

ORIGINAL

In the
Supreme Court of Ohio

BROOKWOOD PRESBYTERIAN
CHURCH,

Appellant,

v.

OHIO DEPARTMENT OF EDUCATION,

Appellee.

: Case No. 2009-1926
:
:
: On Appeal from the
: Franklin County
: Court of Appeals,
: Tenth Appellate District
:
: Court of Appeals Case
: No. 09-AP-303
:
:

**MEMORANDUM IN OPPOSITION TO JURISDICTION
OF THE OHIO DEPARTMENT OF EDUCATION**

JAMES S. CALLENDER JR. (0059711)
DONELL R. GRUBBS (0034655)
BUCKLEY KING, LPA
One Columbus, Suite 1300
10 West Broad Street
Columbus, Ohio 43215-3419
(614) 461-5600
(614) 461-5630 facsimile
grubbs@bucklaw.com

Counsel for Appellant
Brookwood Presbyterian Church

RICHARD CORDRAY (0038034)
Attorney General of Ohio

MIA MEUCCI (0083822)
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 644-7250
(614) 644-7634 facsimile
mia.meucci@ohioattorneygeneral.gov

Counsel for Appellee
Ohio Department of Education

FILED
NOV 20 2009
CLERK OF COURT
SUPREME COURT OF OHIO

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INTRODUCTION

This appeal poses no issues that warrant review. The Tenth District correctly affirmed the judgment of the Franklin County Court of Common Pleas, dismissing Brookwood Presbyterian Church's administrative appeal for lack of subject-matter jurisdiction under R.C. 119.12. The court's decision in this regard is sound, and need not be reviewed further for several reasons.

Initially, the community school sponsorship statutes at issue here are clear and unambiguous, and the Tenth District applied them correctly. Brookwood sought to qualify as a sponsor under R.C. 3314.02(C)(1)(f), which allows qualified tax-exempt entities to apply to be sponsors if they meet various conditions. Some of these conditions are objective, but others are more subjective, e.g., an interested party must be an "education-oriented entity." R.C. 3314.02(C)(1)(f)(iii). Under R.C. 3314.015(B)(3), appellee Ohio Department of Education ("Department") has the final say on whether a particular entity is "education-oriented": "Such determination of the department is final." R.C. 3314.015(B)(3). Once an entity meets all of these required standards for application, it may formally apply to be a community school sponsor, and the Department's ultimate determination of whether the entity will be approved as a sponsor is appealable under R.C. 119.12. See R.C. 3314.015(D).

As the Tenth District recognized, this framework, which is clearly expressed in the statutes, is logical. There is a significant difference between initial eligibility determinations and the final merit decision as to whether a qualified entity should be allowed to sponsor a community school. It makes sense to vest the Department with the exclusive discretion to weed out unqualified applicants at the earliest step without involving the appellate process.

Indeed, the Department's eligibility determination lacks the fundamental characteristics of an administrative appeal. Unlike the ultimate determination as to whether a qualified entity may sponsor a community school, the initial eligibility determination did not result from a quasi-

judicial proceeding and was not made by the highest or ultimate authority within the Department. The fact that such decisions bear little similarity to the types of decisions typically appealed through R.C. 119.12 adds further support to the Tenth District's interpretation of the statute.

Brookwood tries to avoid this result by claiming that this express legislative mandate will somehow put Ohio at risk of losing or missing out on federal funds tied to educational reforms. Even if Brookwood is correct in this regard, and the Department maintains that it is not, this Court is not the proper place to air those concerns. The General Assembly is the ultimate arbiter of public policy in this State; this Court may not override an express legislative mandate to achieve perceived financial benefits for Ohio.

Additionally, of the four propositions of law that Brookwood advances, only two are properly before this Court. In its final two propositions, Brookwood argues that the Department violated the Equal Protection Clauses of the United States and Ohio Constitutions and that the Department failed to properly enter a record of the proceedings. But the Tenth District did not address these issues below. Rather, it determined that they were moot because Brookwood was not entitled to appeal the Department's decision. Because the lower court did not resolve these claims on their merits below, this Court should not review them on the first instance here.

Brookwood is merely looking for a forum to express its unhappiness with the Department's decision, which was made under a statute that the Tenth District correctly concluded does not permit appeals. For these and other reasons, this Court should decline to review this matter.

STATEMENT OF THE CASE AND FACTS

A. Entities seeking to sponsor community schools must meet several eligibility criteria.

A community school, Ohio's term for a charter school, is a public nonprofit, nonsectarian school that operates independently of any school district. Community schools are operated by

non-profit corporations pursuant to contracts with entities that are supposed to supervise the schools. Although those supervising entities are known as “sponsors,” they do not provide funding. Instead, the State funds the school by diverting operating funds from the school district where the community school’s students live to the community school.

Before an entity may apply for sponsorship, the Department must initially determine that the entity meets the threshold eligibility criteria. A qualified tax-exempt entity under section 501(c)(3) of the Internal Revenue Code like Brookwood that seeks to be a sponsor will be eligible if: (1) it has been in operation for at least five years prior to applying; (2) it has assets of at least \$500,000 and a record of financial responsibility; (3) the Department determines that the entity is an “education-oriented entity,” i.e. an entity whose mission or operations foster education; (4) the Department determines that the entity has successfully implemented educational programs; and (5) the entity is not a community school. R.C. 3314.02(C)(1)(f)(i)–(iv). All criteria must be satisfied. If an entity meets the eligibility criteria, the Department will then decide whether to approve or disapprove the entity’s sponsorship application.

B. Brookwood applied to be a community school sponsor; the Department determined that Brookwood was ineligible because it is not an “education-oriented entity.”

Brookwood Presbyterian Church is a tax-exempt, non-profit church organized for religious purposes. In November 2007, Brookwood submitted an application to the Department requesting approval to sponsor community schools in Ohio under R.C. Chapter 3314. By letter dated March 5, 2008, the Department informed Brookwood that it was not eligible to apply to sponsor a community school because it is a religion-oriented entity, not an “education-oriented entity” as required by R.C. 3314.02(C)(1)(f)(iii). Thereafter, Brookwood asked the Department to reconsider its decision. On May 9, 2008, the Department sent Brookwood a letter reaffirming its determination that Brookwood is not eligible to apply for community school sponsorship.

C. Both the Franklin County Court of Common Pleas and the Tenth District Court of Appeals dismissed Brookwood's appeal.

Brookwood appealed the Department's decision to the Franklin County Court of Common Pleas, including with its Notice of Appeal a demand under R.C. 119.12 that the Department prepare and certify to the common pleas court a record of the proceedings in the case. Brookwood styled it as an administrative appeal under R.C. 119.12 and 3314.015(D). The Department filed a Notice and supporting affidavit informing the common pleas court that no public hearing had been conducted in the matter and as such there was no record of proceedings to be certified. In response, Brookwood filed a "Motion for Judgment in Favor of Brookwood for Failure of Appellee to File Complete Record, Pursuant to R.C. 119.12." The Department countered with a motion to dismiss.

On March 2, 2009, the trial court issued a combined decision denying Brookwood's motion for judgment regarding the Department's failure to file a record and granting the Department's motion to dismiss the appeal. In dismissing the appeal, the trial court made several findings relevant to this appeal. First, it held that the Department's determination that Brookwood is not an "education-oriented entity" is "final" under the plain language of R.C. 3314.015(B)(3). Next, the court cited with approval *Heartland Jockey Club, Ltd. v. Ohio State Racing Comm.* (Aug. 3, 1999), Franklin App. No. 98AP-1465 (unreported), for the proposition that when the legislature includes language in a statute directing that a decision of a State agency is "final," there can be no appeal pursuant to R.C. 119.12. Finally, the trial court held that because R.C. 119.12 does not govern this case, the Department was not required to certify a record to the court. The court then dismissed the appeal for lack of subject matter jurisdiction.

Brookwood then appealed to the Tenth District, which affirmed the trial court's judgment. Referring to the plain language of R.C. 3314.015(B)(3), the court similarly concluded that the

Department's determination that an entity is not "education-oriented," and thus not eligible to apply for community school sponsorship, is "final." *Brookwood Presbyterian Church v. Ohio Dept. of Edn.*, 2009-Ohio-4645, ¶9. Relying on the conclusion in *Heartland*, the court of appeals then held that R.C. 3314.015(B)(3) forecloses appeals of the Department's determinations of a non-profit entity's eligibility to apply for community school sponsorship. *Id.* at ¶10. As such, the court found that the Department's decision in this matter is not subject to appeal, which rendered moot the remainder of Brookwood's assignments of error. *Id.* Brookwood now asks this Court to accept jurisdiction in this case.

THIS APPEAL IS NOT OF GREAT GENERAL OR PUBLIC INTEREST

Not every decision the Department makes subjects it to a R.C. 119.12 appeal. Recognizing this fact, the Tenth District dismissed Brookwood's appeal because the plain language of R.C. 3314.015(B)(3) states that the Department's "education-oriented entity" determination is "final." Though Brookwood disagrees with that statute, this Court cannot be asked to change the language of R.C. 3314.015(B)(3). Policy decisions of this nature are the province of the General Assembly. Simply put, Brookwood is unhappy that the legislature chose to foreclose appeals of sponsorship eligibility determinations made by the Department. But that disappointment presents no issue worthy of this Court's attention.

A. The Tenth District decision closely tracked the plain language of R.C. 3314.015(B)(3), a statute that is not subject to contrary interpretation.

The Tenth District decision was based on the plain language of R.C. 3314.015(B)(3), which clearly states that the Department's determination as to whether a proposed community school sponsor is an "education-oriented entity" is "final." Given its clarity, the statute cannot logically be read to suggest that final means anything other than not subject to further review.

Indeed, the Tenth District has already established the meaning of “final.” *Heartland*, supra. In this case, both the trial court and the Tenth District invoked *Heartland’s* to conclude that R.C. 3314.015(B)(3) forecloses appeals of the Department’s sponsorship eligibility determinations. These courts are well-versed in Chapter 119. Their decisions concerning administrative procedure should not be subjected to scrutiny just because an appellant disagrees with the outcome, which is exactly what Brookwood is attempting to do here. Brookwood’s argument boils down to nothing more than a disagreement with R.C. 3314.015(B)(3), not a question of its meaning. Such discontentment is not enough to warrant this Court’s review.

B. Not every determination made by an administrative agency is subject to appeal.

Should this Court decide to dissect R.C. 3314.015(B)(3), its purpose is well-grounded in law. In Ohio, it is well-recognized that, absent specific statutory or constitutional authority, there is no inherent right to appeal from an order of an administrative agency. See, e.g., *Corn v. Bd. of Liquor Control* (1953), 160 Ohio St. 9. For a court of common pleas to have subject matter jurisdiction over an appeal of an agency decision, the Ohio legislature must have granted the appellant the right to pursue the appeal. *Id.* This Court has recognized that a state agency could be subject to R.C. Chapter 119 for some purposes but not for others. See *Plumbers & Steamfitters Comm. v. Ohio Civil Rights Comm’n* (1981), 66 Ohio St. 2d 192.

Not every decision made by a State agency is appealable under R.C. 119.12, and R.C. 3314.015(B)(3) states that the Department’s decision at issue here is final. In short, the General Assembly has given administrative agencies absolute gatekeeping powers in these types of baseline eligibility determination decisions, and this Court should honor that broad grant of authority. If the courts were to divest administrative agencies of such discretion, they would be inundated with appeals on matters that simply do not warrant judicial intervention.

C. The General Assembly, not this Court, has the final say with regard to the policy implications of community school statutes.

The bulk of Brookwood's argument is that the Department's decision furthers the Governor's alleged policy to cap community school growth and ruins the state's chances of receiving federal monies. Such hyperbole is both irrelevant to the issue at hand and factually wrong. In fact, during Governor Strickland's first year in office, twenty new community schools opened across the state, and more than 300 community schools are presently operating in Ohio.¹

But even if Brookwood is correct in arguing that the Department's application of R.C. 3314.015(B)(3) stunts community school growth and could potentially impact the state's ability to obtain federal funding, it is the General Assembly, and not this Court, who weighs in on such policy matters. The General Assembly is the "ultimate arbiter of public policy." *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, ¶ 21. It is improper for Brookwood to ask this Court to change the plain language of this statute merely because they disagree with the General Assembly's policy choices. If it is dissatisfied with the statutory scheme governing Ohio's community schools, Brookwood should lobby the General Assembly for relief.

ARGUMENT

Appellee Ohio Department of Education's Propositions of Law Numbers 1 and 2:

A decision of the Department which denies a community school sponsor application is not subject to appeal under R.C. 119.12.

The language of R.C. 3314.015(B)(3) makes clear that eligibility determinations made by the Department are final and thus foreclose appeal.

Brookwood's first two propositions of law are interrelated, and will therefore be addressed together. In these sections, Brookwood argues that, despite the plain language of R.C.

¹ The most recent annual report on the status of community schools in Ohio is available online at <http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=662&ContentID=41601&Content=66604>

3314.015(B)(3), which provides that the Department's decision as to whether an entity is "education-oriented" is "final," it nonetheless has the right to appeal this decision using the administrative appeal provisions in R.C. 119.12. Brookwood is mistaken for two reasons: (1) its argument contravenes the plain statutory language and (2) the Department's "education-oriented entity" determination is not the type of quasi-judicial decision reviewable under R.C. 119.12.

A. The plain language of R.C. 3314.015(B)(3) forecloses an appeal on the issue of whether an entity is "education-oriented."

A plain language review of R.C. 3314.015(B)(3) and related statutes reveals that an appeal is inappropriate here. In construing a statute, this Court must first look at the plain language of the provision. See *Medcorp, Inc. v. Ohio Dep't of Job & Family Servs.*, 121 Ohio St.3d 622, 2009-Ohio-2058, ¶ 9. The Court must give effect to the words used, and may neither add nor delete words. See *Hall v. Banc One Mgmt. Corp.*, 114 Ohio St.3d 484, 2007-Ohio-4640, ¶ 24. If this review yields a clear meaning, the statute must be applied as written. *Medcorp*, 2009-Ohio-2058, at ¶ 9.

Pursuant to R.C. 3314.015(B)(3):

The department of education shall determine, pursuant to criteria adopted by the department, if any tax-exempt entity under section 501(c)(3) of the Internal Revenue Code that is proposed to be a sponsor of a community school is an education-oriented entity for purpose of satisfying the condition prescribed in division (C)(1)(f)(iii) of section 3314.02 of the Revised Code. *Such determination of the department is final.*

(Emphasis added.) The word "final" means "leaving no further chance for action, discussion, or change; deciding; conclusive." Webster's New World College Dictionary 506 (3d Ed. 1997). Its inclusion here sends a clear and unambiguous message; R.C. 3314.015(B)(3) provides the Department with sole discretion to determine which entities meet the baseline qualifications needed to apply to be community school sponsors, and no appeal may be taken of this initial

eligibility determination. This decision is contrasted with the final determination of whether an eligible entity is allowed to become a sponsor, which R.C. 3314.015(D) explicitly makes appealable: “The decision of the department to disapprove an entity for sponsorship of a community school . . . may be appealed by the entity in accordance with” R.C. 119.12.

The Tenth District has previously held that the type of “final” determination provision in R.C. 3314.015(B)(3) precludes an appeal. In *Heartland*, the court of appeals addressed the issue of whether an individual could appeal from a decision by the Ohio State Racing Commission under R.C. 3769.089(E)(3). *Heartland Jockey Club, Ltd. v. Ohio State Racing Comm.* (Aug. 3, 1999), Franklin App. No. 98AP-1465 (unreported). That statute provides, in relevant part, that “[t]he determination of the commission” as to whether a permit holder may simulcast a special racing event “is final.” R.C. 3769.089(E)(3). An aggrieved permit holder attempted to appeal such a decision in *Heartland*, but the trial court dismissed the appeal. *Heartland* at *2. The Tenth District affirmed, holding that “the legislature intended to foreclose direct administrative appeals from decisions involving R.C. 3769.089 when the legislature included in the statute the sentence ‘the determination of the commission is final.’” *Id.* at *3. *Heartland* thus stands for the proposition that where, as here, a statute states that a decision of a State agency is “final,” the agency decision may not be appealed under R.C. 119.12.

The statute at issue in *Heartland* is analogous to R.C. 3314.015(B)(3), in that both statutes contain language explaining that a decision by the respective State agency is “final,” and neither provides for an administrative appeal under Chapter 119. Since R.C. 3314.015(B)(3) contains such express language, the Tenth District correctly concluded that the trial court did not err by dismissing Brookwood’s appeal for lack of subject-matter jurisdiction.

Brookwood argues that the Tenth District's decision in *Heartland* is irrelevant here because it involves a different agency and a separate statutory scheme. However, the statutes at issue in each case contain the "such determination of the department is final" language, and neither statute provides for an administrative appeal under Chapter 119. Further, while Brookwood is correct that no other courts have cited to *Heartland* for the proposition that where the legislature includes language in a statute, directing that a decision of a State agency is "final," the agency decision may not be appealed under R.C. 119.12, *Heartland* has not been overruled either. The fact that a decision has not been cited by a sister court does not render it null and void.

Because, as the Tenth District correctly recognized, the plain language of R.C. 3314.015(B)(3) precludes an appeal of the Department's baseline determination of whether an entity has all of the qualifications necessary to apply to be a sponsor of a community school, this Court should decline to review this case further.

B. Eligibility determinations under R.C. 3314.015(B)(3) regarding whether an entity is "education-oriented" do not bear any indicia of the quasi-judicial proceedings appealable under R.C. 119.12.

The General Assembly's decision to make the initial eligibility decision final and not appealable makes sense. Not every decision made by an executive entity is appealable; in fact, R.C. 119.12 is specifically limited to orders issued "pursuant to an adjudication." Because the initial determination of whether an entity is "education-oriented" for the purposes of being eligible to apply to be a community school sponsor lacks all attributes of such quasi-judicial proceedings, Brookwood's attempt to lump these proceedings together runs contrary to both R.C. 119.12 and R.C. 3314.015(B)(3). In short, the Department's determination here cannot be reviewed through R.C. 119.12 because it did not result from a quasi-judicial proceeding, was not an adjudication that could support jurisdiction under R.C. 119.12, and was a final, non-

appealable order. Brookwood advances several arguments to the contrary, none of which are compelling.

Initially, Brookwood claims that R.C. 3314.015(D) governs this appeal and that R.C. 3314.015(B)(3) “merely limits the scope of appellate review provided under subsection (D).” But R.C. 3314.015(D) only provides for an administrative appeal under R.C. 119.12 in the situation where an *eligible entity* has subsequently been disapproved for sponsorship of a community school and not, as in the present case, where ODE makes the determination that an entity is not education-oriented and, as such, not an eligible entity in the first instance.

Distinguishing between these types of orders for the purposes of appealability is critical. The Department’s eligibility determination did not result from a quasi-judicial proceeding, which is required for appeals under R.C. 119.12. “[B]efore an appeal can successfully be brought to the Court of Common Pleas of Franklin County under the provisions of R.C. Chapter 119, the proceedings of the administrative agency must have been quasi-judicial in nature.” *State ex rel. Bd. of Edn. v. State Bd. of Edn.* (1978), 53 Ohio St.2d 173, 176. This Court has noted that “[p]roceedings of administrative officers and agencies are not quasi-judicial where there is no requirement for notice, hearing and the opportunity for introduction of evidence.” *M. J. Kelley Co. v. Cleveland* (1972), 32 Ohio St.2d 150, paragraph two of the syllabus.

Brookwood mistakenly cites *Rossford Exempted Village School Dist. v. State Bd. of Edn.* (1989), 45 Ohio St. 3d 356, and *Union Title Co. v. State Bd. of Edn.* (1990), 51 Ohio St.3d 189, for the proposition that “quasi-judicial proceedings of [the Department] like the denial of Brookwood’s application here may be appealed to the court of common pleas pursuant to R.C. 119.12.” (Appellant’s Brief at 6). However, the territory transfer statutes at issue in those cases are distinguishable from the community school sponsor eligibility statute at issue here. *Rossford*

dealt with R.C. 3311.06 and *Union Title* involved R.C. 3311.24. Both statutes contemplate substantial involvement by the State Board of Education, including, among other things, approving or disapproving requests to transfer territory, presiding over hearings, and passing resolutions.

Indeed, territory transfer proceedings, though administrative in nature, are comparable to mini-trials. Those persons interested in requesting a transfer petition through their resident board of education, which in turn files a proposal with the State Board of Education. Ohio Admin. Code 3301-89-02(A)(1)-(3). Negotiations take place, after which the State Board either adopts a resolution to approve a negotiated agreement or begin the administrative hearing process. *Id.* at (A)(6). Thereafter, the Department sends the parties requests for information, analyzes the information received, and presents its analysis to the State Board. *Id.* at (B)-(D). At this stage, the parties have the opportunity to request a hearing. *Id.* at (E). Once a hearing is requested, a hearing date is set and a hearing officer is appointed. *Id.* at (F). At the hearing, the parties present testimony and exhibits for the hearing officer to consider. *Id.* at (G). The hearing officer's report and recommendation is filed with the State Board and copies are sent to the parties who may then file objections. *Id.* at (H). Ultimately, the State Board decides whether to approve, disapprove, or modify the hearing officer's recommendation. *Id.* at (I).

This process is markedly different from initial eligibility determinations made under the community schools statutes. Here, Brookwood did not receive written notification of its right to a hearing pursuant to Chapter 119 and no hearing took place because one was not required. Likewise, no report and recommendation was submitted to the State Board (because no hearing officer was required to be appointed), and the State Board made no determination with respect to Brookwood's eligibility. Given the absence of these essential factors, the Department's

determination of whether a proposed sponsor is an eligible entity for the purpose of applying for sponsorship does not result from quasi-judicial proceedings.

Rather, such determinations are made by the Department's Office of Community Schools ("Office"). The Office conducts an internal review of any application and supporting documentation submitted by a proposed sponsor to determine whether it is an eligible entity. This process does not require a formal hearing, there are no witnesses, no record is generated, and they do not necessitate involvement by the State Board. These determinations are not quasi-judicial. Therefore, R.C. 119.12 provides no jurisdictional base for review.

Furthermore, Brookwood's attempt to invoke R.C. 119.12 fails even if the eligibility determination came from a quasi-judicial proceeding because it lacked another essential requisite to the statute's applicability: an "adjudication." R.C. 119.12 authorizes a party to appeal an "order of an agency issued *pursuant to an adjudication*." (Emphasis added). R.C. 119.01(D) in turn defines "adjudication" as "the determination by the highest or ultimate authority of an agency of an agency of the rights, duties, privileges, benefits, or legal relationships of a specified person. . . ." The determination challenged here does not fit within that definition because it was not made by "the highest or ultimate authority of" the Department. The Department's eligibility determination was made by Joni Cunningham, Associate Director of the Office. However, Ms. Cunningham is not the Department's "highest or ultimate authority." See R.C. 3301.13 (providing that the "superintendent of public instruction [is] the chief administrative officer of" the Department).

Since the action at issue was not taken by "the highest or ultimate authority" within the Department, it was not an adjudication. Thus, Brookwood's invocation of R.C. 119.12 fails as a matter of law.

Appellee Ohio Department of Education's Proposition of Law Number 3:

Brookwood's constitutional challenges are not properly before the Court.

Brookwood has not properly raised its third proposition of law before this Court. As the Tenth District correctly noted, its decision to affirm the judgment of the Common Pleas Court and dismiss Brookwood's administrative appeal for lack of subject matter jurisdiction rendered moot Brookwood's remaining assignments of error, including this issue. As such, the court of appeals has not yet ruled on the merits of this issue.

This Court typically declines to review issues for the first time on discretionary appeal. See *State v. Brooks* (1989), 44 Ohio St.3d 185, 193 ("We decline to decide this issue before the court of appeals has had an opportunity to address this issue in the first instance."). Even if the Court accepts the first two propositions of law and finds that the lower court erred, it should remand the case for resolution of this issue below. See *Allstate Ins. Co. v. Cleveland Elec. Illuminating Co.*, 119 Ohio St.3d 301, 2008-Ohio-3917, ¶ 16 ("Because the court of appeals' erroneous disposition of the issue before us led it to hold that CEI's remaining assignments of error were moot, we remand to the court of appeals for consideration of those issues."). No matter what, though, *this* appeal is not the appropriate time to decide those issues on the merits. As such, the Department will not argue the merits of this proposition of law at the present time.

Appellee Ohio Department of Education's Proposition of Law Number 4:

The Department was not required to certify a record to the Common Pleas Court.

For the reasons explained in the third proposition of law, Brookwood's fourth proposition of law is also not properly before this Court. That being said, Brookwood's argument that the trial court should have rendered judgment in its favor further underscores the differences between the determination at issue here and those that may be appealed under R.C. 119.12.

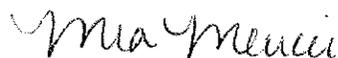
As explained above, R.C. 119.12 did not provide the common pleas court with jurisdiction in this matter. The decision at issue did not result from a quasi-judicial proceeding and was not made by the Department's "highest or ultimate authority." Further, the language of R.C. 3314.015(B)(3) makes clear that eligibility determinations made by the Department are final and thus not appealable pursuant to R.C. 119.12. Such determinations are not cases for which a public hearing is required under Chapter 119. The Department could not certify a record to the common pleas court because no such record exists. In short, the Department cannot be penalized for failing to certify a record that does not exist.

CONCLUSION

For the above reasons, this Court should decline jurisdiction over the appeal.

Respectfully submitted,

RICHARD CORDRAY (0038034)
Ohio Attorney General



MIA MEUCCI (0083822)
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
(614) 644-7250
(614) 644-7634 facsimile
mia.meucci@ohioattorneygeneral.gov

Counsel for Appellee
Ohio Department of Education

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum in Opposition to Jurisdiction of the Ohio Department of Education was served by U.S. mail this 20th day of November, 2009, upon the following counsel:

James S. Callender Jr.
Donell R. Grubbs
BUCKLEY KING, LPA
One Columbus, Suite 1300
10 West Broad Street
Columbus, Ohio 43215-3419

Counsel for Appellant
Brookwood Presbyterian Church



Mia Meucci
Assistant Attorney General