

L. RODNEY JONES,

Appellant

v.

CARROLL COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-02

### OPINION

This is an appeal of the denial of Appellant's request for a tuition waiver for his children to attend public school in Carroll County. The local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the Motion.

### FACTUAL BACKGROUND

Appellant and his family reside in Carroll County where his five children attend Carroll County Public Schools ("CCPS"). Prior to the start of the 1998-99 school year, Appellant sold his home in Carroll County and began construction on a new home in Carroll County. While the new home was under construction, Appellant and his family resided with relatives in Anne Arundel County. Pursuant to the residency policy of the Board of Education of Carroll County, Appellant applied for and was granted a 90 day tuition waiver so that his children could continue to attend CCPS free of charge while the family lived out of county during the construction of their new Carroll County home.

The waiver covered the period of time from August 24, 1998 until November 24, 1998. Due to delays in home construction, Appellant requested and was granted an extension of the tuition waiver to February 24, 1999. There were additional unanticipated delays in the construction of Appellant's new home and Appellant again requested an extension of the tuition waiver. Appellant was granted an extension to April 15, 1999. However, although Appellant did not receive his use and occupancy permit for the new home until June 1, 1999, CCPS refused to grant Appellant a tuition waiver beyond April 15, 1999. Appellant was accordingly charged tuition effective April 15 through the last day of the school year in the total amount of \$3,148.40. *See* 5/3/99 letter from Little to Jones.

Appellant appealed the tuition decision. By letter dated November 11, 1999, Vernon F. Smith, Assistant Superintendent of Administration, advised Appellant that he was upholding the decision to charge tuition in the amount of \$3,148.40 for the period covering April 15, 1999 through the end of the 1998-99 school year. The letter further indicated that Appellant could receive credit toward tuition owed if he provided a copy of his Carroll County tax bill or

receipt for payment of Carroll County property taxes. The tuition payment or the requested documentation was due by December 1, 1999. Despite various requests, Appellant did not pay the outstanding tuition balance or submit the receipt for tax payment. On April 24, 2000, the attorney representing the school system sent a demand letter to Appellant in an attempt to collect the tuition amount. Appellant did not pay the tuition.

Appellant appealed the decision to charge him tuition to the local board. His letter of appeal, received by the local board on May 15, 2000, stated the following:

I am hereby writing to request an appeal for the decision made by Mr. Hyde, the Superintendent of Schools, whereby the decision was made that I must pay tuition fees for my five children in the school system.

I would be happy to discuss the circumstances with you at any time that would be convenient. I have referenced my home and cell number above. Please call me as soon as possible.

In response, C. Scott Stone, President of the Carroll County Board, advised Appellant of the following by letter dated May 18, 2000:

We have received your correspondence requesting an appeal before the Board of Education

Attached you will find the Rules of Procedure in Appeals and Hearings under Code Section 4-205 of the Education Article to the Annotated Code of Maryland. An Appeal Information Form is also attached.

Please fill out the Appeal Information Form and return to me in accordance with the timelines set forth in the Rules of Procedure. Include any other documents which you think are pertinent to your appeal. Copies of all submissions should also be sent to the Superintendent. . . .

Mr. Stone's letter also indicated a contact number and contact person for Appellant to call with any questions. Appellant did not submit the Appeal Information Form or documentation in support of his appeal within 10 days as specified in the local board's Rules of Procedure.

On July 12, 2000, the local board issued a decision upholding the determination that Appellant pay tuition for the period covering April 15, 1999 through the end of the school year. However, the local board never reviewed the merits of the case. Rather, the local board decision indicated that Appellant "has failed to support his appeal with any information or

documentation in support of his position and has, therefore, failed to meet his burden of proof.” See local board decision at 2. The record further reflects that the decision was mailed to Appellant on July 13, 2000. On July 14, the local board received Appellant’s completed Appeal Information Form dated June 30, 2000 with a postmark date of July 12, 2000.<sup>1</sup>

### ANALYSIS

In his appeal to the State Board, Appellant has submitted documentation to support his position that tuition should be waived. In response, the local board maintains that its decision should be upheld and that the State Board should not consider the underlying merits of the appeal or the documentation submitted by Appellant because the local board reached its decision based on Appellant’s failure to provide information in a timely basis to support his appeal. Alternatively, the local board argues that should the State Board reject the local board’s decision, the matter should be remanded to the local board for a review of the case on its merits.

On the timeliness issue, the local board asserts that in response to Appellant’s appeal to the local board, Appellant was sent a copy of the local board’s Rules of Procedure for appeals and hearings as well as an Appeal Information Form. The Rules of Procedure in Part B3(c)(1) explain the following:

Upon receipt of a notice of appeal for a matter falling under Code Section 4-205(c)(4), the Board shall send the appellant(s) a copy of the Board’s Appeal Information Form. Within 10 days after the Appeal Information Form has been sent to the appellant(s), the appellant(s) shall file the completed Appeal Information Form with the Board, and shall also send a copy to the Superintendent. Failure to file the Appeal Information Form in a timely manner may result in the Board deciding the appeal without a hearing.

The accompanying May 18, 2000 letter from Mr. Stone alerted Appellant of the Appeal Information Form and instructed him to complete and return the form within the appropriate timeline as provided in the Rules of Procedure.<sup>2</sup> The letter further advised Appellant of the individual to contact should he have any questions regarding the appeal process. However, neither Mr. Stone’s letter nor the Appeal Information Form specifically mentioned the 10-day filing deadline.

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<sup>1</sup>Throughout this process Appellant represented himself, not through an attorney.

<sup>2</sup>The Appeal Information Form is designed to provide the local board with information necessary to understanding the issues on appeal.

Eventually, on July 12, 2000, the local board rendered a decision upholding the tuition charge based on Appellant's failure to submit any supporting evidence. At the time of the decision, the only document in the record was Appellant's letter of appeal filed on May 15, 2000, which failed to explain the basis for or provide any information regarding Appellant's challenge of the tuition decision. The local board did not receive any documentation in support of Appellant's appeal until two days after it had rendered its decision in this case.

The local board urges the State Board to review this case in a vein similar to cases which the State Board has dismissed for failure to meet time limitations. As the State Board has held, time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice. *See Shaver v. Howard County Board of Education*, MSBE Opinion No. 00-6 (February 1, 2000); *Louis J. Brocato v. Board of Education of Baltimore County*, 7 Op. MSBE 756 (1997). While the opinions cited by the local board concern failures to meet filing deadlines, those deadlines are statutory deadlines rather than deadlines established by local board rules of procedure, as in the instant case. Additionally, the cited opinions are in a different procedural posture in that those cases concern failures to file an initial appeal with the local board in a timely manner. Here, Appellant timely filed an appeal which was acknowledged by the local board. His failure was not to provide additional documentation necessary to an understanding of the issues within the time frame specified in the local procedures. Thus, we do not believe that these cases serve as clear precedent for upholding the local board's decision on the ground of untimeliness.

Appellant argues that his appeal should not be decided on a technicality. He acknowledges receipt of the May 18, 2000 letter from Mr. Stone, but claims that he did not receive the attached rules of procedure. He further argues that he would have timely filed the Appeal Information Form if the May 18 letter had specified a particular date on which the form had to be filed. Of course, if there were no procedures enclosed in the May 18, 2000 letter as Appellant claims, it was his responsibility to follow up by contacting the individual specified in the letter.

Nonetheless, we note that Appellant is not an attorney. Neither the May 18 letter from the Board President nor the Appeal Information Form specifically noted the 10-day deadline.<sup>3</sup> One has to carefully read more than two pages of procedural text before finding the 10-day deadline referenced in section B3(c)(1) of the local board procedures. Under these circumstances, and given the fact that Appellant did eventually submit the Appeal Information Form which crossed in the mail with the local board's decision, we believe it is appropriate for the local board to reconsider the matter.

## CONCLUSION

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<sup>3</sup>We urge the local board to highlight the 10-day deadline in its procedures. We also recommend that the 10-day deadline be referenced on the Appeal Information Form.

For these reasons, we are remanding the case to the Board of Education of Carroll County

for consideration of the appeal on its merits.<sup>4</sup>

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January 31, 2001

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<sup>4</sup>In doing so, we would also refer the local board Section 7-101(b)(2) of the Education Article, Annotated Code of Maryland, which provides: “Upon request and in accordance with a county board’s policies concerning residency, a county superintendent may allow a child to attend school in the county even if the child is not domiciled in that county with the child’s parent or guardian.”