

CATHY G.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR17-04

ORDER

Appellant filed an appeal of the decision of the Montgomery County Board of Education (“local board”) denying her request to have her son transferred from Wheaton High School to Einstein High School.¹

The local board filed a motion to dismiss the appeal based on untimeliness. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board “shall be taken 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 local board issued its decision on November 15, 2016. (Motion, Ex. 1). The cover letter, dated November 16, 2016, attached to the local board’s decision, advised of the right to appeal to the State Board of Education. The cover letter identified the date of the local board’s Decision and Order. The letter correctly stated that the appeal “must be made in writing to the Maryland State Board of Education . . . within 30 days of the date of the enclosed Decision and Order.” It further stated that to “meet the 30-day deadline, State Board regulations . . . require that your appeal, along with a copy of the Decision and Order, must be transmitted to the State Board on or before the 30th day following the date of the enclosed Decision and Order.” The letter also set forth the methods of transmitting the appeal and provided the State Board’s address. (Motion, Ex. 2).

The Appellant’s appeal should have been transmitted to the State Board on or before December 15, 2016, but it was not transmitted until December 16, 2016. Time limitations are generally mandatory and will not be overlooked except in 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, dismissing appeals that

¹ The school system assigned Appellant’s son to Wheaton through the DownCounty Consortium school choice process. Appellant’s son had selected Wheaton as his second choice school and Einstein as his fifth choice. Students who want to change their assigned school after the choice process is complete must request a student transfer.

have been filed one day late based on untimeliness. *L.A. v. Montgomery County Bd. of Educ.*, MSBE Order No. OR10-02 (2010); *Mohan G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-48 (2008); *Kaliym Hill & Yvette Butler v. Montgomery County Bd. of Educ.*, MSBE Op. No. 03-04 (2003); *Twu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-11 (2001); *Schwalm v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 98-50 (1998); *Friedman v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 98-41 (1998); *Duckett v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 97-14 (1997).

In this case, however, Appellant maintains that she did not receive the local board's decision until November 21, 2016, six days after its issuance. She argues that she should have been allowed extra time to submit the appeal due to this delay. The local board maintains that it mailed the Decision and Order on November 16, one day after issuance, and that the Appellant's supposed receipt of the letter on November 21 does not justify an exception to the 30-day deadline.

This Board has previously explained that that 30-day filing deadline takes into consideration the fact that it might take several days for an individual to receive notice of the local board's decision. *Eastern Middle School Workgroup v. Montgomery County Bd. of Educ.*, MSBE Order No. OR10-03 (2010). Thus, in cases involving an appellant's delayed receipt of a local board decision due to delays in mailing, this Board has found that such delays do not necessarily warrant an extension of time for filing an appeal. See *Daryl Hunsberger v. Washington County Bd. of Educ.*, MSBE Order No. OR13-01 (2013); *Foundations Charter Sch. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Order No. OR09-03 (2009); *Mohan G. v. Montgomery County Bd. of Educ.*, MSBE Order No. 08-48 (2008)(finding that three to six day delays in mailing a local board's decision to an appellant were not extraordinary circumstances sufficient to justify an extension of the filing deadline). The State Board reasoned in these cases that there was still sufficient time remaining in the limitations period for the appellants to timely file their appeals. *Id.*

The same reasoning applies here. Assuming that the Appellant received the local board's decision six days after it was issued, she still had 24 days to file her appeal -- sufficient time in our view. We find no extraordinary circumstance that would justify an exception to the mandatory 30-day deadline.

Therefore, it is this 28th day of March, 2017 by the Maryland State Board of Education,

ORDERED, that the appeal referenced above is hereby dismissed for untimeliness. See COMAR 13A.01.05.03C(2).

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Andrew R. Smarick
President