

MR. AND MRS. VERNON C.,
Appellants

v.

PRINCE GEORGE'S
COUNTY BOARD OF
EDUCATION,
Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 22-07

ORDER

Appellants appeal the decision of the Prince George's County Board of Education ("local board") issued on December 9, 2021, denying their request to grant their son certain school credits based on his failure to pass the Tests of Achievement and Proficiency ("TAP tests") upon entering public school from his home schooling program.¹ 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 December 9, 2021 and mailed the decision to the Appellants via certified and first-class mail on December 10, 2021. The Appellants should have filed their appeal with the State Board on or before January 10, 2022,² but they did not file it until February 2, 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).

Appellants make several arguments that the State Board should accept their late filing which we address in turn.

Appellants argue that the local board failed to notify them how to appeal the decision. Although there is no legal requirement that it do so, the local board advised Appellants in both its decision and the cover letter accompanying its decision that they could appeal in writing to the State Board of Education within 30 days of the date of the local board's decision. The local board's decision also provided Appellants the State Board's address. *See Local Bd. Decision*

¹ The school system administers the TAP tests to determine appropriate credits and course requirements for home schooled and other students who have taken courses from non-approved and non-accredited schools. (PGCPS Policies 5113.2 & 5113.5).

² The 30th day fell on a weekend so the filing was due the next business day. *See* COMAR 13A.01.05.02(B)(4).

and 12/10/21 Nussbaum Letter). In addition, the Maryland State Department of Education website provides directions on how to file an appeal to the State Board. The onus to file the appeal was on the Appellants.

Appellants also argue that they did not receive the local board's decision by mail until approximately one week after its issuance, which delayed their ability to timely file. 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. *See also Mohan G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-48 (2008)(finding appeal untimely even though board's decision was not mailed until approximately one week after it was issued).

Appellants further maintain that their filing was delayed because they fell ill with COVID-19 during the appeal period and there was a snowstorm sometime during January 3-6 that caused power outages. Appellants do not support these arguments by affidavit or any documentation. Nor do they provide any specificity about how the illness or snowstorm prevented them from filing until several weeks after the deadline, especially given that they filed via email.

Appellants also claim their appeal should be considered timely because they had a third party advocacy group notify the State Board of Appellants' intent to appeal and request an extension of the appeal deadline on their behalf. Appellants attached to their February 2 State Board appeal a letter dated January 5, 2022, from V.L. Blackmon, President of the Greater DC National Action Network, seeking an extension of the appeal deadline for Appellants based on their delayed receipt of the local board's decision and the holiday season.³ The letter does not provide any other basis for the extension. The letter contains no addressee or postal or email address for delivery. The State Board has no record of receiving such a request or anyone contacting the Board on Appellants' behalf, nor did the Board grant such a request. Moreover, the reasons given in the letter would not have been sufficient to justify an extension of the deadline.

Finding no extraordinary circumstance that would justify an exception to the mandatory 30-day deadline, 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

Signature on File:

Clarence C. Crawford, President

³ Appellants may represent themselves or may have an attorney represent them in matters involving an appeal before the State Board. *See* COMAR 13A.01.05.04D. The appeal procedures do not allow for representation by third parties other than an attorney. There is no indication in the letter that V.L. Blackmon is an attorney admitted to practice in Maryland who was representing the Appellants.