

MOHAN G.,

Appellant

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 08-48

### OPINION

#### INTRODUCTION

This is an appeal of a denial of an age waiver request for early entry into kindergarten filed by the parents of a child who is not eligible for kindergarten until the 2008-2009 school year. The Montgomery County Board of Education (local board) has filed a Motion to Dismiss maintaining that the case is untimely and moot. The Appellants have submitted an opposition to the motion.

#### FACTUAL BACKGROUND

This appeal began in the summer of 2007 when the Appellants requested an age waiver for their daughter, I.G., to enter kindergarten at Dufief Elementary School for the 2007-2008 school year. I.G. was born on November 7, 2002 and turned 5 on November 7, 2007, making her eligible to start kindergarten for the 2008-2009 school year. The local board denied the waiver, and the Appellants appealed to the State Board.

The State Board remanded the case to the local board on March 27, 2008. The State Board held that the local board's decision was arbitrary based only on its failure to provide some basis for the denial of the application, and requested from the local board an explanation of its reasons for denying Appellants' application. MSBE Opinion No. 08-15.

On remand, the local superintendent sent an April 21, 2008 memorandum to the local board listing specific areas in which the Appellant failed to provide information in support of the request for I.G.'s early entry into kindergarten. In particular, the memorandum states that the areas of Language and Literacy, Numeracy, and areas related to personal, social and emotional skills (among other areas) were lacking sufficient information to demonstrate above-average capabilities:

In the area of Language and Literacy, there was no information provided regarding I.G.'s ability to respond to a story or act out parts of a story, to identify the first and last letters of a word, or to match upper and lower case letters. In the area of Numeracy, there were no data on I.G.'s ability to sort by color, shape, or size. In the area of personal, social, and emotional skills, data were not provided on I.G.'s initiative/self-direction, ability to interact with one or more peers, or the ability to follow one to two-step directions. There were no data in the area of Developmental Multi-step Independent Task and Visual Motor skills to document that I.G. could complete an independent task with multi-step directions within a 10-minute time period. In the area of physical development, there were no data that I.G. could use scissors to cut, or that she could move with balance and control.

The Memorandum also states that, while the Appellants submitted letters from the Academy Child Development Center as well as their own evaluation of I.G. and some of her work, the standard for approval for early entrance to kindergarten required the student to meet the acceptable score in all six areas of the school system's assessment. (Weast Memorandum, 4/21/08).

The local board provided the Appellants with an opportunity to respond to the Superintendent's memorandum and to submit additional information. On May 5, 2008, the Appellants challenged the Superintendent's response in a letter which included new Progress Reports attempting to provide the "missing information." They also claimed that they were unsure as to what constituted "compelling evidence" but indicated that they were willing to submit additional information at the local board's request. For instance, they stated that using scissors was a basic pre-K skill and did not think to provide samples demonstrating such a basic skill. Similarly, they noted that I.G. performed 3 times on stage in school and participated in numerous field trips. (Appellants' Letter, 5/5/08).

In a May 27, 2008 Supplemental Decision and Order, the local board affirmed its previous decision that there was a reasonable basis to deny I.G.'s early entry into kindergarten for the 2007-2008 school year. The board ruled that the Appellants' new information did not indicate above-average performance and still lacked enough compelling evidence to consider I.G. an above-average child who was ready for early entrance into kindergarten. The basis for this decision was primarily a summary of the local superintendent's April 21, 2008 letter which indicated the specific areas lacking evidence of above-average performance -- Language and Literacy, Numeracy, and several other developmental skills. Similarly, the local board pointed out that even if the new information did show exceptional performance, the data was from 2008

and I.G. had had time to mature since the initial request, further suggesting her progress towards readiness for kindergarten for the 2008-2009 school year.

The Appellants appealed to the State Board. They maintain that the local board's standards for early entrance into kindergarten are not transparent and that the local board has demonstrated elusive tactics and incompetence. The Appellants claim that the local board's letter dated April 28, 2008 bases the denial on fabricated details and still lacks the evidence for their decision, such as the rubric analysis that was used in reaching the decision. They contend that the decision remains arbitrary and unreasonable. They seek approval of I.G.'s early entry into first grade or seek "damage compensation" from the school system. (Appellants' Response to Motion).

### STANDARD OF REVIEW

Because this appeal involves a decision of the local board involving a local policy, the local board's decision is considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable, or illegal. COMAR 13A.01.05.05A.

### ANALYSIS

#### *Motion to Dismiss*

The local board has filed a Motion to Dismiss the appeal based on untimeliness. COMAR 13A.01.05.02(B)(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 run "from the latter 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.01.05.02(B)(3).

The local board issued its Supplemental Decision and Order in this case on May 27, 2008. The appeal should therefore have been filed with the State Board on or before June 26, 2008. It was not filed until June 27, the date it was received by the State Board via regular mail delivery.

Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice of the decree. *See Scott v. Board of Educ. of Prince George's County*, 3 Ops. MSBE 139 (1983).

The Appellants maintain that, although the local board's decision is dated May 27, the local board did not send them a copy until May 30, according to the postmark on the envelope, and that they did not receive it until June 2. Appellants maintain, therefore, that because the

decision was mailed 3 days after its issuance, the 30 day deadline should run from the date the local board mailed its decision.


COMAR 13A.01.05.02(B)(1) is clear that the 30 day deadline begins to run "from the later of the date of the order or the opinion reflecting the decision." It does not run from the date of mailing of the order or opinion. For whatever reason, the local board's decision was not mailed the day it was issued. Nevertheless, Appellants received it within a week of its issuance. This is a reasonable time frame for delivery. The cover letter enclosed with the decision informed Appellants of their appeal rights and the applicable time limitation. The remaining period of time within the limitations period was sufficient time for the Appellants to submit their appeal to the State Board.

Appellants also assert their belief that the State Board received their letter of appeal on or before June 26, and that it was the routing of the letter from the State Board Office to the Office of the Attorney General that caused the delay, resulting in the June 27 receipt date.

Appeals to the State Board are received at the Maryland State Department of Education (MSDE) headquarters at 200 Baltimore Street and at the office of MSDE's legal counsel, the Office of the Attorney General at 200 St. Paul Place. All State Board appeal items received at MSDE headquarters, whether they are addressed to the State Board or to legal counsel, are date stamped received and then forwarded to legal counsel at the Office of the Attorney General. This is the standard protocol to ensure that the time sensitive appeal materials are appropriately handled. There is no evidence that this protocol was not followed in this instance. Appellants could have chosen a different method by which to deliver their appeal that would have ensured timely filing, such as sending the appeal by registered or certified mail or by hand delivering the item.

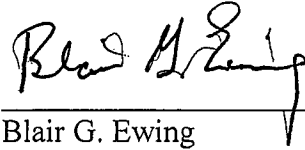
## CONCLUSION

We do not find any extraordinary circumstance here that warrants an exception to the 30 day deadline. For all of the above reasons we conclude that the appeal to the State Board was untimely filed.<sup>1</sup> Accordingly, we dismiss the appeal.

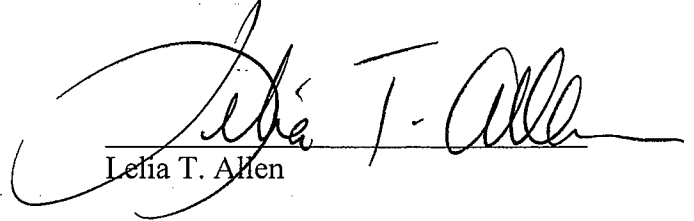
  
James H. DeGraffenreidt, Jr.  
President

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<sup>1</sup> Because we find that the appeal is untimely there is no reason to consider the local board's other claim that the appeal should be dismissed for mootness.



Blair G. Ewing  
Vice President



Lelia T. Allen



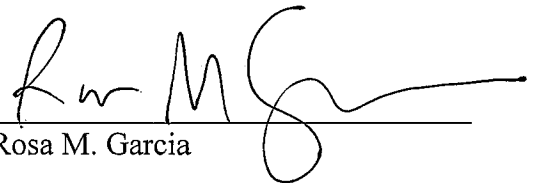
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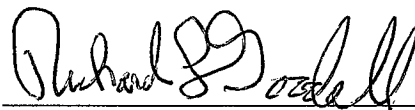
Charlene M. Dukes



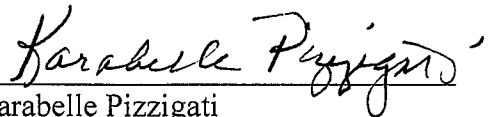
Mary Kay Finan



Rosa M. Garcia

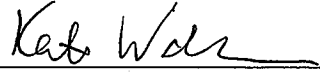


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Ivan C. A. Walks

  
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October 28, 2008