GLORIA LUCKETT,	BEFORE THE
Appellant	MARYLAND
v.	STATE BOARD
HARFORD COUNTY BOARD OF EDUCATION,	OF EDUCATION
Appellee	Opinion No. 04-31

OPINION

This is an appeal of a three-day suspension of Appellant's daughter from Edgewood High School for excessive tardiness. The local board has filed a Motion to Dismiss and/or for Summary Affirmance on grounds that the appeal was untimely filed; there were no due process or other violations; and there exists no genuine issue of material fact. Appellant has filed a response in opposition to the local board's motion.

FACTUAL BACKGROUND

Appellant's daughter, Lennea, is an 11th grade student attending Edgewood High School in Harford County. Edgewood High has a written policy on lateness to school with a progression in penalty for tardy occurrences. *See* Exhibit 5 to 2/26/04 Lentowski letter. On January 14, 2004, Appellant was late for class for the eighth time that school year. By letter dated January 15, 2004, from the Principal Joseph A. Shmitz and the Assistant Principal Charles E. Crue, Appellant was suspended for three days after the eighth tardy infraction. By letter dated January 23, 2004, Appellant appealed the three-day suspension to the Superintendent of Harford County and requested a meeting before the local board.

On January 27, 2004, the Superintendent's designee David Volrath, Director of Secondary Education, issued a written decision upholding the three-day suspension and stating that Appellant had no serious regard for reporting to class on time. Mr. Volrath relied in part on Assistant Principal Crue's description of the efforts made to work with Lennea on her tardiness problem:

> Dave,
> Shortly after receiving this email you should have the three page fax. I included her schedule and a school map. Lennea's locker is number 836 which is located outside of room 42 next to her period five class.
>
> I listed the date and class change where each lateness occurred. Because of the rotation schedule, I showed the class change for each of the dates in question. However, it should be noted that

there are three latenesses to period five. Her science class, which meets during period five, goes to first lunch. Lennea has the ability to go to her locker before and after this class and before and after her lunch. On two of three of these latenesses for lunch she passed her locker in transit. These lateness should be viewed as late returning from lunch.

The lateness on 11/21 was to first period. All buses are in before 7:25 and period one begins at 7:40. This was not a lateness to school for she had been in the building. There are warning bells at 7:30 and 7:35.

There are five minute periods between each class, except between hours two and three where there are seven minutes. This was done to create an environment where no student should have to carry more then two periods of books particularly since the locker is near their fifth period class.

More importantly, each student has sixteen hall passes per quarter. These are not used for the nurse or as administrative request for students being sent to the office. These are only for student needs such as needing to return to a locker or go to the bathroom if they did not have appropriate time. Lennea, as of the parent meeting, has used only two of these if my memory is correct.

Mom mentioned that she has back problems and I have nothing other then her word to support that including her actions within the hall. Giving it credance [sic], I reviewed her book needs and locker location in an earlier meeting. Lennea confirmed at that time that it was not an issue.

As stated earlier, there were six latenesses to class during the first quarter. There were similar problems last year. The administration has always worked with students that have had difficulties. There has been nothing to support that Lennea cannot correct this situation if she so chooses.

This is not the first time that mom has yelled at me over the phone, hung up or threatened to go to the media or the Board of Education for this and other issues. I am comfortable in our position.

Exhibit 7 to 2/26/04 letter (Crue to Volrath email).

By letter dated February 11, 2004, the local board advised the parties that it would consider the appeal of the suspension pursuant to its documentary appeal procedures. The local board further advised the parties to submit written statements including any exhibits by February 27, 2004. On February 11, 2004, the Superintendent, Jacqueline Haas, upheld the suspension indicating that after a review of the evidence presented, Appellant "committed the infractions as set forth in the Assistant Principal's investigation." (*See* Superintendent's letter).[1]

Based upon a review of the written submissions by the parties, the local board upheld the three-day suspension imposed by the Superintendent, finding that it was proper and appropriate. (*See* local board letter dated March 10, 2004).

Appellant appealed the local board's decision to the State Board via fax on April 15, 2004, arguing that the local board failed to follow established policies and procedures thereby violating her due process rights.

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 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. COMAR 13A.01.01.03B(3). In this case, the local board decision was issued on March 10, 2004. While the appeal should therefore have been filed with the State Board by April 9, 2004, the appeal was not faxed until April 15, 2004.

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

[1]As the local board has explained in its motion, the board treated Appellant's January 23, 2004 appeal to the Superintendent as an appeal to the board as evidenced by the February 10, 2004 letter from the board requesting written position statements from the parties. The Superintendent, however, had not communicated her final decision until February 11, 2004, the day after the local board issued the appeal procedures letter.

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 on the ground of 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); and most recently in *Jeffrey and Marinelle Carter*, MSBE Opinion No. 04-01 (January 28, 2004).

Further, the State Board has held that 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). Appellant argues that had the local board informed her of the 30-day statute of limitations, and/or given her the correct office to which she could call and get information relative to the appeals' process, the appeal would have been timely.[2] We note that while there is no statutory or regulatory obligation that the local board advise Appellant of the appeals' process, in most instances, as a courtesy, local boards have informed appellants of the 30-day time limitation. Nonetheless, the record does not disclose any extraordinary circumstance, and Appellant has offered none that would merit an exception to the mandatory thirty day deadline. Therefore, we dismiss the appeal as untimely. *See* COMAR 13A.01.01.03J(2)(d).

Merits

Alternatively, if we were to review the merits, we would find no error in the proceedings. It is well established that the decision of a local board with respect to a student suspension or expulsion is considered final. Md. Code Ann., Educ. §7-305. Therefore, the State Board's review is limited to determining whether the local board violated State or local law, policies, or procedures; whether the local board violated the due process rights of the student; or whether the local board acted in an otherwise unconstitutional manner. COMAR 13A.01.01.03E(4)(b).

In her letter of appeal dated January 23, 2004, Appellant requested a meeting at the local board level. However, the local board reviewed the appeal on the record, *i.e.*, based upon documentation submitted by both parties. In Appellant's appeal letter dated April 15, 2004, she states that during her appeal to the local board she was informed that a hearing would be held, but she was subsequently informed that a hearing had taken place and she was not present.

[2]In the last paragraph of its decision, the local board advised the Appellant of her right to appeal to the State Board and set forth the main number of the Maryland State Department of Education should the Appellant have any questions as to the appeals' procedure.

Thereafter she was informed that "an official hearing was not held." (*See* Appellant letter dated 4/15/04).

Based upon our review of the record, we find no evidence to establish that the process, as Appellant has explained, occurred. There is correspondence in the record from the local board advising Appellant that no hearing occurred, but that there was a meeting of the board wherein the submissions by the parties were reviewed. (*See* 3/17/04 letter from local board's General Counsel, Patrick Spicer).

Under *Goss v. Lopez*, 419 U.S. 565 at 581 (1975), the United States Supreme Court has held that for a suspension of 10 days or less, due process requires only that the student be given oral or written notice of the charges against him and if he denies them, an opportunity to present his side of the story in a meeting or conference. The suspension in this case was for three days. Due process therefore does not entitle Appellant to a full evidentiary hearing before the local board or the State Board. *See also, Black v. Carroll County Board of Education*, MSBE Op. No. 02-24 (2002) and *Ali v. Howard County Board of Education*, MSBE Op. No. 00-15 (2000), citing *Goss v. Lopez.*

Moreover, a review of the record discloses that after her 8th tardiness incident, the Assistant Principal met with Lennea and her mother to discuss the tardy incidents. Further, the school system investigated the matter. Mr. David Volrath, Director of Secondary Education, visited the school and spoke with administrators to gather information. The record also discloses that the school had made attempts to work with Lennea including changing her classroom routes to diminish the amount of time required to move between classes. (*See* letter dated 1/27/04 and Crue email). Under these circumstances, we find no due process violation.

Appellant further argues that the school should have taken her daughter's medical circumstances into account and at least changed her locker so that it would be in closer proximity to her classes.[3] The local board argues that Appellant's daughter would not accept the modified discipline of detention in lieu of suspension and that her classes were in relatively close proximity to one another which would allow her to drop off and pick up books at her locker so as not to exacerbate her condition. (*See* letter dated 1/27/04). Moreover, Appellant does not dispute that her daughter should take some responsibility for her lateness. (*See* Appellant letter dated 1/23/04).

Based on our review, we find sufficient evidence to support the local board's decision to uphold the three-day suspension.

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[3]Appellant submitted a doctor's note which states that her daughter was unable to carry a number of books because she has scoliosis.

CONCLUSION

For the reasons noted above, we dismiss the appeal as untimely. Alternatively on the merits and finding no due process violations or other illegalities in the proceedings, we would affirm the 3-day suspension imposed by the Board of Education of Harford County.*

Edward L. Root
President

JoAnn T. Bell

Dunbar Brooks

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

July 21, 2004

* Lelia T. Allen, Henry Butta, Beverly A. Cooper, and David F. Tufaro, newly appointed members of the State Board of Education, did not participate in the deliberations of this appeal.