).

LEGAL ANALYSIS

We first address the issue of the jurisdiction of the State Board. The State Board is authorized to hear appeals pursuant to either §4-205(c) or §2-205(e) of the Education Article.

Section 4-205(c) vests the State Board with appellate jurisdiction over cases decided by the local board. *See Board of Educ. of Garrett County v. Lendo*, 295 Md. 55, 65 (1982). Such cases may involve explanations of the true intent and meaning of school law and applicable bylaws of the State Board, and controversies and disputes involving the rules and regulations of the county board and the proper administration of the county public school system. Md. Code Ann., Educ. §4-205(c)(1)&(2). The jurisdiction of the State Board under §4-205(c), therefore, is limited to matters arising within the authority of and initially decided by a local superintendent. *See Board of Educ. of Garrett County v. Lendo* at 66.

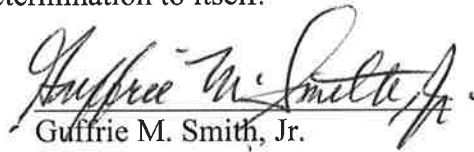
In contrast, the State Board has broad jurisdiction and authority under §2-205 of the Education Article. Section 2-205(e) establishes the authority of the State Board to explain the true intent and meaning of the provisions of the Education Article that are under its jurisdiction and the bylaws, rules and regulations adopted by the Board. It states that the Board shall decide all controversies and disputes under these provisions. The State Board's authority under §2-205 has been described as "a visitatorial power of such comprehensive character as to invest the State Board 'with the last word on any matter concerning educational policy or the administration of the system of public education.'" *See Board of Educ. of P.G. Co. v. Waeldner*, 298 Md. 354, 360 (1984)(citations omitted). With respect to the jurisdiction of the State Board under §2-205, the court in *Clinton v. Board of Educ. of Howard County*, 315 Md. 666, 676-677(1989), recognized that:

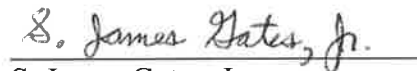
Section 2-205 was intended by the General Assembly as a grant of *original* jurisdiction to the State Board, such that, in limited instances enumerated in that section, a litigant could go directly to the State Board for a decision without the need for exhausting any lower administrative remedies. Since the category of cases involved deal primarily with statewide issues (*i.e.*, statutes and/or bylaws applicable to *all* county boards of education), no useful purpose would be served by *requiring* a lower level administrator or agency to decide a question of statewide applicability. *Board of Educ. Garrett Co. v. Lendo*, 295 Md. 55, 65, 453 A.2d 1185, 1190 (1982) (quoting, with favor, the amicus brief filed in that case by the Maryland State Teachers Association, Inc. [emphasis in brief]).

Here, ACTA has not raised matters reviewable under either provision. ACTA has not requested review of a matter arising within the authority of and initially decided by a local superintendent. Nor has ACTA requested that the State Board explain the true intent and meaning of a provision of the Education Article, a bylaw, rule or regulation, or decide a controversy or dispute arising under any such provision. Rather, ACTA has asked how it was determined that teachers who ACTA believes should have received a stipend were found not to be eligible and has asked for an explanation regarding why the SPI is the current metric for determining a school "having comprehensive needs."


With regard to individual teachers being found ineligible under the Act, such decisions are made by the local school system. As such, the appropriate avenue of review for a case or controversy involving a specific teacher being found ineligible is to seek review of that decision through a §4-205 appeal to the local superintendent and then the local board.


With regard to ACTA's disagreement about the metric established by the State Board for identifying schools "having comprehensive needs," the Act leaves it to the discretion of the State Board to determine how that term is defined. Ms. Spross explained to Mr. West that the State Board had determined that school in strands 4 and 5 of the SPI are comprehensive needs schools. Apparently, ACTA does not agree with that determination. It cannot, however, utilize the §2-205 appeal process to appeal the State Board's own determination to itself.



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July 28, 2015