

LOIS PENA,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-16

OPINION

Appellant appeals the decision of the Montgomery County Board of Education (MCPS) to move a school/community based program (“SCBP”) for two classes of special education students from Beall Elementary in Rockville to Wayside Elementary in Potomac. The local board has filed a Motion to Dismiss asserting that the appeal was untimely filed. In response, Appellant maintains that the appeal is not untimely because the local board did not mail her a copy of its decision.

FACTUAL BACKGROUND

On June 12, 2003, thirteen parents, including Appellant, appealed to Dr. Carey Wright, the Associate Superintendent for Student and Community Services, challenging the decision to place an SCBP at Wayside Elementary for the 2003-2004 school year. The SCBP serves twelve special education students from within Wayside’s established attendance zone, as well as from other neighborhoods. The relocation of the SCBP to Wayside required the addition of two more portables on the blacktop of the school’s playground.¹

By letter dated July 7, 2003, Dr. Wright concurred with the decision to place two SCBP classes at Wayside.² The letter addresses each of the appeal issues, explaining that Montgomery County Board of Education Policy FAA does not apply to the relocation of the SCBP classes to Wayside. Rather, it applies to any action affecting attendance areas and the closure or consolidation of schools. The letter further explained that Wayside is only slightly overutilized, and the impact of the facility and education program changes were considered and deemed reasonable before the relocation decision was made, including the placement of the relocatables. The letter also explained why other schools were not chosen for the SCBP classes based on reasonable transportation distances, and equitable distribution of special education programs in all schools.

¹The school already had two portables due to overcrowding.

²The decision to relocate the SCBP classes from Beall to Wayside was made jointly by MCPS staff in the Office of School Performance, the Department of Special Education, the Department of Planning and Capital Programming, and the Department of Transportation.

Meanwhile, prior to the receipt of Dr. Wright's letter, Joy Stein, presumably on behalf of the original appellants, filed a formal Complaint from the Public with the Superintendent of Schools, requesting that the decision to locate the SCBP at Wayside be reversed. In response, Dr. Weast referenced Dr. Wright's earlier response, stating that nothing he would suggest differed with the conclusion reached by Dr. Wright.

On further appeal, the local board unanimously upheld the decision to relocate the SCBP to Wayside. In its decision, the local board found that Appellants lacked standing to bring the appeal because they had not demonstrated a direct injury distinct from that to the general population at Wayside or to the general public. In addition, the local board indicated that if it were to consider the merits of the appeal, it would have found that Policy FAA - Long Range Educational Facilities Planning was not violated.

ANALYSIS

As a threshold matter, the local board argues that this appeal should be dismissed because it was untimely filed. State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. *See* Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.01.03B (3). The 30 days run from the later of the date of the order or the opinion issued explaining the decision. COMAR 13A.01.01.03B(3). 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. *Id.*

Here, the local board issued a written opinion on October 14, 2003. The appeal should therefore have been filed with the State Board by November 13, 2003. However, the appeal was sent to the State Board office via regular First Class mail postmarked November 15, 2003, and received by the State Board office on November 18, 2003, several days beyond the limitation deadline.

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 Education of Prince George's County*, 3 Op. MSBE 139 (1983); *See also* COMAR 13A.01.01.03G (2). The State Board has strictly applied this rule of law, and has dismissed appeals that have been filed a mere one day late based on untimeliness. *See Christine Schwalm v. Board of Education of Montgomery County*, 7 Op. MSBE 1326 (1998); *Marie Friedman v. Board of Education of Montgomery County*, 7 Op. MSBE 1260 (1998); *Eleanor Duckett v. Board of Education of Montgomery County*, 7 Op. MSBE 620 (1997).

Appellant explains that the appeal was filed beyond the 30 day deadline because she never received the local board decision by mail from the local board. Appellant indicates that although the decision was mailed to Appellant Elyse Levin as evidenced by letter of October 15,

2003, the decision was not mailed to the Appellant herself.

In response, the local board explains that the local board decision was mailed to Elyse Levin because she was the Appellant of record in the local board appeal. The superintendent's decision had been appealed to the local board by Elyse Levin, Lois Pena, and Allison Saffer, in that order. *See* 8/6/03 letter of appeal to local board. The appeal was docketed under Elyse Levin, the first name on the appeal to the local board. *See* Affidavit of George Margolies. Although the local board appeal was thereafter supplemented by letter of September 15, 2003 in which Ms. Levin and Ms. Pena's names were reversed and Ms. Saffer's name was omitted, the appeal remained docketed under Ms. Levin's name.

We believe that the initial letter of appeal to the local board indicates that Ms. Levin, Ms. Pena, and Ms. Saffer jointly filed the appeal. In cases where there are multiple Appellants who have jointly filed an appeal together, it is not unusual to treat the Appellants as a single party and to deal with a single contact person, as was done here.

Moreover, a review of the record in this case demonstrates that a single contact person was used at each level of the appeal process. The original appeal to Dr. Carey Wright, the Associate Superintendent, was signed by thirteen parents, among whom were Joy Stein, Elyse Levin, Lois Pena, and Allison Saffer. Thereafter, Ms. Stein appealed to Dr. Jerry Weast. Both Dr. Wright and Dr. Weast communicated their responses only to Ms. Stein. The appeal to the local board was submitted by Ms. Levin, Ms. Pena, and Ms. Saffer; not Ms. Stein. The local board communicated its response to Ms. Levin.³ Ms. Pena was not the first signatory on an initial appeal at any level, except for this appeal to the State Board. As joint Appellants, Ms. Levin, Ms. Pena, and Ms. Saffer should have communicated with each other regarding the status of the appeal.

Thus, we do not find any extraordinary circumstance that would merit an exception to the mandatory thirty day deadline.

³As explained by George Margolies, Staff Director of the Montgomery County Board of Education: "The Decision and Order was not sent separately to Ms. Pena and Ms. Safer, any more than it would have been to the other ten parents had all original thirteen appellants remained on the pleadings as they pursued it to higher levels. To do so is unnecessary and burdensome. Moreover, this appeal was filed as a joint appeal. It is not unusual to deal with a single contact person as was done in this case. At no time did Ms. Pena inquire of me as to the whereabouts of the Decision and Order." (Margolies Affidavit, ¶ 11).

CONCLUSION

For these reasons, we dismiss the appeal as untimely. *See* COMAR 13A.01.01.03J(2)(d).

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March 31, 2004