

JEREMY FISCHER,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-43

OPINION

This appeal contests the summer reading requirement for advanced placement English at Walter Johnson High School. Appellant claims that “Montgomery County Public Schools have no authority to regulate [his] summer vacation, nor do they have the right to evaluate [his] summer vacation for purposes of the first semester grade.” The local board has filed a Motion to Dismiss the Appeal based on untimeliness. Although requested to do so, Appellant has not filed a response to the motion.

BACKGROUND

During the 1998-99 school year, Appellant was a 12th grade student enrolled in Advanced Placement English at Walter Johnson High School in Montgomery County.¹ Prior to leaving school in the spring of 1998, Jeremy and other students voluntarily enrolled for the 1998-99 AP English class and were advised of the summer reading assignment which is a required part of the AP English curriculum.

On August 27, 1998, Jeremy advised his AP English teacher of his intent to protest the summer reading assignment. He argued that the assignment was unjust because it required him to perform work outside of the approved school calendar. The teacher awarded Jeremy a zero for the assignment based upon the summer reading requirement. The grade for this assignment impacted negatively on Jeremy’s first marking period grade for AP English for which he received a “D.”

On October 29, 1998, Appellant’s father filed a complaint regarding Jeremy’s AP English grade. He requested that the grade only reflect work assigned during the marking period, and not during the summer months. The principal of Walter Johnson, Dr. Frank Stetson, denied the father’s request. He noted that Jeremy had waited until the end of the

¹In describing the factual background in this case, we have relied entirely upon the record before us: Appellant’s letter of appeal to the State Board, the local board’s decision, and the local board’s Motion to Dismiss.

summer to object to the summer reading requirement which was a known requirement of the class curriculum, despite his being assigned summer reading prior to leaving school the previous spring.

By letter dated November 23, 1998, Jeremy and his father appealed the principal's decision to the local superintendent. The matter was assigned to a hearing officer, Mr. Raymond J. DeBalso, who conducted an appeal conference. As stated in the local board's decision:

Mr. DeBalso noted that Jeremy received a grade of D for the first marking period in his AP English class due to his refusal to submit the summer reading assignment. However, he concluded that the assignment of reading by Walter Johnson during the summer was permitted, and even required by school system policy as described in a March 31, 1998, memorandum to all principals from associate superintendents Dr. Mary Helen Smith and Dr. Steven G. Seleznow. Furthermore, such assignments are in keeping with the level of work and independence expected in advanced placement classes. Moreover, Jeremy had registered voluntarily for this specific class before leaving for summer break, was aware of the summer reading requirement, made no request for a change, and requested no accommodation at that time. Mr. DeBalso concluded that Jeremy was not 'punished' for not completing the work but, rather, held accountable for the required work, as were all the other students.

Jeremy also complained that the assignment was not in compliance with the school system's own policies because it failed to provide a choice among several possible books, and was not cross-curricular. However, Mr. DeBalso found that this claim was irrelevant to the resolution of this complaint since Jeremy's objection to the assignment as articulated in his August 27, 1998, letter to Ms. Gafford, as well as in his complaint from the public, did not indicate that these issues were a basis for his failure to complete the assignment. As to the question raised by Mr. Fischer about the accuracy of Jeremy's English grade notwithstanding the summer reading assignment, Mr. DeBalso requested that Dr. Stetson review the calculation of Jeremy's grade. In conclusion, Mr. DeBalso concurred that the teacher had acted in a reasonable and fair manner, and recommended that the Complaint be denied.

The superintendent accepted the recommendation of the hearing officer.

Thereafter, the matter was appealed to the local board. After reviewing the materials in this case, the local board issued a decision on April 26, 1999² upholding the superintendent's denial of the appeal based on the reasons stated in Mr. DeBalso's January 29, 1999 memorandum and the superintendent's March 17, 1999 memorandum.

ANALYSIS

The local board argues that this appeal should be dismissed because it was untimely filed. State law and regulation require appeals of local board decisions to be filed with the State Board within thirty days of the local board decision. *See* Md. Code Ann. Educ. § 4-205 (c) and COMAR 13A.01.01.03B (3). 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.01.01.03B (3). The local board decision was issued on April 26, 1999. The appeal to the State Board should, therefore, have been filed with the State Board on or before May 26, 1999.

Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as affirmative proof that the decree appealed from was procured by fraud or that the Appellant had no notice of the decree. *See Scott v. Board of Education of Prince George's County*, 3 Op. MSBE 139, 142 (1983); *See also* COMAR 13A.01.01.03G (2). 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.³ *See Christine Schwalm v. Board of Education of Montgomery County*, MSBE Opinion No. 98-50 (September 24, 1998); *Marie Friedman v. Board of Education of Montgomery County*, MSBE Opinion No. 98-41 (July 29, 1998); *Eleanor Duckett v. Board of Education of Montgomery County*, MSBE Opinion No. 97-14 (March 26, 1997).

Here, the appeal was delivered by certified mail postmarked May 27, 1999; one day beyond the limitation deadline. Appellant offers no reason for his failure to appeal in a timely manner. Because we find no extraordinary circumstance that would merit an exception to the mandatory thirty day deadline, we dismiss the appeal as untimely. *See* COMAR 13A.01.01.03J(2)(d).

Moreover, even if the State Board were to consider this appeal, we would find that Appellant has waived his right to contest this matter. It is well settled that the State Board will not review the merits of student grade decisions. As stated in *Crawford v. Washington County Board of Education*, 4 Op. MSBE 890 (1997), "the merits of students' grades 'should be kept

²Appellant indicates that the decision was received on April 30, 1999.

³The State Board may dismiss an appeal on its own motion, or on motion filed by any party. *See* COMAR 13A.01.01.03J(1).

within the school building,’ and are to be made by the persons most able to evaluate the situation from personal knowledge.” *See also McComb v. Montgomery County Board of Education*, MSBE Op. 98-21 (April 29, 1998); *Miranda v. Montgomery County Board of Education*, MSBE Op. 97-52 (December 10, 1997); *Kim v. Carroll County Board of Education*, MSBE Op. 97-48 (December 10, 1997); *Mai v. Montgomery County Board of Education*, MSBE Op. 97-31 (June 25, 1997); *Tompkins v. Montgomery County Board of Education*, MSBE Op. 96-41 (October 29, 1996); *Haugen v. Frederick County Board of Education*, 3 Op. MSBE 322, 326 (1983). The State Board will only accept appeals regarding academic grades if there are specific allegations that the local board failed to follow proper procedure or violated a student’s due process rights.

In this case, Appellant challenges both the grade that he received in AP English, as well as the legality of AP English curriculum summer reading requirement. Given the fact that Appellant voluntarily registered for the AP English class prior to leaving for summer break in the spring of 1998, and that he was aware of the summer reading requirement but made no objection at that time, we find that, in addition to being untimely, the issue has been waived.

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Montgomery County.

Walter Sondheim, Jr.
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Edward Andrews
Vice President

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Judith McHale

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John Wisthoff

September 22, 1999