

GINA D.,
Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 15-02

OPINION

INTRODUCTION

Appellant filed this appeal with the State Board challenging the decision of the Montgomery County Board of Education (local board) dismissing as untimely filed Appellant's appeal of her request that her son be permitted to transfer to Montgomery Blair High School (Blair). The local board has filed a Motion for Summary Affirmance maintaining that its dismissal of the appeal based on untimeliness was not arbitrary, unreasonable or illegal. Appellant responded to the local board's motion.

FACTUAL BACKGROUND

Appellant is a single mother of three children¹ who lives in an area of Montgomery County, called the Down County Consortium, where students are assigned to one of five area high schools through a computer assisted lottery process based on student preference and various other factors. Although Appellant's son selected Blair as his first choice in the lottery process, he was assigned to attend Wheaton High School, his second choice. (Motion, Ex.2). Appellant participated in the second round of school assignments and her son was again assigned to Wheaton. (Motion, Ex.3).

In March 2014, Appellant appealed the decision explaining that her son had never attended his home school and had been assigned to elementary and middle schools in the same feeder pattern based on a change of school assignment request. Appellant asked that her son be allowed to remain in the same feeder pattern for high school and attend Blair in order to stay with the familiar school community and so that he could participate in after school sports programs in the area. Appellant noted that she and her children had been living temporarily with her sister until Appellant could find a suitable home in the Blair attendance area. (Motion, Ex.4).

The Director of the Division of Consortia Choice and Application Program Services denied the request. She explained that the number of requests for Blair far exceeded the number of seats available, such that only those students with Blair as their base school or with older siblings at Blair were assigned there. The Director also indicated that Appellant had not presented a unique hardship to justify a transfer to Blair. (Motion, Ex.6).

¹ As of March 2014, the children were ages 17, 13 and 11.

On further appeal to the Superintendent's Designee, Appellant explained that they have been in their current living situation for a while, and that Appellant is working 7 days per week in order to try to move into the Blair community. (Motion, Ex.7). The Superintendent's Designee referred the matter to a hearing officer for review. The hearing officer found that Appellant's case did not present a unique hardship because Appellant's request was based primarily on keeping her son in the Blair feeder pattern so that he could remain with his friends and a familiar school community, and was based on attending school close to Long Reach Recreation Center so her son could more easily participate in sports. By letter dated May 15, 2014, the Superintendent's designee advised Appellant that he was adopting the recommendation of the hearing officer and denying the transfer request. In that letter, he advised Appellant that in order to appeal his decision she needed to do so by writing to the local board "as soon as possible, but not later than 30 days from the date of this letter." (Motion, Ex.8).

Appellant's appeal to the local board was due on Monday, June 16, 2014. Appellant submitted her appeal to the local board on August 28, 2014. (Motion, Ex.9). In her letter, the Appellant requested that the local board excuse the late filing of the appeal. She stated "my family has experienced several hardships within the last few months, including me being forced to resign from my job due to grant termination and subsequently finding immediate suitable employment to care for my family." *Id.*

In a decision issued September 22, 2014, the local board dismissed the appeal based on untimeliness. (Motion, Ex.10). While the local board sympathized with the difficulties faced by Appellant and her family due to the loss of Appellant's job, it noted that the appeal was filed over two months past the deadline and not until after school had started. The local board stated that "[w]hile the loss of employment might under certain circumstances excuse some lateness, . . . it did not preclude filing an appeal for such an extended period." *Id.*

The Appellant timely appealed the local board's decision to the State Board. In her appeal to the State Board, Appellant maintains that the loss of her job should be sufficient grounds to find an exception to the thirty day filing deadline.

STANDARD OF REVIEW

The standard of review in a student transfer decision is that the State Board will not substitute its judgment for that of the local board unless the Appellant demonstrates that the local board's decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05. A decision may be arbitrary or unreasonable if it is contrary to sound educational policy or a reasoning mind could not have reasonably reached the conclusion of the local board. COMAR 13A.01.05.05(B). A decision may be illegal if it is unconstitutional, exceeds statutory authority or the jurisdiction of the local board, misconstrues the law, results from an unlawful procedure, is an abuse of discretionary power, or is affected by any other error of law. COMAR 13A.01.05.05(C).

ANALYSIS

The local board dismissed the Appellant's appeal because it was untimely filed. Section 4-205(c)(3) of the Education Article provides that 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." 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 Op. MSBE 139 (1983). Accordingly, the State Board has consistently dismissed appeals that were untimely filed with the local board. *See Nonna A. and Dylan C. v. Howard County Bd. of Educ.*, MSBE Order No. OR10-09, and cases cited therein.

In addition, local board policy BLB states that an appeal to the local board shall be initiated by filing the appeal "within 30 days of the date of the superintendent's or designee's final action or decision adversely affecting the appellant." It further states that if the appeal is not filed within the 30 day period, "such failure shall constitute sufficient grounds for the [local board] to dismiss an appeal."

The local board essentially found that, based on the information before it, the length of the delay in the case of slightly over 2 months was not reasonable. In the local board's view, Appellant had not sufficiently explained why the length of the delay was warranted, such that the circumstances rose to the level of an extraordinary circumstance to excuse the late filing. Based on the facts before the local board at the time of its decision, we cannot conclude that the local board's decision was arbitrary, unreasonable or illegal.

CONCLUSION

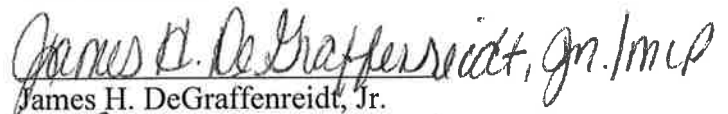
For the reasons stated above, we affirm the local board's dismissal of the Appellant's case.



Charlene M. Dukes
President



Mary Kay Finan
Vice President



James H. DeGraffenreidt, Jr.
Linda Eberhart

Absent

S. James Gates, Jr.

Larry Giammo

Larry Giammo

Luisa Montero-Diaz

Luisa Montero-Diaz

Absent

Sayed M. Naved

Madhu Sidhu

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

Guffie M. Smith, Jr.

Guffie M. Smith, Jr.

January 27, 2015