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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, SUPPLEMENTAL BRIEF

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STATEMENT OF QUESTIONS INVOLVED

I. WHETHER THE MACOMB CIRCUIT COURT ERRED IN CONCLUDING THAT MCL 24.263 OF THE ADMINISTRATIVE PROCEDURES ACT OF 1969 REQUIRED THE PLAINTIFF TO APPEAL THE STATE SUPERINTENDENT'S ACT OF DECLINING TO ISSUE A DECLARATORY RULING TO THE CIRCUIT COURT.

Appellant/Plaintiff:	Yes.
Appellee/Defendant:	No.
This Court should answer:	No.

II. WHETHER AN AGENCY'S ACT OF DECLINING TO ISSUE A DECLARATORY RULING ENABLES A LITIGANT TO PURSUE A DECLARATORY-JUDGMENT ACTION IN CIRCUIT COURT UNDER MCL 24.264.

Appellant/Plaintiff:	Yes.
Appellee/Defendant:	Yes, if the litigant's claim challenges the validity and applicability of a rule and the respective agency is made a party to the action.
This Court should answer:	Yes, if the litigant's claim challenges the validity and applicability of a rule and the respective agency is made a party to the action.

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I. INTRODUCTION

In considering Plaintiff/Appellant, Warren Consolidated School District's ("WCS") Application for Leave to Appeal, this Court has raised two questions presented for supplemental briefing involving the interpretation of MCL 24.263 and MCL 24.264 of the Administrative Procedure Act the ("APA"). Notably, either one of these statutes may have provided WCS with an avenue to seek declaratory relief – an avenue WCS has refused to pursue over the last 14 years. The avenue of relief, whether under MCL 24.263 or MCL 24.264, depends on the nature of the claim that a party is seeking. In this instant lawsuit, WCS seeks to challenge the Michigan Department of Education's ("MDE") application and decision regarding the State School Aid Act, MCL 388.1601, *et seq*, when it approved Defendant/Appellant, School District of Hazel Park's ("Hazel Park") student membership count and awarded school aid funds to Hazel Park accordingly. This type of claim is only appropriate under MCL 24.263 regarding the applicability of an actual state of facts of the statute administrated by the MDE.

WCS ignores the plain and unambiguous statutory language of MCL 24.263 and insists on pursuing a monetary original action against Hazel Park. WCS has alleged that it lost millions of dollars in damages in the form of state school aid monies for students whom WCS neither educated nor supported with district resources. WCS believes it is entitled to these funds that were paid by the MDE to Hazel Park for approved and accepted student counts for students educated by Hazel Park. WCS's lawsuit collaterally challenges: 1) the MDE's approval of Hazel Park's student membership counts; 2) the MDE's subsequent award of state school aid funds to Hazel Park based on those approved counts; and 3) the MDE Superintendent's recent decision refusing to grant WCS's declaratory relief on those prior approvals. WCS attempts to circumvent the MDE's decisions, step in the shoes of the MDE, and redirect the state school aid Hazel Park received from

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the MDE to itself through the court system. The manner in which WCS pursues its claims is wholly improper under the APA.

While a declaratory judgment action under MCL 24.264 may be applicable to a litigant, such as WCS, WCS's current claim does not seek a declaratory ruling on the applicability or validity of a rule as set forth above. In addition, for the two questions presented, specifically MCL 24.264, the MDE – a necessary party in any appeal or declaratory action – is absent from WCS's ongoing litigation campaign. Therefore, even if this Court finds in favor of WCS that MCL 24.264 was an available avenue of relief, WCS's Complaint is subject to dismissal at the Circuit Court level as the MDE is not a named party.

For the reasons set forth herein and the reasons set forth in Hazel Park's Answer to WCS's Application for Leave to Appeal, this Court should affirm the decisions of the circuit court and the Court of Appeals.

II. LAW AND ARGUMENT

The issue with WCS's claims is its method of attack and type of claim it attempts to pursue – a collateral attack on the MDE's decision approving student membership counts and awarding state school aid to Hazel Park, an application of a set of facts to the State School Aid Act, which is administrated by the MDE. Instead of pursuing an appeal under MCL 24.263, WCS is principally pursuing a claim for monetary damages against Hazel Park only by collaterally attacking the MDE's decisions. The Macomb Circuit Court correctly dismissed WCS's Complaint because of WCS's failure to appeal the MDE's decision under MCL 24.263. While MCL 24.264 may have been previously available to WCS, WCS's action does not seek declaratory relief from the MDE regarding the applicability or validity of a rule. WCS decided to pursue a completely different course of action – an original action for money damages against Hazel Park, only. Even

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if this Court finds that MCL 24.264 is applicable to WCS's claims, WCS's claims still fail because it failed to include the MDE in the action as required by MCL 24.264.

A. The Macomb Circuit Court Correctly Ruled that MCL 24.263 Required WCS to Appeal the MDE Superintendent's Decision Declining to Issue a Declaratory Ruling to the Circuit Court.

The Macomb Circuit Court correctly ruled that WCS was required to appeal the MDE Superintendent's decision declining to issue a declaratory ruling to the Circuit Court solely because WCS's original action in attempting to collaterally attack the MDE's decision must be pursued as an appeal under MCL 24.263. Put succinctly by the Circuit Court: "[Hazel Park] argues that [WCS] 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." (**Appellee's App Ex M** at 7). The Circuit Court correctly dismissed WCS's Complaint on the basis that WCS chose to pursue an original action for monetary damages against Hazel Park only, instead of filing an appeal with the Circuit Court as required by the APA:

> 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). Judicial, rather than administrative resolution of the issues raised by WCS would undermine the MDE's ability to regulate state school aid through its pupil accounting, auditing, and appeals procedures. Therefore, if WCS wished to challenge the MDE's decisions, WCS was required to appeal those decision to the circuit court pursuant to MCL 24.263 and the Michigan Court Rules.

MCL 24.263 states:

> On request of an interested person, an agency may issue a declaratory ruling as to the **applicability to an actual state of facts of a statute administered by the**

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> **agency or of a rule or order of the agency**. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. **A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case**.

MCL 24.263 (emphasis added). MCL 24.263 provides statutory authority for the MDE to issue a declaratory ruling regarding the application of a set of facts to a statute administered by that agency. 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 (1977); *Bentley v Dept of Corr*, 169 Mich App 264, 272; 425 NW2d 778 (1988); and *Standifer v Dept of Corr*, 187 Mich App 388, 390; 468 NW2d 241 (1990).

In *Human Rights Party*, the plaintiff sought declaratory rulings, in addition to asserting violations of due process and equal protection guarantees and the guarantee against cruel and unusual punishment of the Michigan and Federal Constitutions, from the Michigan Department of Corrections – the defendants. *Human Rights Party*, 76 Mich App at 206-207. The defendants refused to act on the theory that they lacked the authority to issue such rulings. *Id*. at 207. The question presented in *Human Rights Party* is whether there is judicial review of this refusal under MCL 24.263. *Id*. The Court of Appeals held that "the intent of the Legislature in establishing [MCL 24.263] is to afford judicial review of an agency's refusal to make any ruling… [and] that a refusal to issue a declaratory ruling under M.C.L.A. 24.263 is subject to judicial review as an agency final decision or order in a contested case." *Id*. at 209-210.

In *Standifer*, the Court of Appeals reaffirmed the holding in *Human Rights Party* and directly held: "[a]n agency's refusal to issue a declaratory ruling under MCL § 24.263; M.S.A.

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3.560(163) is subject to judicial review as an agency final decision or order in a contested case." *Standifer*,187 Mich App at 390. Accordingly, the Court of Appeals vacated the decision of the circuit court, finding that it "clearly went beyond the procedures set forth in the APA" which require that judicial review of the agency decision be confined to the record and undertaken without a jury. *Id.* at 391.

Unlike an original civil action, this judicial review is confined to the record, conducted by the circuit court, MCL 24.304, governed by the standard set forth in MCL 24.306. Instead of pursuing an appeal under MCL 24.263, WCS sought to improperly collateral attack and circumvent the MDE's decisions. A party entitled to direct judicial review cannot bring an original action which challenges the agency decision. *Womack Scott v Dept of Corr*, 246 Mich App 70, 80; 630 NW2d 650 (2001).

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)." 246 Mich App at 80; see also *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"). "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

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> 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 v Fredrick, 271 Mich 538, 545-546; 260 NW 908 (1935).

WCS's argument sidesteps the supplemental question presented by arguing it was never required to seek a declaratory ruling from the MDE. This was extensively litigated in prior matters and is not the issue at hand. The question here is whether Macomb Circuit correctly ruled that the MDE's decision was subject to an administrative appeal under MCL 24.263. That answer is yes based on the plain language of MCL 24.263. There is no dispute that WCS sought a ruling from the MDE regarding the MDE's alleged misapplication of the State School Aid Act by approving and distributing funds to Hazel Park for students it educated, but WCS claims resided within its district. The MDE's 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." See *Standifer*, 187 Mich App at 390, and *Human Rights Party*, 76 Mich App at 210.

WCS may be somewhat correct in that *it could have* pursued a declaratory action against the MDE (not Hazel Park) under MCL 24.264, as discussed below, but it did not choose this avenue. It chose an original action against Hazel Park collaterally attacking the MDE's decision. WCS's decision to pursue a purely monetary remedy in the courts, while refusing to seek declaratory relief under the procedure mandated by MCL 24.263, is inconsistent with the APA. Nonetheless, there is no dispute that the MDE's decision – a declaratory ruling – is subject to judicial review unless another available avenue of relief of pursued. See MCL 24.263 and MCL 24.301. Therefore, 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

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review of the Superintendent's decision by way of appeal. See MCL 24.263 and MCL 24.301; *See also Womack Scott* 246 Mich App at 79 (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). Accordingly, WCS cannot collaterally attack those findings in its instant lawsuit, and the dismissal of its Complaint should be affirmed.

B. The MDE's Act of Declining to Issue a Declaratory Ruling May Enable WCS to Pursue a Declaratory Judgment Action Against the MDE if the Requirements of MCL 24.264 are Met.

WCS has never pursued a declaratory judgment action under MCL 24.264 in a single filing prior to this issue being raised by this Court because it is likely that WCS has no interest in pursuing such an action against the MDE as WCS only wants monetary damages from Hazel Park. MCL 24.264 may have been available to WCS if all the statutory requirements were met, which WCS cannot meet here.

WCS's claims are not alleged in a manner that are available under MCL 24.264 because it does not seek declaratory relief on the validity or applicability of a rule. MCL 24.264 states that:

> Unless an exclusive procedure or remedy is provided by a statute governing the agency, **the validity or applicability of a rule**, including the failure of an agency to accurately assess the impact of the rule on businesses, including small businesses, in its regulatory impact statement, may be determined in an action for declaratory judgment if the court finds that the rule or its threatened application interferes with or impairs, or imminently threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The action shall be filed in the circuit court of the county where the plaintiff resides or has his or her principal place of business in this state or in the circuit court for Ingham county. **The agency shall be made a party to the action**. An action for declaratory judgment may not be commenced under this section unless the plaintiff has first requested the agency for a declaratory ruling and the agency has denied the request or failed to act upon it expeditiously. This section shall not be construed to prohibit the determination of the validity or applicability of the rule in any other action or proceeding in which its invalidity or inapplicability is asserted.

MCL 24.264 (emphasis added).

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Based on the plain language, MCL 24.264 is more limiting than MCL 24.263 as it only applies to the "validity of applicability of a rule," whereas MCL 24.263 applies 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." Compare MCL 24.263 and MCL 24.264. In considering statutory language, courts have an obligation "to discern and give effect to the Legislature's intent as expressed in the words of the statute." *Elec Data Sys Corp v Twp of Flint*, 253 Mich App 538, 545; 656 NW2d 215 (2002) (internal citation omitted). The focus of the inquiry centers on the words of the statute because they provide the most reliable evidence of intent. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004) (internally quotation omitted). If the statutory language is unambiguous, courts presume that the Legislature intended the plainly expressed meaning and further judicial construction is neither permitted nor required. *DiBenedetto v W Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). A court does not interpret a statute in a way that renders any statutory language "surplusage or nugatory." *Pohutski v City of Allen Park*, 465 Mich 675, 684; 641 NW2d 219 (2002).

The *Human Rights Party* Court, in analyzing the plaintiffs' claims, held that "[t]he declaratory judgment provisions of M.C.L.A. [§] 24.264 appear to apply only to existing rules, and not to the mode of administration of a statute which is governed by M.C.L.A. [§] 24.263. *Human Rights Party*, 76 Mich App at 211. WCS does not challenge the validity or applicability of a rule, WCS essentially challenges the MDE's application of a rule to an actual set of facts, i.e., an administrative action, when it approved and accepted Hazel Park's student membership counts by providing state school aid. WCS's challenge to Hazel Park's student membership count and the MDE's subsequent award of state school aid is subject to the exclusive procedure and remedies provided by the State School Aid Act governing the MDE and the award of state school aid.

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Therefore, specifically as to WCS's Complaint, MCL 24.264 is not available to WCS in the way its current challenge is styled.

Next, a very important provision set forth in MCL 24.264 requires the litigant to make the agency a party to the action. If this Court determines that WCS's allegations that the MDE allowed Hazel Park to claim students for aid purposes somehow constitutes an application of a rule, MCL 24.264 may provide MDE with a potential cause of action by way of declaratory judgment, **but only if the MDE is made a party to the proceeding**. This omission is fatal based on the plain and unambiguous language of MCL 24.264. MCL 24.264 by use of the word "shall" expressly requires that the agency be joined as a party to any such action. See *Smitter v Thornapple Tp*, 494 Mich 121, 136; 833 NW2d 875 (2013) ("Legislature's use of the word 'shall' generally indicates a mandatory directive, not a discretionary act."). This requirement is not merely technical – it reflects the necessity of including the agency whose conduct or interpretation is at issue, both to defend its position and to be bound by any judgment. The Supreme Court has long recognized the necessity of having all interested parties before it to have a case that is appropriate for declaratory judgment. See *Central High Sch Athletic Ass'n v Grand Rapids*, 274 Mich 147, 153; 265 NW 322 (1936) ("We have grave doubts that a declaratory judgment would be res judicata of anything with only the present parties before us. All interested parties should be before the court."); see also *Skiera v Natl Indem Co*, 165 Mich App 184, 188; 418 NW2d 424 (1987)("It has ... been held that, as part of the requirement that there be an actual controversy, it is necessary that all the interested parties be before the court."), citing *Central High* and *Washington-Detroit Theatre Co v Moore*, 249 Mich 673,677; 229 NW 618 (1930).

Without MDE's participation, any declaratory relief issued would be incomplete and potentially unenforceable. Notwithstanding the Court's position on whether MCL 24.264 is available to WCS, WCS's Complaint would still be subject to dismissal for failure to join an

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indispensable party under both MCL 24.264 and MCR 2.205. Accordingly, since WCS's Complaint cannot meet the statutory requirements for the applicability of MCL 24.264, the relief therein is not available to WCS.

III. CONCLUSION

WCS seeks to recover millions of dollars in damages based on its assertion that Hazel Park improperly received state school aid funds. WCS's claim depends entirely on the premise that the MDE's interpretation of the State School Aid Act and the application of an actual set of facts at issue was erroneous. That issue must be resolved under MCL 24.263. Styled differently and following the statutory requirements, WCS may have pursued a declaratory judgment action under MCL 24.264, but it did not. WCS's refusal to pursue either path, while seeking to directly extract funds from Hazel Park, improperly circumvents the statutory framework and creates a legal fiction whereby a third-party school district stands in for the MDE.

Hazel Park respectfully requests that this Honorable Court deny WCS's Application for Leave to Appeal for the reasons set forth in this supplemental brief and as more fully set forth in its Answer to WCS's Application for Leave to Appeal. This Court should follow the Michigan Court of Appeals and affirm the Macomb Circuit's decision granting summary disposition on WCS's claims and dismissing WCS's Complaint against Hazel Park.

Respectfully Submitted,

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CERTIFICATION OF COMPLIANCE WITH MCR 7.212(B)

The undersigned certifies that Appellee/Defendants, School District of Hazel Park's Supplemental Brief complies with MCR 7.212(B) and consists of 4099 words and was created using Microsoft Word.

By: */s/ Thomas D. Landa*
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