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| SUSAN AND BRAD NORMAN, | BEFORE THE |
| Appellants | MARYLAND |
| v. | STATE BOARD |
| HOWARD COUNTY BOARD OF EDUCATION, | OF EDUCATION |
| Appellee | Opinion No. 03-37 |

OPINION

This is an appeal of the denial of Appellants' request that their daughter, Megan, be granted an exception to attend eighth grade in an out of district school in the Howard County Public School System. The local board has submitted a Motion to Dismiss based on untimeliness. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Although requested to do so, Appellants have not submitted a reply.

FACTUAL BACKGROUND

Megan attended the seventh grade at Clarksville Middle School in the Howard County Public School System for the 2002-2003 school year. As part of a comprehensive redistricting decision, Megan was reassigned to Folly Quarter Middle School for the 2003-2004 school year[1]. On June 2, 2003, Appellants submitted a request to Roger Pluckett, Assistant Superintendent, for an exception to local board policy 3211-R, Section II B, which requires that students attend schools within their geographic assignment area. If granted, the exception would permit Megan to remain at Clarksville Middle School for the 2003-2004 school year. Appellants' request at that time was based solely upon the fact that they could not obtain after school day care for Megan.

Mr. Pluckett denied the request, explaining that difficulty obtaining child care does not constitute a hardship for which an exception to the pupil assignment policy may be made. (Letter of June 9, 2003). Mr. Pluckett's letter advised Appellants that if they wished to appeal his decision to the local board, they must do so in writing within 30 days of the date of his letter, *i.e.,* by close of business July 9, 2003. (Letter of June 9, 2003).

At 5:07 p.m. on July 9, 2003, Appellants e-mailed an appeal to the local board. An unsigned written letter of appeal dated July 9, 2003 was hand-delivered and mailed to the local board on July 10, 2003. In that appeal Appellants for the first time stated that their request was based upon Megan's anxiety about attending a new school. Sandra French, Chairman of the

[1]The State Board upheld the redistricting decision in *Andrews, et al. & Bonnie Rocke, et al. v. Howard County Board of Education*, MSBE Op. No. 03-28 (July 28, 2003).

local board, denied the appeal by letter dated July 10, 2003. Ms. French noted that the appeal was untimely and that the local board could not properly consider an appeal based upon Megan's anxiety because Appellants had not raised that issue before Mr. Pluckett.

Appellants timely filed an appeal to the State Board. Thereafter, Mr. Pluckett became aware of Appellants' new basis for appeal. By letter dated August 4, 2003, he wrote to the Normans offering to reconsider their request based upon Megan's anxiety and invited them to submit information and documentation from professional counselors or doctors in support of their request. To our knowledge, Mr. Pluckett has not received any documentation or information from Appellants.

ANALYSIS

As a preliminary matter, the local board argues that this appeal should be dismissed because it was untimely filed. State law requires that an appeal of the superintendent's decision be filed with the local board within thirty days of the date of the superintendent's decision. *See* Md. Code Ann. Educ. § 4-205 (c).

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). 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).

Here, the superintendent's decision was issued on June 9, 2003. The appeal should therefore have been filed with the local board by close of business July 9, 2003. However, the appeal was sent to the local board office via e-mail after business hours on July 9, 2003. The written unsigned appeal was hand-delivered on July 10, 2003. Appellants offer no reason for the failure to appeal in a timely manner other than that they initially did not intend to appeal. There does not appear to be any extraordinary circumstance that would merit an exception to the mandatory thirty day deadline. For this reason, we dismiss the appeal as untimely.

Alternatively, if we were to review the merits of the case, the standard of review for a student transfer decision is that the State Board will not substitute its judgment for that of the local board unless that decision is shown to be arbitrary, unreasonable, or illegal. *See, e.g.*, *Breads v. Board of Education of Montgomery County*, 7 Op. MSBE 507 (1997).

Howard County Public School System guidelines on pupil assignment specifically provide that day care concerns do not constitute a hardship warranting an exception to those guidelines:

> In rare circumstances, individual exceptions may be made by the superintendent or his designee based upon documented hardship. Hardship depends on a family's individual and personal situation. *For the purposes of these guidelines, problems that are common to large numbers of families such as need for a particular schedule, class/program, sibling enrolled, or day care, do not constitute a hardship.*

Circular 208 - Guidelines, March 5, 2003, p. 2 (emphasis added).

The Maryland Court of Appeals has ruled that there is no right to attend a particular school. *See Bernstein v. Board of Education of Prince George's County*, 245 Md. 464, 472 (1967); *cf. Dennis v. Board of Education of Montgomery County,* 7 Op. MSBE 953 (1998) (desire to participate in particular courses does not constitute unique hardship sufficient to override utilization concerns). Moreover, that State Board has consistently held that a desire to continue at a preferred day care provider does not constitute a hardship. *See, Jennifer Watson & Brigid E. Monaghan v. Montgomery County Board of Education*, Op. No. 02-61 (December 4, 2002); *Charles and Michelle Sullivan v. Board of Education of Montgomery County,* Op. No. 00-22 (April 19, 2000); *Alberto Gutierrez and Theresa Finn v. Board of Education of Montgomery County*, Op. No. 00-01 (February 1, 2000); *Gelber v. Board of Education of Montgomery County*, 7 Op. MSBE 616 (1997); *Breads v. Montgomery County Board of Education*, 7 Op. MSBE 507 (1997).

Further, when the transfer request was first submitted, the issue of Megan's anxiety was not presented as a basis for the request and therefore not considered by the local board on review of the request. The State Board has consistently declined to address issues that have not been reviewed initially by the local board. *See Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (failure to raise issue of age discrimination below constituted waiver on appeal).

Finally, Appellants have been provided the opportunity to present their request based upon Megan's anxiety of attending a new school to the assistant superintendent, but have failed as yet to provide supporting documentation.

CONCLUSION

For the reasons set out above, we dismiss this appeal as untimely. *See* COMAR 13A.01.01.03J(2)(d). Alternatively, based upon our finding that the local board decision was not

arbitrary, unreasonable, or illegal, we would affirm the denial of the transfer request.

Edward L. Root
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October 28, 2003