

STEPHEN M. & MARILIA M.,

Appellants

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR15-12

ORDER

Appellants challenge the decision of the Montgomery County Board of Education (local board) dismissing as untimely their appeal seeking early first grade entry for their daughter.¹ The local board filed a Motion to Dismiss the State Board appeal, also based on untimely filing. (Appeal).

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 Order dismissing the case on September 8, 2015. (Motion, Ex. 7). Thus, the appeal should have been transmitted to the State Board on or before October 8, 2015. Appellants did not transmit the appeal to the State Board until October 9, 2015. (Memorandum to Parties, 10/9/15).

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. *See Schwalm v. Montgomery County Bd. of Educ.*, 7 Op. MSBE 1326; *Twu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-11 (2001); *CTL v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-18 (2010).

In their response to the local board’s motion, Appellants maintain that the local board’s Order was issued on September 9, making the State Board appeal due on October 9. (Appellants’ Response). Unfortunately the Appellants based their calculation on the incorrect date. It appears that they used the date of the cover letter transmitting the Order rather than the

¹ Pursuant to COMAR 13A.08.01.02(C)(2), a child must turn six by September 1 in order to enroll in first grade. Appellants’ daughter did not turn six until October 20.

date of the Order itself. The cover letter specifically states, however, that “[t]o meet the 30 day deadline, State Board regulations . . . require that your appeal . . . must be transmitted to the State Board on or before **the 30th day following the date of the enclosed Decision and Order.**” (Emphasis added). (Motion, Ex.7). The issuance date of the Order is clearly printed on it just prior to the board member signatures. (Motion Ex.8).

Miscalculation of the filing deadline based on the transmittal letter date is not an extraordinary circumstance that would excuse compliance with the 30 day deadline. *See Yvette J. v. Montgomery County Bd. of Educ.*, MSBE Order No. OR09-05 (2009).

Therefore, it is this 8th day of December, 2015 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

A handwritten signature in cursive script, reading "Guffie M. Smith, Jr.", written over a horizontal line.

Guffie M. Smith, Jr.
President