

WADE TREY JOHNSON,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-27

OPINION

Appellant challenges the local board's dismissal for untimeliness of the appeal of his suspension from school for 45 days due to violations of school policy concerning alcohol, drugs, non-controlled substances and inhalants. The local board has filed a motion to dismiss. Appellant has not submitted a reply to the motion.

FACTUAL BACKGROUND

Appellant was an eighth grade student at Mayfield Middle School in Howard County. On March 9, 2001, Wade was suspended from the Howard County Public School System for 45 days for violating Policy #3451 - Alcohol, Other Drugs, Non-Controlled Substances, and Inhalants and Policy #3431 - Discipline. Appellant appealed the disciplinary decision to the local board. His notice of appeal, sent via facsimile, was received at the local board office at 5:46 p.m. on March 20, 2001. The same notice of appeal, sent via Express Mail, was received at the local board office on March 22, 2001. By letter dated March 30, 2001, the chairman of the local board advised Appellant that his appeal was dismissed based on untimeliness.¹

ANALYSIS

A decision of a local board with respect to a student suspension or expulsion is considered final. Md. Code Ann., Educ. § 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).

Section 7-305 (c)(4)(i) of the Education Article permits a suspension of more than ten days to be appealed to the local board **within ten days after the determination**. (Emphasis added.) Time limitations are generally mandatory and will not be overlooked except in

¹Appellant requested that the local board reconsider its decision dismissing the appeal. The local board denied Appellant's reconsideration request.

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 Jeff and Jody Shaver v. Howard County Board of Education*, MSBE Opinion No. 00-6 (February 1, 2000) (affirming local board's denial of appeal based on untimeliness); *Louis J. Brocato v. Board of Education of Baltimore County*, MSBE Opinion No. 97-32 (July 29, 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) (upholding local board's dismissal of appeal based on untimeliness).

The local board maintains that this matter should be dismissed because Appellant failed to appeal the suspension decision at the local level on a timely basis. Appellant argues that his appeal to the local board was timely because he was entitled to an additional three days beyond the 10 day deadline to file since notification of the suspension was given by mail. *See* 3/9/01 suspension letter from Haskins. Appellant relies on Rule 1-203(c) of the Maryland Rules of Procedure to support his argument.

We disagree with Appellant's assertion that Maryland Rule of Procedure 1-203(c) extends the ten day deadline provided in §7-305 of the Education Article by three days to account for mailing. Rule 1-203(c) provides as follows:

Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after **service** upon the party of a notice or other paper and **service** is made by mail, three days shall be added to the prescribed period. (Emphasis added).

It is clear that Rule 1-203(c) only applies when formal service is a prerequisite to triggering a right or requirement of a party, and service is made by mail. *See Kamara v. Edison Brothers Apparel Stores, Inc.*, 136 Md. App. 333, 337-338.

Appellant's appeal to the local board was required to be filed "within 10 days after the determination" by the local superintendent or his designee. *See* Md. Code Ann., Educ. 7-305(c)(4)(i). Formal service of the suspension decision is not a prerequisite to filing the appeal, rather the appeal is triggered by the determination itself. Therefore, by its own terms, Rule 1-203(c) is inapplicable in this case.

Additionally, Maryland Rule of Procedure 1-101(a) determines the applicability of Rule 1-203. It states that Rule 1-203 applies to "matters in all courts of this State, except the Orphans' Court and except as otherwise specifically provided." The Board of Education of Howard County is not a court of the State. Nor does the law anywhere specifically provide that Rule 1-203 is applicable in an appeal to the Board of Education of Howard County. Thus, Rule 1-203(c) does not apply to this appeal and the 10 day deadline provided in §7-305 of the Education Article is not modified to allow three days for mailing.

Here the suspension decision was made on March 9, 2001. The decision should have been appealed to the local board by Monday, March 19, 2001. Even if the State Board were to accept a filing date of March 20, the date of Appellant's faxed notice of appeal, the appeal to the local board would still have been late. In this regard, it is curious that on the notice of appeal to the local board, the certification of mailing states that "on the 19th day of March, 2001, a copy of the above was mailed" to the Howard County Public School System, yet the copy was not faxed until March 20th. Further, the Express Mail certificate indicates a "Date In" of 3/20/01 with "Delivery Attempted" on 3/20/01 and 3/22/01.

CONCLUSION

For these reasons, we believe that the Board of Education of Howard County properly dismissed the appeal on the basis of untimeliness. *See* Educ. § 7-305(c).

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August 29, 2001