

FOUNDATIONS CHARTER SCHOOL

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR09-03

ORDER OF DISMISSAL

In this appeal, Foundations Charter School (Foundations) challenges the decision of the Baltimore City Board of School Commissioners (local board) denying its application to open a charter school.

The local board filed a Motion to Dismiss the appeal based on untimeliness. COMAR 13A.01.05.02B(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 later 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.01.05.02B(3).

Although the local board voted to reject Foundations' application on December 9, 2008, it issued its rationale for the decision on January 7, 2009, through a letter from the Chief Executive Officer. Using the January 7 date to compute the 30 day deadline, Foundations' appeal should have been filed with the State Board on or before February 6, 2009. Foundations did not file its appeal until February 11, 2009.

Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. *Jenkins v. Prince George's County Bd. of Educ.*, MSBE Op. 99-39 (1999), citing *Scott v. Board of Educ. of Prince George's County*, 3 Ops. MSBE 139 (1983). Appeals that are even one day late, barring extraordinary circumstances, are untimely. *Schwalm v. Board of Educ. of Montgomery County*, MSBE Op. No. 98-50 (1998).

Foundations argues that it filed its appeal to the State board late due to a procedural irregularity resulting from the CEO's failure to mail promptly the local board's rationale for rejecting the application.¹ Specifically, the CEO's letter providing

¹ Appellant relies on Maryland Rules 2-535 and 3-535 regarding a court's ability to exercise revisory power over a judgment in cases of fraud, mistake and irregularity. The rules governing the district and circuit courts do not apply to proceedings before the State Board of Education. *See Johnson v. Howard County*

the rationale for the decision is dated January 7, 2009, yet the postmark date is January 12, 2009 – a five day delay in mailing. Foundations argues that it should get five extra days for filing its appeal to the State Board because a full 30 days from the time the rationale was mailed is necessary to “perfect” its appeal to the Board, which requires more than mere notice of the appeal.

In *Mohan G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-48 (2008), the State Board dealt with this precise issue. In that case, the appellant filed his appeal to the State Board a mere one day late. He argued that due to the local board’s delay in mailing its decision to him until three days after the decision was rendered, that the 30 day deadline should have run from the date the decision was mailed. *Id.* at 3. Finding the appeal to be untimely filed, the State Board held that the appellant had received the decision within a week of its issuance, and that the remaining period of time within the limitations period was sufficient time for the Appellant to submit his appeal to the State Board.

The question here is whether the 30 day time frame should be overlooked due to extraordinary circumstances. For whatever reason, there was a 5 day delay between the date the CEO issued the rationale and the date it was mailed to Foundations. Foundations received the rationale on January 13, 2009. (Memorandum in Support of Appeal at 11). Consistent with the *Mohan G. v. Montgomery County Bd. of Educ.*, we do not believe that the delay in Foundations’ receipt of the rationale here is an extraordinary circumstance that would warrant extending the time for filing an appeal. The remaining period of time within the limitations period was sufficient time for Foundations to submit the appeal to the State Board. We acknowledge, however, that at some point, delayed mailing of the local board’s decision could rise to the level of an extraordinary circumstance which would justify extending the deadline for filing an appeal to the State Board.

Therefore, it is this ^{21st} day of July, 2009, by the Maryland State Board of Education,

ORDERED, that the appeal referenced above is hereby dismissed for untimeliness. COMAR 13A.01.05.03C(e).

Bd. of Educ., MSBE Op. No. 01-27 (2001). The standard here is whether any extraordinary circumstances existed which would excuse the late filing.