

TYBOIA BROWN,

Appellant

v.

SOMERSET COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 20-09

ORDER

Tyboia Brown (“Appellant”) requests that this Board reconsider its January 28, 2020 Order in *Tyboia Brown v. Somerset County Board of Education*, MSBE Order No. OR 20-03, which dismissed her appeal for untimeliness.¹ The local board opposes the request.

Request for Reconsideration Standard

A decision on a request for reconsideration shall be made in the discretion of the State Board except that a decision may not be disturbed unless there is sufficient indication in the request that: (1) The decision resulted from mistake or error of law; or (2) New facts material to the issues have been discovered or have occurred subsequent to the decision. The State Board may refuse to consider facts that the party could have produced while the appeal was pending. The State Board may, in its discretion, abrogate, change, or modify the original decision. COMAR 13A.01.05.10.

No Mistake or Error of Law

The State Board has long held that time limitations for filing a State Board appeal 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 dismissed the instant appeal because Appellant asserted a claim for lack of notice to excuse her untimely filing but failed to submit the required affidavit required pursuant to COMAR 13A.01.05.04G. *See* MSBE Order No. OR 20-03.

Appellant maintains that the State Board’s Order dismissing her appeal resulted from a mistake or error of law because she asserted claims of fraud or other extraordinary circumstances, which do not have an affidavit requirement, and did not simply assert lack of notice, which requires submission of an affidavit.

Appellant is mistaken that the State Board’s order was premised on a mistake or error of law. It is clear that Appellant’s underlying argument in response to the local board’s motion to dismiss was lack of notice and nothing more. Appellant stated “I am opposing this dismissal on

¹ Appellant has submitted a motion for recusal which we address under a separate order.

the basis that I had not been properly notified of the board’s decision. . . .” (Appellant’s Opposition). Further references to lack of notice are contained throughout the Appellant’s opposition. *Id.*

No New Material Facts Have Been Discovered or Have Subsequently Occurred

Appellant argues in her reconsideration request that new material facts have occurred or been discovered subsequent to the State Board’s Order that support reconsideration. She has provided a United States Postal Service (“USPS”) tracking receipt indicating that the certified mail delivery of the local board’s decision was issued on September 19, 2019, and not on September 18, 2019 as the local board represented. Using the September 19 date as the date from which the 30-day appeal deadline begins to run, the Appellant calculates that her appeal was not due to be filed until October 24, 2019, and thus was timely. She also argues that these new material facts constitute “a new claim of lack of notice and fraud.”

The State Board may refuse to consider any evidence that the party could have introduced while the appeal was pending. COMAR 13A.01.05.10E. Appellant did not submit the USPS tracking receipt to the State Board while the appeal was pending. She states that she obtained the receipt on February 3, 2020, but presumably it was available at the time of the appeal. Appellant fails to address why she did not introduce it. For this reason alone, the State Board declines to consider it.

Moreover, the tracking receipt is not material to the issues of timeliness and fails to demonstrate Appellant’s appeal was timely filed. The 30-day filing deadline runs from the later of the date of the order or opinion reflecting the local board’s decision, not from the date the local board mails the decision. *See* COMAR 13A.01.04.02B(1). As this Board stated in its Order, the appeal was due on October 17, 2019, but Appellant did not file it until October 22, 2019. Furthermore, Appellant is mistaken that she was entitled to add three additional days to the deadline based on prior COMAR 13A.01.05.02B(5) (adding three days to deadlines when service is required by mail). That provision is inapplicable to the initial appeal filing deadline. *See Ballinger v. St. Mary’s County Bd. of Educ.*, MSBE Order No.18-01 (2018); *Nitzer v. Baltimore County Bd. of Educ.*, MSBE Order No. 17-02 (2017). Moreover, the State Board repealed that provision effective February 11, 2019. *See* 46:3 Md. R. 107 (February 1, 2019).

Because the Appellant has failed to provide an adequate basis for reconsideration of MSBE Order No. OR 20-03, it is this 28th day of April, 2020, ORDERED, by the Maryland State Board of Education, that the request for reconsideration is denied.

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Warner I. Sumpter
President