

JEFF AND MARINELLE CARTER,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 04-01

OPINION

This is an appeal of the denial of Appellants' request for an out-of-district transfer for their son Brandon to attend Oakland Mills High School rather than attend his in-district school, Wilde Lake High School. The local board has submitted a Motion to Dismiss and/or for Summary Affirmance on grounds that the appeal is untimely and that there are no genuine issues as to material facts. Appellant has filed an opposition to the motion.

FACTUAL BACKGROUND

In March of 2003, Appellants submitted an out-of-district request asking that their son, Brandon, be allowed to attend Oakland Mills High School as a 9th grader for the 2003-2004 school year rather than attend his home school, Wilde Lake High School. Simultaneously, the Appellants also requested that their daughter, who was already attending Oakland Mills High School as a junior, continue as a senior at Oakland Mills to be able to graduate from that high school in 2004. Brandon previously attended Oakland Mills Middle School where he was allowed to complete eighth grade during the 2002-2003 school year.¹ Brandon is now in the 9th grade at Wilde Lake High School.

By letter dated March 14, 2003, the Superintendent's designee² approved the transfer request for the Carters' daughter Jennifer in order to not disrupt her high school education thereby affording her the opportunity to graduate from Oakland Mills High School in 2004. By a second letter bearing the same date, the Superintendent's designee denied the Carters' request for

¹In 2002, the Carters' place of residence changed from the Oakland Mills school district to the Wilde Lake school district. In May of 2002, the Carters requested that the Superintendent allow Brandon to complete his 8th grade term at Oakland Mills Middle School and that their daughter Jennifer be allowed to continue attending Oakland Mills High School. The request was made along with a statement by the Carters that they intended to find housing within that school year back in the Oakland Mills school district. The Superintendent's designee granted the transfer request for the 2002-2003 school year for both students.

²The Superintendent's designee who rendered the decision was Roger L. Plunkett, Assistant Superintendent for School Administration.

transfer of Brandon to Oakland Mills High School because the local board had extended a moratorium on open enrollment and because Oakland Mills is closed to out-of-district students due to its being overcapacity. (See March 14, 2003 letters from Superintendent's designee, Roger Plunkett).

Appellant filed an appeal on April 16, 2003 asserting that the transfer would be in Brandon's best interest educationally to remain in the school environment where he was most comfortable having attended schools in the feeder district for Oakland Mills High School since kindergarten. Appellants also reasoned that the decision should be overturned because they will have two children in two different high schools which would cause a hardship for the family. In addition, the Appellants asserted that Brandon will be an asset wherever he attends high school.

By letter dated May 12, 2003, the Carters were informed that the local board would conduct an appeal on June 25, 2003 based upon the record documents, for which the parties could be present. The parties were also informed that they could submit additional documentation for the local board to consider.³ On June 25, 2003, the local board conducted a record review of the appeal. The Appellants were not present at the time of the hearing.

On August 4, 2003, the local board issued a letter indicating because of a 2-2 tie vote by the board, the decision of the Superintendent's designee remained in force. The letter outlined the requirement for a three-vote majority and the failure to muster three votes either to uphold or to reverse the Superintendent's decision.

On September 18, 2003, the State Board received Appellants' request to appeal the local board's decision. The local board filed a Motion to Dismiss and/or for Summary Affirmance on October 20, 2003 asserting that the appeal was filed untimely and that there were no genuine issues as to material facts. Appellants filed a response to the local board's motion on November 5, 2003, acknowledging that the appeal was untimely and stating, *inter alia*, that although the local board did not act illegally nor enforce its policy arbitrarily, the policy itself was arbitrary.

ANALYSIS

Timeliness

The local board argues that the appeal should be dismissed because it was untimely filed. State law and regulations require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. Education Article § 4-205(c)(3) of the Annotated Code of Maryland provides:

A decision of a county superintendent may be appealed to the

³The record indicates that both parties submitted further documentation to support their positions.

county board if taken in writing within 30 days after the decision of the county superintendent. The decision may be further appealed to the State Board if taken in writing within 30 days after the decision of the county board.

The 30 days run from the later of the date of the order or the opinion explaining the decision. *See* COMAR 13A.01.01.03B(3). In this case, the local board decision was issued on August 4, 2003. The appeal should have therefore been filed with the State Board by September 3, 2003. However, the appeal was not received by the State Board until September 18, 2003.⁴

The State Board has strictly enforced the 30-day filing deadline for appeals. *See, e.g., Schwalm v. Montgomery County Board of Education*, 7 Op. MSBE 1326 (1998) and cases cited therein (appeal one day late dismissed for untimeliness). The State Board has consistently applied this rule of law and has dismissed appeals that have been filed one day late based on untimeliness. *See Philip Twu v. Montgomery County Board of Education*, MSBE Opinion No. 01-11 (February 27, 2001) *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).

As a reason to support the untimely filing, Appellants offer that “[we] wanted to allow sufficient time to elapse for Brandon to settle into Wilde Lake” and “[a]s a family [we] discussed this appeal process and arrived at the decision that Brandon’s wishes would dictate the course [we] followed. If he said he was content at Wilde Lake, no appeal action would go forward; if he remained unhappy and unsettled, [we] would press forward with the appeal...” As the State Board has held, time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. *See Shaver v. Howard County Board of Education*, MSBE Opinion No. 00-6 (February 1, 2000); *Scott v. Board of Education of Prince George’s County*, 3 Op. MSBE 139 (1983); *See also* COMAR 13A.01.01.03G(2). We do not find that allowing Brandon to “settle in at Wilde Lake” constitutes extraordinary circumstances as contemplated by the statute, regulations, and case law.

CONCLUSION

Because we find no extraordinary circumstance that would merit an exception to the mandatory thirty day deadline, we dismiss the appeal as untimely. *See* COMAR 13A.01.01.03B(3).

⁴The appeal was received via first class regular mail at the Maryland State Department of Education Headquarters, 200 W. Baltimore Street, Baltimore, Maryland 21201.

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Walter S. Levin, Esquire

Karabelle Pizzigati

Maria C. Torres-Queral

John L. Wisthoff

January 28, 2004