

CALVERT NEIGHBORS FOR  
SENSIBLE SCHOOL REDISTRICTING

Appellant

v.

CALVERT COUNTY BOARD  
OF EDUCATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-37

OPINION

INTRODUCTION

In this appeal, Appellant challenges the Calvert County Board of Education's March 13, 2008 decision to redistrict several elementary schools in Calvert County to populate the newly built Barstow Elementary School. The local board has filed a motion to dismiss the appeal for untimeliness. Appellant has submitted an opposition to the motion.

FACTUAL BACKGROUND

On March 13, 2008, the Calvert County Board of Education (local board) adopted new school attendance boundaries for five existing elementary schools and for the newly built Barstow Elementary School. The existing schools that were affected by the redistricting are Calvert Elementary School, Huntington Elementary School, Mutual Elementary School, Plum Point Elementary School and St. Leonard Elementary School. The redistricting was necessary in order to populate Barstow Elementary School which is scheduled to open for the 2008-2009 school year.

Appellant filed an appeal of the local board's redistricting decision with the State Board. The State Board received the appeal via certified mail with conflicting date stamps by the United States Postal Service (USPS). The USPS round hand stamp on the appeal envelope is dated April 14, 2008 and the USPS automated date stamp on the envelope is dated April 15, 2008. The local board has filed a motion to dismiss the appeal maintaining that the automated date stamp is controlling and the appeal was therefore untimely filed.

ANALYSIS

The issue here is the timeliness of the 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 it has been delivered to the State Board or deposited in the United States mail, as registered or certified, before the expiration of the time period. COMAR 13A.01.05.02B(3). Per State Board practice, an appeal that is transmitted within the limitations period is considered to be timely filed.

The local board adopted the new school attendance boundaries on March 13, 2008. The appeal should therefore have been filed with the State Board by Monday, April 14, 2008.<sup>1</sup>

The parties dispute the date on which the appeal was filed with the State Board based on the conflicting USPS date stamps on the envelope. Appellant maintains that the appeal was timely filed based on the USPS hand stamp dated April 14. The local board maintains that the appeal was untimely filed based on the USPS automated stamp dated April 15.

The circumstances of the mailing of the appeal package are unique. Counsel for the Appellant entered the United States Post Office at 2 Massachusetts Avenue, NE in Washington, DC at 11:47 p.m. After obtaining the appropriate packaging and receipts from the counter, she got in line behind several other people and waited her turn for service.<sup>2</sup> She handed the package to the postal clerk who hand stamped the package and the certified mail receipt with a round date stamp reflecting April 14, 2008. By the time the clerk ran the item through the automated meter, it was past midnight. Affidavit of Karen S. Smith. This produced an automated date stamp on the package and on the certified mail receipt of April 15, 2008.<sup>3</sup>

The local board has produced an affidavit from a USPS Supervisor with knowledge of the operations at the post office on Massachusetts Avenue. He explains that the round date stamp is manually set by postal service employees at the beginning of their work shifts. It is USPS practice to hand stamp the mail of any customer on line prior to the closing of the branch at 11:59 p.m. with the date as of 11:59 p.m. using the round date stamp, even if the actual time the clerk processes the mail goes beyond that time. The Track and Confirm service available for USPS patrons and recipients of certified mail reflects the actual time of processing as identified by the electronic date stamp.<sup>4</sup> Thus, it is possible to have the hand stamp and automated stamps reflect different dates. Affidavit of Jovan E. Barnes. That is what happened here.

The only issue for the State Board to decide is which date stamp is controlling here for purposes of determining when the appeal was "deposited in the United States mail."

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<sup>1</sup>Because the 30 day time period ended on a Saturday, the filing deadline was on Monday, April 14. COMAR 13A.01.05.02b(4).

<sup>2</sup>Customer volume at the post office was high at that branch on the night of April 14, 2008. Affidavit of Jovan E. Barnes. This was likely due to the April 15 income tax filing deadline.

<sup>3</sup>The USPS Track and Confirm service, which is based on the automated date stamp, states that the item was accepted for mailing on April 15 at 12:03 a.m.

<sup>4</sup>The actual date of acceptance also appears on the computer generated mailing label produced by the postage meter.

The local board argues that the automated date stamp should control here because it is the only reliable measure of the actual date and time of acceptance of the package as it is not subject to human error. The local board cites the State Board's decision in *Potomac Charter School v. Prince George's County Bd. of Educ.*, MSBE Opinion No. 05-08(2005) to support its position regarding the unreliability of the USPS round hand date stamp. In *Potomac Charter School*, legal counsel for the appellant sent the appeal package to the post office by courier on the last day of the limitations period. Incorrect postage had been affixed to the package in the law firm's mail room. The USPS employee initially hand stamped the certified mail receipt using the round date stamp, but then rejected the package for mailing due to insufficient postage. The package was redelivered to the post office and accepted for mailing the following day, but was deemed untimely by the State Board because it was filed one day late. Although there was more than one date stamp on the appeal envelope, *Potomac Charter School* was not a case involving conflicting postmarks or date stamps. There was no dispute regarding the date on which the package was mailed. Thus, Potomac Charter School does not resolve the issue before the Board here.

The local board also argues that the round hand date stamp merely noted the date on which counsel for Appellant was on line at the post office, and not the date that the item was deposited in the mail. USPS policy, however, recognizes that USPS employees may not be able to assist all customers on line prior to the closing of the post office doors. In fairness to those customers, the policy is to service those customers and postmark items for mailing on the date on which the individual got on line, even if the employee cannot assist them before the stroke of midnight.

The local board likens Appellant's situation to getting caught in traffic on the way to deliver an appeal to the State Board and not arriving there until after close of business due to traffic. Response at 8. This is not an appropriate analogy. Entering the post office while it is open, waiting on line for service, and being assisted after the doors are closed to the public is not the same as getting caught in traffic and arriving at a place of business after it closes. If counsel for Appellant had arrived after the post office was closed, she would not have been serviced and the appeal envelope would not reflect an April 14 hand stamp.

We believe the date of the USPS round hand stamp is controlling here for the purpose of determining the date on which the appeal was deposited in the mail and, therefore, filed with the State Board. Although counsel for Appellant waited until the last hour to mail the appeal, there is no dispute that she was in line at the post office prior to 11:59 p.m. on April 14 when it closed its doors to the public.<sup>5</sup> It is USPS practice to date stamp by hand the mail of all customers on line for service prior to the close of the post office doors with the date as of 11:59 p.m. We think this round date stamp shows that the mail is accepted by the post office on that date and thereby serves as the postmark, rather than the automated date stamp. This hand stamped postmark is on the appeal envelope as well as on the certified mail receipt. In our view, based on USPS practice

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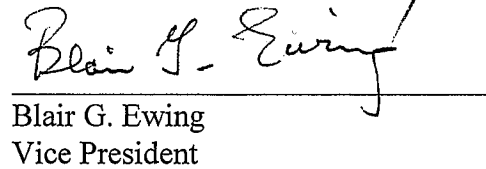
<sup>5</sup>Better planning on the part of Appellant's counsel could have avoided this entire issue.

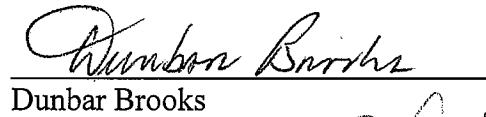
and the facts of this case, the envelope and certified mail receipt contain a valid USPS postmark of April 14.

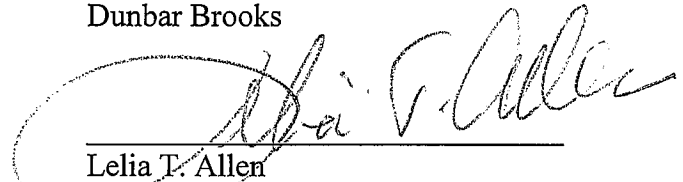
CONCLUSION

For these reasons, we believe that the appeal was timely filed. Therefore, we deny the local board's motion to dismiss the appeal for untimeliness. The appeal shall proceed on the merits.

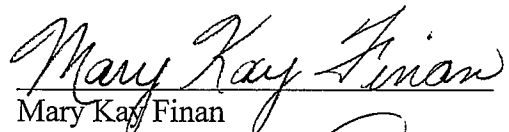
  
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President

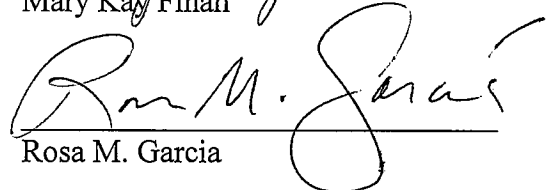
  
Blair G. Ewing  
Vice President

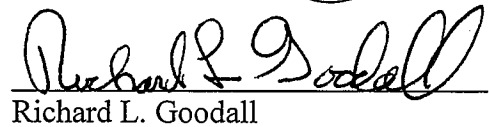
  
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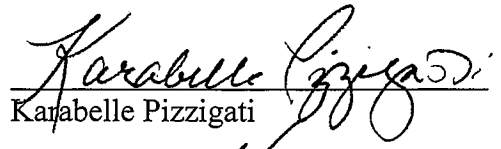
  
Lelia T. Allen

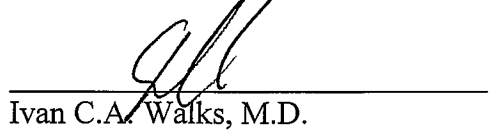
  
Charlene M. Dukes

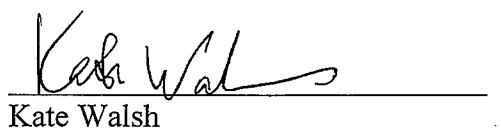
  
Mary Kay Finan

  
Rosa M. Garcia

  
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Ivan C.A. Walks, M.D.

  
Kate Walsh

July 15, 2008