

T.J. and D.J.

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No.: OR23-15

ORDER

Appellants challenge the decision of the Montgomery County Board of Education (“local board”) denying Appellants’ daughter an exemption from the Montgomery County Public Schools (“MCPS”) one credit health education course, part of a State required health education credit for graduation. Appellants sought the exemption based on religious grounds. In its decision, the local board explained that MCPS may excuse students from the family life and human sexuality (“FLHS”) unit of study of the MCPS comprehensive health education curriculum, but there is no provision to waive or excuse the entire health education course.¹ The local board further explained that Appellants’ child could satisfy the required health credit in other ways, including through an independent study or by enrolling in a college course, and directed school staff to inform Appellants of the alternative means by which their daughter could earn her health credit.

The local board maintains that the appeal to the State Board is untimely. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board “shall be filed within 30 calendar days of the decision of the local board” and that the “30 days shall run from the later of the date of the order or the opinion reflecting the decision.” An appeal is deemed transmitted within the limitations period if, before the expiration of the time period, it has been delivered to the State Board, deposited in the U.S. Mail as registered, certified or Express, or deposited with a delivery service that provides verifiable tracking from the point of origin. COMAR 13A.01.05.02B(3). The State Board has also been accepting delivery of appeals by email.

The local board issued its decision on June 6, 2023. Both the decision and the cover letter accompanying the decision advised that the Appellants could appeal the matter to the State Board within 30 days of the June 6 decision of the local board.² See Local Bd. Response, Ex. 1 Decision and Order and 6/7/22 Seabrook Letter.

The Appellants should have filed their appeal with the State Board on or before July 6, 2023, but they did not file it until July 7, 2023, the date the State Board received the appeal via email. Time limitations are generally mandatory and will not be overlooked except in

¹ MCPS Regulation IGP-RA, *Comprehensive Health Education Instructional Program*, permits MCPS to excuse students from the FLHS unit of study consistent with COMAR 13A.04.18.01D(2)(e) which permits parents to opt-out their child from the FLHS units of study. Thus, the Appellants may choose to have their daughter opt-out of the FLHS unit.

² The reference to July 7 as the date of the local board’s decision in footnote 1 of the local board’s response to the State Board appeal is a typographical error and has no impact on the untimeliness determination here.

extraordinary circumstances such as fraud or lack of notice. *See Scott v. Board of Educ. of Prince George's County*, 3 Op. MSBE 139 (1983). The State Board has consistently applied this rule of law and has dismissed appeals that have been filed one day late based on untimeliness. *See Lee v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Order No. OR22-02 (2022); *Cathy G. v. Montgomery County Bd. of Educ.*, MSBE Order No. OR17-04 (2017) and cases cited therein.

Appellants have not made any valid argument to extend the filing time. We, therefore, find no extraordinary circumstance that would justify an exception to the mandatory 30-day deadline.

Accordingly, it is this 26th day of September 2023 by the Maryland State Board of Education, ORDERED, that the appeal referenced above is hereby dismissed for untimeliness.³ *See* COMAR 13A.01.05.03B.

Signature on File:

Clarence C. Crawford
President

Demur: Shawn D. Bartley

Although a time deadline was missed, this matter is not moot. There is a likelihood that this student and other similarly situated students and families that have sincere religious beliefs will be forced to participate in educational activities that do not comport with an individual's religious liberties. This is an opportunity for the State Board to take on and resolve an issue that is presently capable of repetition yet evading review.

³ MCPS Regulation ISB-RA sets forth the parameters for earning credit through independent study. Based on the record, it appears that Appellants have been attempting to develop an independent study for their daughter to satisfy the health credit requirement.