

JEFF AND JODY SHAVER,

Appellants

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-6

OPINION

This is an appeal of the 45-day suspension of Appellants' son from Mayfield Woods Middle School/Howard High School for violating the school system's alcohol policy.¹ The local board has filed a motion to dismiss the appeal based on untimeliness.

BACKGROUND

During the 1998-99 school year, Appellants' son was an eighth grade student at Mayfield Woods Middle School in Howard County. While the factual record in this case is sparse, by Appellants' own words their son was involved in an incident where he "admitted to bringing vodka along on a school outing, and passing it among his friends." The Administrative Coordinator for the Howard County Public School System, acting as the superintendent's designee, indicated that she received a request for a long-term suspension from the principal of Mayfield Woods, and made her decision to suspend the student after a thorough investigation and a conference with Appellants was conducted. *See* affidavit of Alice W. Haskins.

By letter dated July 1, 1999, Appellants were advised that their son was being suspended for 45 days beginning June 14, 1999 for violating Howard County Board of Education Policy 3451 – Alcohol, Other Drugs, Non-Controlled Substances, and Inhalants, which prohibits the possession, use and distribution of alcohol on school property or at school-sponsored activities. The letter further advised Appellants of the suspension appeal procedures.

A letter of appeal of the suspension decision, dated August 5, 1999, was received by the school system on August 16, 1999. The postmark date on the envelope is August 13, 1999. By letter dated August 17, 1999, the local board denied Appellants' appeal based on untimeliness.

ANALYSIS

The decision of a local board with respect to a student suspension or expulsion is

¹Joshua was suspended from June 14 to November 3, 1999, and offered alternative education through the Evening School Program.

considered final. Md. Educ. Code Ann. § 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.01.01.03(E)(4)(b).

The local board argues that this matter should be dismissed because Appellants failed to timely appeal the suspension decision at the local level. Appellants argue that an exception should be granted in their case because they did not discover the letter advising them of the suspension decision until July 27 due to their vacation from July 11 through July 26. Additionally, they claim that the postmark date on the letter was July 9, eight days from the date of the decision.

Section 7-305 (c)(4)(i) of the Education Article permits a suspension of more than ten days to be appealed to the county board within ten days after the superintendent's decision. Time limitations are generally 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). Accordingly, the State Board has declined to review matters that are untimely filed at the local level. *See Louis J. Brocato v. Board of Education of Baltimore County*, 7 Op. MSBE 756 (1997) (decision untimely appealed to local board cannot be subject to State Board appeal); *Jackson v. Frederick County Board of Education*, 6 Op. MSBE 838 (1995) (local board's dismissal of appeal upheld based on untimeliness).

Here, the suspension decision was made on July 1. The decision should have been appealed to the local board by July 11. Moreover, even if the State Board were to accept a notice date of July 27 (the date when Appellants returned from vacation), the 10-day deadline for an appeal to the local board would have been August 6. Although Appellants' letter is dated August 5, it is postmarked August 13, and was not received by the school system until August 16. *See Affidavit of Susan Shown*. Moreover, Appellants have presented no evidence indicating that the appeal letter was actually mailed on or before August 13.

In light of the above, we believe that the local board did not act arbitrarily, unreasonably or illegally in denying the appeal.

CONCLUSION

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

Edward Andrews
President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

Reginald Dunn

George W. Fisher, Sr.

Marilyn D. Maulsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

February 1, 2000