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STATE OF MICHIGAN
IN THE SUPREME COURT

WARREN CONSOLIDATED SCHOOL DISTRICT,

Appellant/Plaintiff,

v

SCHOOL DISTRICT OF THE CITY OF HAZEL PARK

Appellee/Defendant.

Supreme Court No. 167643
COA No. 362948
Case No. 2020-00352-CZ

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APPELLEE/DEFENDANT SCHOOL DISTRICT OF THE CITY OF HAZEL PARK'S, ANSWER TO APPELLANT/PLAINTIFF WARREN CONSOLIDATED SCHOOL DISTRICT'S APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT OF JURISDICTION

Appellee/Defendant School District of the City of Hazel Park concurs in general with Appellant/Plaintiff Warren Consolidated School District's statement of jurisdiction as to an Application for Leave to Appeal of the Court of Appeals August 22, 2024 decision affirming the Circuit Court's granting summary disposition in favor of Appellee/Defendant School District of the City of Hazel Park pursuant to MCR 7.303(B)(1).

However, Appellant/Plaintiff Warren Consolidated School District's Application for Leave to Appeal should be denied because this Court lacks subject matter jurisdiction over the appeal based upon the issues raised by Appellant/Plaintiff Warren Consolidated School District as to whether Appellant/Plaintiff Warren Consolidated School District was required to exhaust its administrative remedies before the Michigan Department of Education. The determination that Appellant/Plaintiff Warren Consolidated School District was required to exhaust its administrative remedies before the Michigan Department of Education was made in connection with prior lawsuits and judgments which were not appealed. Appellant/Plaintiff Warren Consolidated School District is not permitted to collaterally attack those judgments here. *Jackson City Bank & Tr Co v Frederick*, 271 Mich 538, 545-546; 260 NW 908, 910 (1935); *Martin v Dept of Corr*, 168 Mich App 647, 653; 425 NW2d 205, 208 (1988).

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

I. WHETHER THE PRIOR 2011 AND 2017 LAWSUITS AND JUDGMENTS WHICH WERE NOT APPEALED DETERMINING THAT APPELLANT/PLAINTIFF WARREN CONSOLIDATED SCHOOL DISTRICT WAS REQUIRED TO EXHAUST ITS ADMINISTRATIVE REMEDIES BEFORE THE MICHIGAN DEPARTMENT OF EDUCATION IS PROPERLY BEFORE THIS COURT.

Appellant/Plaintiff:	Yes.
Appellee/Defendant:	No.
Circuit Court:	Did not address because the issue was not subject to this lawsuit as it was previously determined in prior lawsuits.
Court of Appeals:	Did not address because the issue was not subject to this lawsuit as it was previously determined in prior lawsuits.

II. WHETHER THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S DISMISSAL OF APPELLANT/PLAINTIFF WARREN CONSOLIDATED SCHOOL DISTRICT'S COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION WHERE THE STATE SUPERINTENDENT'S DECISION DECLINING TO ISSUE A DECLARATORY RULING CONSTITUTED A DECLARATORY RULING SUBJECT TO JUDICIAL REVIEW PURSUANT TO THE MICHIGAN COURT RULES AND THE ADMINISTRATIVE PROCEDURE ACT IN THE SAME MANNER AS A CONTESTED CASE.

Appellant/Plaintiff:	No.
Appellee/Defendant:	Yes.
Circuit Court:	Yes.
Court of Appeals:	Yes.

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I. INTRODUCTION

The Michigan Department of Education ("MDE") awarded the Appellee/Defendant School District of the City of Hazel Park ("Hazel Park") with state school aid funds based on Hazel Park's approved membership count for students it educated. Since 2011, Appellant/Plaintiff Warren Consolidated School District ("WCS") has engaged in a 13-year tireless litigation campaign seeking to have Hazel Park pay WCS over 10 million dollars in monetary damages in the form of state school aid funds that Hazel Park received from the MDE for what WCS believes are poached students. Hazel Park educated these students, not WCS. Despite this, WCS has the mistaken belief that if not for Hazel Park educating these students, WCS would have educated them, counted them in membership counts, and therefore, WCS should receive the state school aid funding for the past 15 plus years by direct payment from Hazel Park. This is not some noble quest by WCS to enjoin a systematic injustice as WCS would like this Court to believe. WCS has not asked for a return of funds to the MDE, and the MDE is not seeking a return of the funds. Instead, WCS wants the funds directly from Hazel Park. It is an attempt to obtain a 10-million-dollar windfall for students it did not educate at the expense of Hazel Park. It would be a manifest injustice to award WCS such a profit.

WCS's campaign has involved three original lawsuits (including this instant one) against Hazel Park in Macomb County Circuit Court, and two trips to the Michigan Court of Appeals. At every stage, WCS has been told through opinions and orders that it is pursuing its claims in the wrong manner. The lower courts have consistently held that WCS was required to exhaust its administrative remedy with the MDE, and then appeal the MDE's determination to the circuit court. Each time that WCS was informed of these rulings, WCS pursued a portion of its administrative remedy, then came back to the circuit court in another direct action, resulting in a dismissal. After obtaining finality from the MDE, WCS refused to appeal that declaratory ruling

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to the Circuit Court as required under MCL 24.263. Instead of following the proper appeal procedures required under the Administrative Procedures Act, MCL 24.201 et seq (the "APA") and the Michigan Court Rules, WCS brought this third original action against Hazel Park again requesting declaratory relief and damages in the form of state school aid monies for students that WCS did not educate in another improper attempt to circumvent the MDE's oversight and approval of state school aid disbursement without the MDE's presence in this action.

Hazel Park respectfully requests that this Court end WCS's baseless endeavor once and for all and deny WCS's Application for Leave to Appeal because Michigan law, and specifically the APA, does not permit an original action by WCS to challenge the pupil membership count of Hazel Park under the Michigan State School Aid Act or to bring a claim that WCS is entitled to school aid funds for students it did not educate. Even if WCS were permitted to bring its claims in the form of an original action, WCS's substantive claims fail for the following reasons[1]: WCS has not satisfied the elements for a declaratory ruling; Michigan State School Aid Act does not provide WCS with a private cause of action against Hazel Park; WCS's claims for monetary damages are barred by governmental immunity; and WCS cannot establish the elements of an unjust enrichment claim.

Accordingly, for the reasons set forth herein, Hazel Park respectfully requests that this Court deny WCS's Application for Leave to Appeal.

[1] The merits of WCS's substantive claims were addressed by Hazel Park in the briefing submitted to the Circuit Court and the Court of Appeals. Neither court addressed these issues, other than making passing mention on a couple of occasions that they are skeptical that WCS's substantive claims have merit. Since the substantive nature of these claims are not subject to this instant appeal, Hazel Park will not spend time on these issues in its Answer. Hazel Park is prepared to address these issues if this Court requests briefing on these matters.

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II. COUNTER STATEMENT OF FACTS

A. The MDE Has Accepted and Approved Hazel Park's Student Membership Count in its INVEST Program.

Michigan's State School Aid Act (the "SSAA") governs the distribution of state funds to local school districts. The MDE reviews the student membership count of each school district in accordance with the statutory rules set forth in MCL 388.1606 and the Pupil Accounting Manual in distributing state school aid to the school districts. (**Appellee's Appendix Exhibit A**, *2018-2019 Pupil Accounting Manual*); *see also* MCL 388.1618(8). The school districts must also have an annual audit of membership counts conducted by either an intermediate district superintendent or a certified public accountant. MCL 388.1618(4).

Since the 2008-2009 school year, Hazel Park has complied with the SSAA and has lawfully partnered with INVEST to create and operate an alternative education for students. (**Appellee's Appendix Exhibit B**, *Affidavit of Kathleen Andre*). There is no dispute that the program complies with state law and was eligible for state funding. (See **Appellee's App Ex B**). The students enrolled in the INVEST program resided within the geographic boundaries of many school districts, not just WCS. (**Appellee's App Ex B**, ¶ 5). The MDE has also approved Hazel Park's INVEST program because it was established prior to 2010-2011 school years. (**Appellee's Appendix Exhibit C**, *MDE Email Correspondence*).

In addition to being grandfathered in under MCL 388.1606(6), all of the students enrolled in the INVEST program, who reside within the boundaries of another school district fit into one or more of the exemptions in MCL 388.1606(6). (**Appellee's App Ex B and C**; see also **Appellee's Appendix Exhibit D,** *Defendant's Supplemental Answers to Discovery at 11*). MCL 388.1606(6) states:

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> * * *A district must have the approval of the pupil's district of residence to count the pupil in membership, except approval by the pupil's district of residence is not required for any of the following:
>
> * * *
>
> (h) A pupil enrolled in an alternative education program operated by a district other than his or her district of residence who meets 1 or more of the following:
>
> (i) The pupil has been suspended or expelled from his or her district of residence for any reason, including, but not limited to, a suspension or expulsion under section 1310, 1311, or 1311a of the revised school code, MCL 380.1310, 380.1311, and 380.1311a.
>
> (ii) The pupil had previously dropped out of school.
>
> * * *

MCL 388.1606(6).

The students enrolled at the INVEST program either dropped out of school, were at risk of dropping out, were in the process of dropping out of school or were expelled, and subsequently enrolled in the INVEST program. (**Appellee's App Ex B, C and D**). Because INVEST is an alternative education program, all of those students fit within the statutory exemption contained within MCL 388.1606(6)(h). (**Appellee's App Ex B, C and D**).

As part of the enrollment process to support this exemption, Hazel Park required prospective enrollees to fill out Registration Forms and Minor Parental Release Forms certifying that the student dropped out of another school district and was now enrolling in the INVEST program. (**Appellee's App Ex B, C and D**). Hazel Park developed this documentation process with, and obtained approval from, the auditors appointed by the Oakland Schools Intermediate School District ("Oakland Schools ISD"). (**Appellee's App Ex B, C and D**). The MDE provided funding to Hazel Park on this same basis without challenge or complaint. (**Appellee's Appendix Exhibits B, C and D**).

Moreover, to enroll a student in the INVEST program, Hazel Park first needed to request the student's records from the student's prior school district. (**Appellee App's Ex B and D**). This means that, as a practical matter, each time a student who resided in the geographic boundaries of

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WCS enrolled in the INVEST program, WCS received notice. (**Appellee App's Ex B and D**). Although notified of each enrollment change, WCS did not question the transfer, contact Hazel Park to question the transfer, appeal the auditor's finding or appeal the MDE's funding.

Hazel Park has complied with all requirements and has fulfilled all duties applicable to it under the SSAA, which does not provide WCS with a basis to question or challenge Hazel Park's student membership reporting. The enforcement of the SSAA is within the exclusive purview of the MDE. Hazel Park has no duty whatsoever to WCS. WCS's challenge to Hazel Park's membership reporting is unwarranted and unsupported by any provision in the SSAA or any other law.

B. WCS's First Lawsuit against Hazel Park Challenging Student Membership Counts was Dismissed for Failure to Exhaust Administrative Remedies.

WCS originally filed its first lawsuit against Hazel Park back in 2011 ("2011 Lawsuit"). The case was assigned to the now retired Honorable Peter J. Maceroni ("Honorable P. Maceroni"). In the 2011 Lawsuit, the parties filed cross motions for summary disposition. (**Appellee's Appendix Exhibit E**, *July 12, 2012 Opinion and Order*). The Court denied WCS's motion on its declaratory judgment claim and granted Hazel Park's motion for summary disposition under MCR 2.116(C)(10) finding that the MDE had determined that all the students at issue were exempt under the SSAA, MCL 388.1601 et seq, because the MDE accepted and approved Hazel Park's membership count:

> Here, [WCS]'s requested declaration does not involve an actual controversy * * * The Court, in its discretion, will not issue a declaration regarding an uncontested issue with no actual controversy.
>
> * * *
>
> The MDE has approved and accepted the audit of [Hazel Park]'s membership and has not found that any pupils were counted erroneously as members of [Hazel Park]'s district * * * [WCS] essentially maintains this is inaccurate and requests a separate finding by this Court regarding the membership of particular pupils.

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> The Court declines [WCS]'s invitation to displace the MDE's finding in this regard.

(**Appellee's App Ex E** at 4, 7).

On August 23, 2012, the Court granted WCS's motion for reconsideration because it erred in finding that discovery was closed. (**Appellee's Appendix Exhibit F**, *August 23, 2012 Opinion and Order*). The Court vacated its grant of summary disposition to Hazel Park but reaffirmed its July 12, 2012 Opinion and Order in all other aspects. (**Appellee's App Ex F** at 3). The Court re-opened the case and allowed discovery to continue. (**Appellee's App Ex F** at 4).

Once discovery closed, the parties filed cross motions for summary disposition. (**Appellee's Appendix Exhibit G**, *February 26, 2014 Opinion and Order*). The Court did not fully analyze the substantive issues of WCS's claim and granted Hazel Park's motion under MCR 2.116(C)(8) and (10) because "plaintiff has not exhausted its administrative remedies." (**Appellee's App Ex G** at 5). However, the Court again noted the MDE's approval and acceptance of Hazel Park's membership count:

> [t]he MDE has approved and accepted the audits of the INVEST program and has not found that any pupils were counted in error as members of defendant's district … this Court previously declined plaintiff's request to displace the MDE's findings since it has approved and accepted the audit of defendant's membership and have not found that any students were erroneously counted as members of defendant's program.

(**Appellee's App Ex G** at 3). It also found that "* * * after all remedies were exhausted, [WCS could have] availed itself of the circuit court's administrative appeal process if it remained dissatisfied." (**Appellee's Appendix Exhibit G** at 5).

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C. The MDE Denied WCS's First Appeal Because the MDE Cannot Award State Aid Funds to WCS Because It Did Not Educate the Students.

On January 5, 2016, WCS filed its administrative appeal with the Assistant Director of the MDE. The MDE initially declined to make a declaratory ruling on WCS's appeal. (**Appellee's Appendix Exhibit H**, *MDE Correspondence dated April 19, 2016*).

On October 18, 2016, the Assistant Director with the MDE sent a follow up letter explaining why it declined to issue a declaratory ruling and denied WCS's appeal because: "[t]here is no relief available from the [MDE] as it cannot award state aid funds to a district that did not educate the children" and "any changes in this regard would most likely be prospective in application and, thus, would not provide relief for the previous years involved in your appeal." (**Appellee's Appendix Exhibit I**, *MDE Correspondence dated October 18, 2016*).

D. WCS's Second Lawsuit against Hazel Park Challenging Student Membership Counts was Dismissed for Failure to Exhaust Administrative Remedies.

WCS elected not to finish the administrative appeal process required by MDE and pointed out by the Honorable P. Maceroni. (*See* **Appellee's App Ex G** at 5 and **Ex H**). After starting its administrative appeal process in 2016, WCS was unsatisfied with the initial ruling. WCS elected to abandon its administrative appeal and bring another direct lawsuit against Hazel Park in 2017. Ultimately, WCS's 2017 lawsuit was dismissed as WCS again failed to exhaust its administrative remedies because it did not follow the MDE's appeal procedure. (**Appellee's Appendix Exhibit J**, *August 9, 2019, Circuit Court Opinion and Order*).

E. WCS's Second Attempt to Appeal to the MDE.

On November 14, 2019, WCS attempted to pick up where it left off on its previous administrative appeal. WCS sent a letter to the MDE State Superintendent indicating it was appealing the April 19, 2016 and October 18, 2016 determinations of the MDE. On January 8, 2020, the State Superintendent noted that the time period to appeal those decisions had expired

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and considered WCS's letter as a request for a declaratory ruling. (**Appellee's Appendix Exhibit K,** *MDE January 8, 2020 Decision*). In doing so, the State Superintendent declined to issue a declaratory ruling. (*Id*.).

WCS could have appealed the State Superintendent's decisions to the circuit court under MCR 7.119 and MCL 24.263 by following the proper procedures. Instead of following those mandates and ignoring the Honorable P. Maceroni's prior order pointing out that "[WCS could have] availed itself of the circuit court's administrative appeal process if it remained dissatisfied", WCS filed this third direct lawsuit against Hazel Park.

F. WCS's Instant Third Lawsuit against Hazel Park Challenging Student Membership Counts was Dismissed by the Circuit Court for Failure to Exhaust Administrative Remedies.

Continuing to ignore the original instructions by the Circuit Court in the 2011 Lawsuit that "[WCS could have] availed itself of the circuit court's administrative appeal process if it remained dissatisfied," WCS filed this third direct lawsuit against Hazel Park. (**Appellee's Appendix Exhibit G**). In Count I of its Complaint, WCS requested that the Circuit Court declare that Hazel Park violated the SSAA by improperly counting students as pupils; enjoin Hazel Park from counting pupils in its membership without WCS's approval, and award WCS money damages. (**Appellee's Appendix Exhibit L**, *WCS Compl* at 8). This is despite the findings by the MDE that Hazel Park did not engage in any violation of the SSAA and that WCS was not entitled to state aid for students it did not educate. (**Appellee's App Ex I**). In Count II, WCS brought a claim against Hazel Park for unjust enrichment, claiming "[i]t would be unjust under the circumstances to allow Hazel Park to retain the benefits it has received without providing restitution and compensation to WCS." (**Appellee's App Ex L** at 9).

The parties immediately filed cross motions for summary disposition at the start of the case. On June 29, 2020 the Circuit Court granted Hazel Park's motion for summary disposition

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pursuant to MCR 2.116(C)(4). (**Appellee's Appendix Exhibit M**, *June 29, 2020 Circuit Court Opinion and Order*). Again, noting this matter's tortured procedural history, the Circuit Court focused on the requirements for reviewing the decision of an administrative agency. (*Id.* at 6). Citing the APA, the Circuit Court determined that WCS was obligated to file an appeal to the circuit court, rather than an original action. (*Id.* at 6). "The instant action is not an appeal of the MDE's decision and is therefore in violation of MCL 24.301. Therefore, [WCS's] claims must be dismissed." (*Id.* at 7).

G. WCS's First Appeal to the Michigan Court of Appeals.

WCS appealed the Circuit Court's June 29, 2020 decision to the Court of Appeals. For the first time on appeal, WCS argued it was not required to appeal the MDE's decision to this Court under MCL 24.301 because the proceeding before the MDE was not a contested case. (**Appellee's Appendix Exhibit N**, *December 2, 2021, Opinion of the Court of Appeals* at 5). The Court of Appeals recognized WCS first claimed that the proceeding before the MDE did not involve a contested case for the first time in its reply brief and, due to WCS's cursory treatment of the issue, it could be deemed waived. (*Id.* at 5). Nevertheless, the Court of Appeals exercised its discretion to review this unpreserved issue because the Court deemed it to be "of significant importance." (*Id.* at 5).

This Court reasoned as follows and issued the following guidance on remand:

> At oral argument before this Court, defendant was permitted to address plaintiff's belated argument that the process before the MDE did not involve a contested case. Defendant asserted that regardless of whether the process involved a contested case, the superintendent's decision nonetheless was subject to appellate review by the circuit court in the same manner as a contested case under MCL 24.263 because it was a declaratory ruling. Our review of the superintendent's decision, however, reveals that although he considered plaintiff's letter for review of the assistant director's determination as a request for a declaratory ruling, the superintendent did not issue a declaratory ruling. The superintendent in fact explicitly stated "I decline to issue a declaratory ruling in this matter."

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> The record evidence in this case suggests that the MDE administrative process under which plaintiff sought review allowed plaintiff an opportunity to present its position before the MDE, but there is no indication that an evidentiary hearing was required by statute, nor is there any indication that the MDE conducted an evidentiary hearing. However, because the question whether the MDE determination was a contested case is raised for the first time on appeal, the circuit court did not have an opportunity to rule upon this issue; nor does this Court have before it the complete record necessary to resolve this issue on appeal. Under these circumstances, remand it appropriate to permit the circuit court to rule on the issue in the first instance with both parties having an opportunity to present their arguments to the circuit court.

(*Id.* at 5-6).

As a result, the Court of Appeals remanded this case back to the Circuit Court to consider whether this is a contested case. The Court of Appeals also strongly urged the Circuit Court to consider dismissing WCS's lawsuit under MCR 2.116(C)(8) or 2.116 (C)(10):

> If the circuit court determines that plaintiff's proceedings before the MDE were not a contested case, and thus appeal under MCL 24.301 not warranted, it may wish to reconsider defendant's arguments that it is entitled to summary disposition under MCR 2.116(C)(8) or (10). Plaintiff argued before the circuit court that even if the SSAA does not provide for a private cause of action, plaintiff nonetheless may seek declaratory relief. However, under that guise plaintiff has doggedly pursued a claim against defendant for monetary relief on the basis that defendant allegedly violated the SSAA by improperly counting students. It is not at all certain that the SSAA provides a cause of action by one school district against another school district for the counting of students. It also may be that a school district that believes that the counting of students under the SSAA is being improperly administrated to the financial detriment of that district would do better to seek relief against the MDE.

(*Id.* at 6).

The parties yet again filed cross motions for summary disposition and substantial briefing followed. On September 8, 2022, the Circuit Court issued an opinion and order granting Hazel Park's motion for summary disposition. (**Appellee's Appendix Exhibit O**, *September 8, 2022 Opinion and Order*). The Circuit Court focused on whether the MDE Superintendent's refusal to issue a declaratory ruling is subject to judicial review as a contested case. (*Id.* at 5-6). Relying on this Court's opinion in *Human Rights Party v Michigan Corr Comm*, 76 Mich App 204; 256 NW2d

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439 (1977), the Circuit Court concluded that "declining to issue a declaratory ruling has the same effect as refusing to issue a declaratory ruling. Accordingly, the Court finds that the Superintendent's decision is a refusal subject to judicial review." (*Id.* at 6). "Because the Superintendent's decision is subject to judicial review, Plaintiff's remedy was to seek judicial review of the Superintendent's decision rather than filing suit against Defendant. The Court finds that it does not have subject matter jurisdiction to [sic] Plaintiff's claims. Therefore, its claims must be dismissed." (*Id.* at 6).

H. WCS's Second Appeal to the Michigan Court of Appeals.

For the second time, WCS appealed the Circuit Court's decision to the Court of Appeals. The Court of Appeals affirmed the Circuit Court's dismissal finding that the Circuit Court lacked subject matter jurisdiction to decide WCS's civil claims against Hazel Park because MCL 24.263 required WCS to appeal the state superintendent's decision. (**Appellee's Appendix Exhibit P**, *August 22, 2024, Opinion and Order*). WCS's now makes a final attempt to seek leave to appeal to this Court.

III. LAW AND ARGUMENT

In its application, WCS attempts to advance two arguments to persuade this Court to grant its Application for Leave to Appeal. First, WCS claims that it has no administrative remedy to exhaust, despite multiple courts previously ruling that it does. Second, even if it does have an administrative remedy, the APA does not apply to its claims. Despite the courts conclusively determining both of these arguments in the prior lawsuits without appeal, WCS attempts to invoke these arguments again to get its application granted by this Court. These arguments also have no merit, and this Court should deny WCS's Application for Leave to Appeal.

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A. WCS has an Administrative Remedy That It Failed to Exhaust.

WCS again attempts to argue a favored theory that it has raised on multiple previous occasions: that it does not have an administrative remedy. This argument is not properly before this Court. This argument by WCS is instead challenging the Circuit Court's earlier decisions in connection with the 2011 Lawsuit and 2017 Lawsuit, neither of which were appealed by WCS.

Specifically, prior to this instant lawsuit, WCS had already been twice ordered to pursue its administrative remedies with the MDE. It did not appeal those decisions. The Circuit Court first dismissed the 2011 Lawsuit, determining that WCS must exhaust its administrative remedies. (**Appellee's App Ex G** at 3, 5). WCS did not appeal that decision, claiming that it could not be required to exhaust administrative remedies because administrative remedies were unavailable or inadequate.

Then, nearly two years after the dismissal of that 2011 Lawsuit, on January 5, 2016, WCS filed an administrative appeal with the Assistant Director of the MDE. (**Appellee's App Ex H**). In response, WCS was informed that, inter alia, (1) the ISD auditor, at the request of the MDE, performed a review of WCS's allegations and found no basis for further review, (2) WCS is not entitled to state aid funds where it did not educate the students, and (3) there is no review available for one district to file an appeal regarding another district's pupil membership count. (**Appellee's App Ex I)**. In other words, the MDE determined that it is solely responsible for determining student membership counts and awarding state aid and found no problem doing so here under the circumstances alleged by WCS. WCS did not continue to appeal that decision through the MDE's administrative process in a timely manner.

Then, being fully aware of the 2016 decision by the MDE, (**Appellee's App Ex H and I**), WCS filed its second lawsuit asking the Circuit Court to declare a different result. The Circuit Court likewise dismissed the 2017 Lawsuit because WCS failed to exhaust its administrative

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remedies with MDE, which would have required a timely appeal to the State Superintendent. (**Appellee's App Ex J)**. WCS again did not appeal this opinion and order to argue that it had no administrative remedies available through the MDE. It instead went back to MDE to pursue an appeal, though untimely. (**Appellee's App Ex K**).

WCS's instant lawsuit does not concern whether WCS was required to pursue its administrative remedies with the MDE. That had already been twice determined for good and valid reasons outlined in the respective judgments, which were never appealed. This lawsuit, the resulting June 29, 2020 and September 8, 2022 decisions of the Circuit Court, concerned whether the Circuit Court possessed jurisdiction over the original action by WCS to collaterally attack the decisions by the MDE after WCS pursued its administrative remedies. The Circuit Court determined it did not and dismissed WCS's Complaint, which was affirmed by the Michigan Court of Appeals (**Appellee's App Ex O and P**).

In this lawsuit, WCS made the same two primary claims: (1) in Count I, WCS requested a declaratory judgment and money damages, asserting that it has standing under the SSAA to challenge the pupil membership count of Hazel Park and the decision of the MDE; and (2) in Count II, WCS claimed that it is entitled to school aid funds for students it did not educate. (**Appellee's Ex L**). Both arguments directly contradict the decisions of the MDE, seeking to collaterally attack those administrative decisions. The Circuit Court rejected those arguments under the APA, MCL 24.301.

Put succinctly by the Circuit Court: "Defendant argues that Plaintiff has failed to follow the Administrative Procedures Act ("APA") by filing this action to collaterally attack the findings and determinations of the MDE rather than appealing Rice's determination to the circuit court." The Circuit Court did not then order that WCS seek additional administrative remedies before the

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MDE. It dismissed WCS's Complaint on the basis that WCS did not properly file an appeal with the Circuit Court as required by the APA:

> [N]ow that Plaintiff has exhausted all administrative remedies, that administrative decision may only be reviewed by appeal to the circuit court. The instant action is not an appeal of the MDE's decision and is therefore in violation of MCL 24.301. Therefore, its claims must be dismissed. (**Appellee's App Ex M** at 7).

The Circuit Court further explained:

> Plaintiff has identified its enemy, and subsequent source of relief, as Defendant, and has never even included MDE in an action before this Court despite this Court's prior ruling that "MDE approved and accepted the audits of the INVEST program and did not find that any pupils were counted in error." (**Appellee's App Ex M** at 7).

Ignoring the procedural history of this case, the Circuit Court's previous decisions in the 2011 Lawsuit and 2017 Lawsuit, WCS attempts to argue in its application that "…WCS has no administrative remedy." (WCS Appl at p 8). It goes on to contend that "[t]he genesis of this application began with the Circuit Court's **original** sin of believing that WCS could challenge Hazel Park's membership counts through an administrative process. It couldn't then, and it can't now. Yet, this sin has been repeated over and over again by the Circuit Court and Court of Appeals." (WCS Appl at p 9). It is true that this ruling has been repeated over and over again by the Circuit Court because WCS refuses to accept this ruling. Instead of invoking the appellate process in the 2011 Lawsuit and 2017 Lawsuit, WCS keeps filing the same lawsuit. This time it is not about whether WCS has an administrative remedy as it was previously determined, it is about the Circuit Court's jurisdiction to hear this matter, which it does not have as WCS was required to appeal the MDE's decision to the circuit pursuant to MCL 24.236 and the Michigan Court Rules.

In its second argument, WCS continues that "exhaustion of nonexistent administrative remedies is not required." (WCS Appl at p 14). WCS attempts to use the case of *Board of Education of Detroit Public School v Board of Education of Romulus Community Schools*, 227

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Mich App 80; 575 NW2d 90 (1997) to claim they do not need to exhaust their administrative remedies. WCS argues "[t]he goal here, as it was in *Romulus*, is to enjoin the Hazel Park's continued counting of nonexempt WCS's residents in membership without WCS's approval." (WCS Appl at p 9). First, the Romulus case did not even address whether the APA was applicable. It is not clear if that argument was ever raised in that matter. In addition, WCS is not seeking just injunctive relief. It is seeking millions of dollars in damages for students it did not educate. *Romulus* and this case are not factually analogous. Nonetheless, these arguments are the subject of the 2011 and 2017 Lawsuits, not the present lawsuit. These rulings found that WCS was required to exhaust its administrative remedies – rulings which WCS did not appeal.

"Adjudications which may become final through lapse or exhaustion of appeal rights may not be disturbed by collateral attack." *Martin v Dept of Corr*, 168 Mich App 647, 653; 425 NW2d 205 (1988). The Michigan Supreme Court has long adhered to this rule against collateral attack:

> Where jurisdiction has once attached, mere errors or irregularities in the proceedings, however grave, although they may render the judgment erroneous and subject to be set aside in a proper proceeding for that purpose, will not render the judgment void, and until set aside it is valid and binding for all purposes and cannot be collaterally attacked. Error in the determination of questions of law or fact upon which the court's jurisdiction in the particular case depends, the court having general jurisdiction of the cause and the person, is error in the exercise of jurisdiction. Jurisdiction to make a determination is not dependent upon the correctness of the determination made.' 33 C.J. pp. 1078, 1079.

Jackson City Bank & Tr Co, 271 Mich at 545–46.

Given the finality of the prior judgments that WCS was required to exhaust its administrative remedies before the MDE, WCS cannot now claim in this application that it should never have been required to exhaust those administrative remedies. WCS has provided no basis to overturn this decision of the Circuit Court that WCS was required to file an appeal under the APA rather than an original action. Accordingly, this Court should deny WCS's Application for Leave to Appeal.

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B. The Court of Appeals Correctly Affirmed the Circuit Court's Dismissal of WCS's Complaint for Lack of Subject Matter Jurisdiction Because WCS Failed to Appeal the Decision of the MDE under the Administrative Procedures Act and the Michigan Court Rules.

Despite WCS's argument to the contrary, the APA does apply to WCS's claims. Underlying WCS's Complaint are two primary arguments. First, in Count I, WCS necessarily asserts that it has standing under the SSAA to challenge the pupil membership count of Hazel Park and receive monetary damages. And second, in Count II, WCS claims that it is entitled to school aid funds for students it did not educate. These arguments are an impermissible collateral attack on the determination by the MDE, affirmed by State Superintendent Michael Rice on January 8, 2020.

Specifically, in his January 8, 2020 decision, Superintendent Rice determined that the time period for WCS to appeal Ms. Krefman's decision had expired. (**Appellee's App Ex K**). However, Superintendent Rice nonetheless affirmed the following relevant determinations: (1) the MDE has no authority to award state aid funds to a district that did not educate the children; (2) the SSAA provides no review for one district to challenge another district's pupil membership count; (3) WCS's challenges to what constitutes a "dropout" and what constitutes a valid "alternative education program" are best left to the expertise the various consultants employed by the MDE to make these determinations; and, *most importantly*, (4) WCS has no to standing to challenge the pupil membership count of another district. (**Appellee's App Ex K**).

As Superintendent Rice explained in his decision, the APA provides statutory authority for an agency, including the MDE, to issue a declaratory ruling regarding the application of a set of facts to a statute administered by that agency. MCL 24.263. Here, the MDE declined to issue a declaratory ruling on the basis that WCS's request would circumvent the MDE's determination that WCS had no standing to challenge Hazel Park's pupil membership count. (**Appellee's App**

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Ex K). However, that decision—even where the MDE ultimately refused to issue a declaratory ruling—is subject to judicial review under the APA just like any "contested case". *Standifer v Dept of Corr*, 187 Mich App 388, 390; 468 NW2d 241, 243 (1990) (citing MCL 24.263 and *Human Rights Party v Michigan Corr Comm*, 76 Mich App 204, 210; 256 NW2d 439 (1977)).

MCL 24.301, governing the direct review of final agency decisions and contested cases, states in relevant part:

> When a person has exhausted all administrative remedies available within an agency, and is aggrieved by a final decision or order in a contested case, whether such decision or order is affirmative or negative in form, the decision or order is subject to direct review by the courts as provided by law.

Unlike an original civil action, this judicial review is confined to the record, conducted by the circuit court, MCL 24.204, governed by the standard set forth in MCL 24.306.

A party entitled to direct judicial review cannot bring an original action which challenges the agency decision. As explained at length by the Court of Appeals in *Womack Scott*,

> a party aggrieved by a ruling of the CSC cannot file an independent action to seek redress of the claims made during the administrative process, but rather must pursue those claims through a direct appeal to the circuit court pursuant to the APA. See MCR 7.104(C). Here, plaintiff did not appeal the CSC decision to the circuit court within the sixty-day period mandated by the APA, see M.C.L. § 24.304(1), but instead she filed a separate action in the circuit court. Plaintiff's failure to initiate a timely appeal is fatal.

246 Mich App at 80 (citing *Nummer v Treasury Dept*, 448 Mich 534; 533 NW2d 250 (1995) ("Regardless of whether an appeal is taken, the Legislature has provided only one remedy from an adverse determination, i.e., direct appeal in the circuit court. An appeal by its very nature contemplates the possibility of reversal, but it certainly does not contemplate a new, original action. If the Legislature intended anything else, it would have said so more directly.") *see also*

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Workers' Comp Agency Dir v MacDonald's Indus Products, Inc, 305 Mich App 460, 478; 853 NW2d 467, 478 (2014).

WCS argues it was not required to appeal the MDE's decision to the circuit court under MCL 24.263. However, there is no dispute that the MDE's decision – a declaratory ruling – is subject to judicial review in the same manner as a "contested case." *See* MCL 24.263 and MCL 24.301.

Pursuant to MCL 24.203, a contested case is a "proceeding … in which a determination of the legal rights …of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing." If an evidentiary hearing is not required by statute, the proceeding is not a contested case covered by the APA's appeals procedure. *J & P Market, Inc v Liquor Control Com'n*, 199 Mich App 646, 650; 502 NW2d 374 (1993).

Regardless of whether or not there was an evidentiary hearing held by the MDE, pursuant to MCL 24.263, "a declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case." Contrary to WCS's contentions, there was a declaratory ruling in this case. The Superintendent's decision to decline to issue a declaratory ruling was, in fact, a declaratory ruling. Michigan law is well-settled that where, as here, the administrative agency declines to issue a declaratory ruling, that constitutes a declaratory ruling subject to judicial review in the same manner as a contested case. *See Human Rights Party v Michigan Corr Comm*, 76 Mich App 204; 256 NW2d 439, 441-442 (1977); *Bentley v Dept of Corr*, 169 Mich App 264, 272; 425 NW2d 778, 781 (1988); and *Standifer v Dept of Corr*, 187 Mich App 388, 390; 468 NW2d 241, 243 (1990). In *Standifer*, this Court directly held: "[a]n agency's refusal to issue a declaratory ruling under MCL § 24.263; M.S.A. 3.560(163) is subject to judicial review as an agency final decision or order in a contested case." *Id.* Accordingly, this Court vacated the decision of the circuit court, finding that it "clearly went beyond the procedures set forth in the

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APA" which require that judicial review of the agency decision be confined to the record and undertaken without a jury. *Id.* at 391.

Because the Superintendent's decision was a declaratory ruling, the ruling was subject to appellate review by the Circuit Court in the same manner as a "contested case." Accordingly, the Circuit Court correctly dismissed WCS's Complaint for lack of subject matter jurisdiction which was affirmed by the Court of Appeals when WCS did not seek judicial review of the Superintendent's decision by way of appeal. *See* MCL 24.263 and 24.301; *See also Womack Scott v Department of Corrections*, 246 Mich App 70, 79; 630 NW2d 650, 656 (2001) (holding that, even where the agency and circuit court have concurrent jurisdiction, where a party did not file a timely appeal of an agency decision, its claims, collaterally attacking the same, must be dismissed).

If WCS had wished to challenge the substantive findings of the MDE, it would have needed to comply with the procedures set forth in the APA. This includes the requirement that WCS file its petition for review in the circuit court no later than March 9, 2020.[2][3][4] MCL 24.304. WCS did not comply. Accordingly, WCS cannot collaterally attack those findings here and its Complaint must be dismissed in its entirety. *Womack*, 246 Mich App at 80.

Finally, WCS argues that MCL 24.263 does not apply because WCS is not an 'interested person' within the meaning of MCL 24.263. (WCS Appl at p 20). This is yet another round of

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[2] March 8, 2020, which is 60 days from the date of mailing of January 8, 2020, is a Sunday.

[3] The Michigan Court Rules recognize that "[t]he time limit for an appeal of right is jurisdictional." MCR 7.104. Under MCR 7.119, specifically governing "Appeals from Agencies Governed by the Administrative Procedures Act," an appeal for judicial review in the circuit court must be filed within 60 days of the agency's final decision or order. MCR 7.119(B)(1).

To the extent that WCS attempts to seek leave to file a late appeal, no such leave is authorized by the Court Rules of the APA. Under 7.119(D), "Late Appeal," [t]he appellant may file an application for late appeal if permitted by statute." The APA does not permit late appeals. MCL 24.301.

[4] The Defendant in such an action would be the MDE. Because WCS elected not to join the MDE in this action, dismissal was required, as the circuit court lacks jurisdiction to address MDE's decision outside of a direct, timely appeal.

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judicial "whack-a-mole" from WCS. In *Hazel Park I*, WCS contended for the first time on appeal that this matter did not involve a "contested case" for purposes of the APA. Now, as another ruling went sideways for WCS, it claims the statute is "inapplicable" because it is not an "interested person." (WCS Appl at p 20)

MCL 24.263 provides, in relevant part, "[o]n request of an interested party, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency." The APA does not define "interested person." This Court, however, has addressed the definition of "interested person" before:

> We may consult dictionary definitions when construing undefined statutory terms. *Koontz v Ameritech Servs Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). "Interested" is defined, in relevant part, as "being affected or involved." *Merriam-Webster's Collegiate Dictionary* (11th ed.). The reference to an "interested person" in MCL 24.263 may be understood as "a person who is affected by the applicability of the statute or rule at issue to an actual state of facts." To "affect" means "to produce an effect upon," "to act on and cause a change in (someone or something)." Merriam-Webster's Collegiate Dictionary (11th ed.). This does not require a showing of interference with or impairment of legal rights or privileges to establish standing, merely that the person making the request for a declaratory ruling is affected by the applicability of the relevant statute or rule to an actual state of facts.

Forner v Bureau of Const Codes, unpublished opinion per curiam of the Michigan Court of Appeals, issued Aug. 25, 2022 (Docket No. 357335; 357336) at *4 (**Appellee's Appendix Exhibit Q**). WCS cites favorably to *Human Rights*, *supra*, for the notion that the term "interested person" is akin to standing. The *Human Rights* panel, however, was addressing whether the plaintiff had standing to bring constitutional claims on behalf of individual prisoners in the department of corrections. 76 Mich App at 213. The reasoning in *Human Rights* is not applicable to the present case.

To be an interested person, therefore, does not require WCS to establish standing. Rather, WCS need only show that it is "affected by the applicability of the relevant statute or rule". That WCS is affected by the SSAA is beyond dispute. Alleged violations of the SSAA form the

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gravamen of WCS's Complaint and is what has fueled this dispute for the last decade. WCS is an interested person under the APA. Accordingly, the Court of Appeal correctly affirmed the Circuit Court's decision that WCS should have appealed the MDE's decision to the circuit court. Therefore, this Court should deny WCS's Application for Leave to Appeal.

IV. CONCLUSION

Appellee/Defendant School District of the City of Hazel Park respectfully requests that this Honorable Court deny Appellant/Plaintiff Warren Consolidated School District's Application for Leave to Appeal for the reasons set forth herein. If this Court decides to review the Circuit Court and Court of Appeals' decisions, this Court should affirm those decisions granting summary disposition on Appellant/Plaintiff Warren Consolidated School District's claims and dismissing the Complaint against Appellee/Defendant School District of the City of Hazel Park.

Respectfully Submitted,

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CERTIFICATION OF COMPLIANCE WITH MCR 7.212

The undersigned certifies that Appellee's Answer to Appellant's Application for Leave to Appeal complies with MCR 7.212 and consists of 8160 words and was created using Microsoft Word.

By: */s/ Thomas D. Landa*
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