

DEVON and BONNIE C.
Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,
Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR16-15

ORDER

Appellants challenge the July 12, 2016 decision of the Montgomery County Board of Education (“local board”) denying Appellants’ request for a change of school assignment for their daughter to attend Clarksburg High School (“Clarksburg”) rather than her home school, Damascus High School (“Damascus”). Appellants’ transfer request is based on their concerns about racial tensions, and the negative impact that the school climate might have on their daughter. The transfer request was reviewed by the Division of Pupil Personnel Services; the Chief Operating Officer, acting as the superintendent’s designee; and the local board. The decision-maker at each level denied the request.

In the local board’s decision, issued July 12, 2016, the board stated that there was no evidence in the record that the Appellants or their daughter had personally witnessed or experienced any racially based incidents at Damascus, but rather their views were based on information from third parties. The board noted that Appellants’ concerns about the school climate and the impact it might have on their daughter was simply conjecture at that point given that she had not yet attended Damascus. The local board indicated that the Damascus principal had already met with the Appellants about their concerns and assured them that the school and the community would work together “to create an inclusive and comfortable learning environment.” (Local Bd. Decision).

Appellants appealed to the State Board. 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 July 12, 2016. The cover letter, dated July 13, 2016, that was attached to the local board’s decision advised Appellants of their right to appeal to the State Board of Education. The cover letter identified the date of the local board’s Decision and Order, and stated that the appeal “must be made in writing . . . within 30 days of the date of the enclosed Decision and Order.” It further stated that “[t]o meet the 30-day deadline, State Board regulations, found in COMAR 13A.01.05.02B(3), 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 cover letter also explained the various methods for transmitting the appeal to the State Board. (King Letter, 7/13/16).

The Appellants’ appeal should have been transmitted to the State Board on or before August 11, 2016. Appellants did not transmit the appeal until August 12, 2016. The Appellants argue that the

filing deadline should run from the date of the cover letter transmitting the local board's decision rather than the date of the decision because the decision was not mailed the same day it was issued. (Apps' Reply to Motion). Under this theory, the appeal would be timely filed.

In *Eastern Middle School Workgroup v. Montgomery County Bd. of Educ.*, MSBE Order No. OR10-03 (2010), the appellant advanced the same argument presented by Appellants here after transmitting the appeal to the State Board one day late. We stated as follows:

There is no basis for this Board to adopt the Appellant's theory. The 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. Here, the local board's Staff Assistant mailed the decision to the Appellant within one day of its issuance. The cover letter clearly informed the Appellant that any appeal to the State Board "must be received by the State Board within 30 days of the date of the Board's decision and should either be hand delivered or sent by certified mail." We believe that the Appellant had sufficient time to file the appeal in a timely manner.

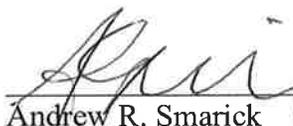
Id.

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 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). The same rule applies here. We find no extraordinary circumstance that would justify an exception to the mandatory thirty day deadline.

Therefore, it is this 27th day of September, 2016 by the Maryland State Board of Education,

ORDERED, that the appeal referenced above is hereby dismissed for untimeliness.¹ *See* COMAR 13A.01.05.03C(2).

MARYLAND STATE BOARD OF EDUCATION



Andrew R. Smarick
President

¹ Appellants have raised concerns about the Damascus school climate and the treatment of minorities there. In addition, they have raised questions about suspension rates for minorities as compared to white students at the school. (Appeal; Reply to Motion). Racial tensions in schools, discriminatory treatment of students based on race, and disproportionality of discipline for minority students are all issues of serious concern to this Board. We urge the local board to look into these matters to determine to what extent the claims have merit, and to take whatever steps it deems necessary to address its findings.