

CHRISTINE T. SCHWALM,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-34

OPINION

In this case, the local board upheld a decision by the local superintendent regarding *The Bluest Eye*, by Toni Morrison, which was approved for retention in high school library media centers in Montgomery County for free choice reading for students in grades nine through twelve.¹ Appellant argues that the local board's decision was unreasonable because it was based on the recommendation of an ad hoc committee report that was arbitrary and capricious.² The local board has filed a Motion to Dismiss based on untimeliness. Appellant has filed a reply.

BACKGROUND

On February 4, 1998, Appellant submitted a Citizens Request for Reconsideration of Instructional Materials in which she requested that the Montgomery County Public School System (MCPS) reevaluate the book *The Bluest Eye*.³ In her request, Appellant asked MCPS to remove the book from all of the County's public school libraries. Appellant objected to the "sexually explicit passages, pedophilia, rape of a child, sexual arousal, . . . bestiality reference, animal cruelty, and child-like writing" which she believed might result in a student being confused or harmed in some way.

In response to Appellant's request, an ad hoc committee convened to reevaluate *The Bluest Eye*. After reviewing the pertinent material in accordance with the Montgomery County Public School manual on the evaluation and selection of instructional materials, the committee

¹The local board decision also upheld the reevaluation of the book *The House of Spirits* by Isabel Allende, and addressed matters surrounding a request for an evidentiary hearing, a request for transcripts of various meetings, and allegations that the local board violated the Open Meetings Act. Ms. Schwalm's appeal to the State Board, however, concerns only the local board's decision as it relates to *The Bluest Eye* and the recommendation of the ad hoc committee.

²Appellant has filed four prior appeals involving other instructional materials. See MSBE Opinion Nos. 98-46, 98-50 consolidating two appeals, and 99-5.

³*The Bluest Eye* was previously reevaluated by a secondary English evaluation and selection committee which changed the status of the book from textbook approval to library approval effective September 2, 1997.

recommended that the MCPS continue to retain the book in high school library media centers at its current approved status for free choice reading. The committee stated that its “decision to keep [the book] at the library level rather than a textbook shows that we are sensitive to community concerns and that students should have choice in reading this text. It would be a disservice to our GT students to deny them a book of this caliber.” *See* Reevaluation Report (3/10/98).

Based on the recommendation of the committee, input from Dr. Roberta M. Haines, Director of School Library Media Programs, and her own review of the materials, Associate Superintendent for Instruction and Program Development, Mary Helen Smith, determined that *The Bluest Eye* should “be retained at its current library status in the media center for free choice reading for Grades 9-12.” In a letter to Appellant dated July 20, 1998, Ms. Smith indicated that each of Appellant’s objections was considered, and noted that the ad hoc committee reevaluated the book in a “judicious and deliberate manner” in compliance with the procedures for evaluation and selection of instructional materials.

An appeal of this decision was taken to the local superintendent of Schools, Paul L. Vance, who upheld the decision. In correspondence to Appellant, the superintendent stated:

After considering your letter, reviewing the documents constituting the record, and consulting with the associate superintendent for instruction and program development as well as the director of school library media programs, Ms. Boone [hearing officer] has reported to me that the actions taken to respond to your request to reevaluate the book, *The Bluest Eye*, by Toni Morrison were thorough and appropriate. Her review showed that the reevaluation review committee noted in particular the literary merit of this landmark text written by a Nobel Prize winning author. Given the way the book engages students, encourages critical thinking, and reflects a freshness and candor in the writing, the committee strongly recommended retaining the book at the high school library level. After careful consideration of all of the information shared with me regarding the reevaluation of *The Bluest Eye*, I find that the book, while not appropriate for assigned reading, should continue to be approved for high school library media centers for free choice reading.

Appellant further appealed to the local board of education. The local board rendered a unanimous decision (5-0) on January 12, 1999,⁴ which stated that the local board “has carefully reviewed the materials submitted by the superintendent and by Ms. Schwalm and has concluded that the decisions of the superintendent regarding the status of the books in question, based on the review by the assistant superintendent and the thorough review and report of the ad hoc

⁴Of the 8 board members, only 5 voted; 2 recused themselves from participation in the deliberations, and 1 member did not participate in the appeals.

committees, were rational, reasonable and non-arbitrary and should not be disturbed.” This appeal followed.

ANALYSIS

As a threshold matter, 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). Appellant sent her appeal to the State Board by certified mail postmarked February 12, 1999.⁵ The local board decision was issued on January 12, 1999. The appeal to the State Board should, therefore, have been filed with the State Board on or before February 11, 1999.

Time limitations are generally considered to be mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. *See Scott v. Board of Education of Prince George’s County*, 3 Op. MSBE 139 (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.⁶ *See Christine Schwalm v. Board of Education of Montgomery County*, MSBE Opinion No. 98-50 (September 24, 1998);⁷ *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).

In this case, Appellant’s only reason for her failure to appeal in a timely manner is her erroneous interpretation of State Board regulations. She argues that thirty days from the board’s decision would have been February 12, 1999. COMAR 13A.01.01.03B (3)(b) states that the “day of the decision of the county board may not be included in computing any period of time prescribed by these regulation.” This means that day one of the computing period is not the day of the local board’s decision. Rather, day one of the computing period is the day following the board decision. Here, the board issued its decision on January 12, 1999. According to State Board regulation, day one of the computing period is January 13, 1999 and

⁵There seems to be some confusion about the manner of mailing. While the appeal was mailed via priority mail, the priority mail envelope was also stamped as certified mail.

⁶The State Board may dismiss an appeal on its own motion, or on motion filed by any party. *See* COMAR 13A.01.01.03J (1).

⁷It is noteworthy here that one of Appellant’s prior cases before the State Board was ultimately dismissed as untimely by the State Board. As previously noted, this is Appellant’s fifth appeal to the State Board. *See* footnote 2.

day thirty of the computing period is February 11, 1999.⁸ Nor has Appellant set forth any extraordinary circumstance that would merit an exception to the mandatory thirty day deadline.

Appellant suggests that because the local board was granted additional to submit its reply, the State Board should recognize Appellant's appeal as timely filed.⁹ However, the State Board regulations do not permit such a result. COMAR 13A.01.01.03G authorizes the State Board or its designee to extend the time limitations for submitting briefs, motions and other pleadings, upon good cause shown, but an extension is not permitted for the initial filing of an appeal. *See also* COMAR 13A.01.01.03I (3). Further, as stated above, Appellant has not presented any extraordinary circumstance that would permit an extension.

Nonetheless, even if the appeal were properly before the State Board, we would find that the local board did not act arbitrarily, unreasonably, or illegally in this matter. The local board decision indicates that it had reviewed the materials and that the superintendent's decision was reasonable and nonarbitrary, and should be upheld. This determination is consistent with the advisory committee's unanimous recommendation that the book remain available in high school libraries for free choice reading.¹⁰ The State Board has previously found local board decisions on instructional materials to be reasonable when those decisions were consistent with the recommendations of advisory committees. *See Michael Hethmon v. Board of Education of Prince George's County*, 6 Op. MSBE 646 (1993) (upholding placement of two books in media center); *Joy Fox v. Board of Education of Anne Arundel County*, 2 Op. MSBE 188 (1980) (upholding

⁸January 13, 1999 is not day zero as Appellant suggests.

⁹Appellant also objects to the extra days which the State Board allots parties to account for the time it takes to receive items through the United States postal system. The extra time is generally three days which are tacked onto the filing time limitation. This filing practice is consistent with that of federal courts and Maryland state courts. The extra days are granted to all parties, including Appellant who was given 18 days, rather than 15 days, to respond to the local board's Motion to Dismiss. Furthermore, if the last day of a time period is a Saturday, Sunday, or State legal holiday, the period runs to the end of the next day that is not a Saturday, Sunday, or legal holiday. *See* COMAR 13A.01.01.03B (3)(c).

Appellant additionally objects to the State Board's courtesy practice of notifying parties when it has not received a filing that is overdue. Again, this practice is followed for all parties. Here, counsel for the local board was contacted on behalf of the State Board when the local board's response was not received. The local board requested an extension of time to file its response and demonstrated good cause based on the fact that the local board attorney had never received a copy of Appellant's appeal or the notification letter indicating the filing deadline for the local board's response to the appeal. The local board's request for an extension of time to file its response was therefore granted.

¹⁰The review committee consisted of a coordinator, an English resource teacher, a media specialist, a high school English teacher and a public librarian.

adoption of two course materials and one teacher textbook as part of curriculum). Here, the committee followed the prescribed procedures and applied the evaluation criteria as provided in the evaluation and selection manual.¹¹

Appellant has presented no evidence to support her contention that the board's decision is arbitrary or unreasonable. She argues that the local board decision is unreasonable because it is based on the arbitrary and capricious recommendation of the ad hoc committee. Specifically, she asserts that the statement made in the committee report - "This committee is fundamentally against censorship and banning" - demonstrates that the committee was biased against excluding books from use by the school system.

From our review of the record, we do not believe that the above statement renders the committee's decision invalid. In its report the committee gave a lengthy description justifying its recommendation that the text be retained in high school library media centers for free choice reading. Among other reasons, the committee cited the fact that the book has literary merit; encourages critical thinking; gives insight into the human condition; was written by a Nobel Prize winning author; and poses a masterful dichotomy in text. In light of the record in this case, we find that the committee's decision is thoughtful, based on legitimate factors, and is not arbitrary, capricious, or unreasonable.

CONCLUSION

For these reasons, we dismiss the appeal as untimely. *See* COMAR 13A.01.01.03J (2)(d).

Walter Sondheim, Jr.
President

Edward Andrews
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

¹¹Appellant seems bothered by the fact that the concerns raised in her request for reconsideration were not specifically addressed point by point by the ad hoc committee. However, there is nothing in the procedures that requires the committee to do so. The committee's recommendation was based on a review of the entire book which includes the pages listed in the attachment to Appellant's request.

George W. Fisher, Sr.

Morris Jones

Marilyn D. Maulsby

Judith McHale

Adrienne L. Ottaviani

John Wisthoff

June 30, 1999