

JOHN AND TAMMY W.,
Appellants

v.

CHARLES COUNTY
BOARD OF EDUCATION,
Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 22-08

ORDER

Appellants challenge the decision of the Charles County Board of Education (“local board”) issued on January 12, 2022, denying their request to transfer their child from Westlake High School to North Point High School. The local board filed a motion to dismiss maintaining that Appellants did not timely file their State Board appeal. Appellants responded to the local board’s motion.

COMAR 13A.01.05.02(B)(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.01.05.02(B)(3). During the COVID-19 emergency, the State Board has also been accepting delivery of appeals by email.

The local board issued its decision on January 12, 2022.¹ 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 date of the local board’s decision. *See* Local Bd. Decision and 1/12/22 Stubblefield Letter.

The Appellants should have filed their appeal with the State Board on or before February 11, 2022, but they did not file it until February 14, 2022, the date the State Board received the appeal via email. 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). *See also Cathy G. v. Montgomery County Bd. of Educ.*, MSBE Order No. OR17-04 (2017), and cases cited therein.

Appellants argue that the State Board should excuse the late filing because the certified letter containing the local board’s decision “was delivered on January 20th which is 9 days after the signed decision,” thereby reducing the number of days Appellants had to appeal. The tracking information from the United States Postal Service (“USPS”) reveals that USPS

¹ The local board’s opinion is dated January 11, 2022. Under COMAR 13A.01.05.02B the date of the local board’s order or opinion is the trigger date for calculating State Board appeals. The local board explains, however, that in this case it voted on the decision on January 11 but did not issue the decision until January 12. Thus, the local board used the January 12 date to calculate the State Board appeal deadline in its analysis of untimeliness. Given that fact and the fact that it is immaterial to the timeliness determination in this case whether the date of the decision is January 11 or January 12, we will use the January 12 date to calculate the appeal deadline here.

attempted delivery of the certified letter on January 14, 2022 and left notice for pick-up of the local board's letter at the post office because no authorized recipient was available to sign for receipt. The tracking information further reveals that Appellants did not pick up the item from the post office until January 20, 2022. (Motion, Ex. 10). Thus, Appellants had notice as of January 14 that the letter from the local board was available for their collection. *See, e.g. Rice v. State*, 136 Md. App. 593 (2001) (notification by the postal service of an expected letter being held at the post office is "tantamount to being placed on actual knowledge" of its contents and an individual cannot avoid notice through "deliberate ignorance" or "willful blindness.").

The local board also sent the letter with the decision to Appellants by regular mail on January 12, 2022. Appellants' response to the motion to dismiss is silent regarding receipt of the regularly mailed letter. Nor have they submitted an affidavit denying receipt of the decision by regular mail as required by COMAR 13A.01.05.04(G)(1) for claims of lack of notice. Thus, the presumption is receipt by mail. *See Tague v. Charles County Bd. of Educ.*, MSBE Op. No. 12-32 (2012) ("the letter sent via regular mail was not returned and the presumption is, therefore, that he received the notice.").

Moreover, the State Board has consistently rejected similar arguments about the impact of delayed receipt of local board decisions on the filing deadline finding that the 30-day filing period takes into consideration the fact that it might take several days for an individual to receive notice of the local board's decision. *See Cathy G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 17-04 (2017) and cases cited therein. We, therefore, find no extraordinary circumstance that would justify an exception to the mandatory 30-day deadline.

Accordingly, it is this 24th day of May 2022 by the Maryland State Board of Education, ORDERED, that the appeal referenced above is hereby dismissed for untimeliness. *See* COMAR 13A.01.05.03B(2).

MARYLAND STATE BOARD OF EDUCATION



Clarence C. Crawford
President