

JOHN AND CAROLE PESCATORE,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-36

OPINION

This is an appeal of the denial of Appellants' request to transfer their daughter from Farquhar Middle School to Briggs Chaney Middle School in Montgomery County. The local board has submitted a Motion to Dismiss based on untimeliness. Appellants have submitted an opposition to the local board's motion.

FACTUAL BACKGROUND

Lauren is assigned to attend sixth grade at William Farquhar Middle School for the 2001-2002 school year. On February 19, 2001, Appellants requested that Lauren be permitted to transfer to Briggs Chaney Middle School for the 2001-2002 school year based on her desire to attend the same school as the majority of her classmates and friends from Cloverly Elementary School.¹ Of the 85 fifth grade students attending Cloverly during the 2000-2001 school year, all but nine were assigned to attend Briggs Chaney for middle school. The nine other students, which include Lauren, were assigned to Farquhar. Additionally, although the majority of students assigned to Farquhar will be assigned to Sherwood High School, Lauren will be assigned to the Northeast Consortium, with Blake High School as her home school, causing Lauren to again be separated from her peers.

Appellants' request was denied by the Field Office Supervisor on March 9, 2001. An appeal to the superintendent was referred to a hearing officer, Mr. Laurence Jeweler. Mr. Jeweler conducted a review of the matter and submitted a memorandum recommending that the denial of the transfer be affirmed because of the absence of a hardship. On the basis of this recommendation, the superintendent affirmed the denial of the transfer request on April 6, 2001.

Thereafter, Appellants appealed the denial to the local board, highlighting concerns with Lauren being separated from her peers in the school community. In a decision issued June 12, 2001, the local board was unable by a majority of its full membership to either affirm or reverse the decision of the superintendent. Thus the superintendent's decision denying the transfer

¹As a result of a boundary change several years ago, Lauren was assigned to Cloverly Elementary School.

remained in effect.

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). The 30 days run from the later of the date of the order or the opinion issued explaining the decision. 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. *Id.*

Here, the local board issued a written opinion on June 12, 2001. The appeal should therefore have been filed with the State Board by July 12, 2001. However, the appeal was sent to the State Board office via “Express Mail” postmarked July 19, 2001, and received by the State Board office on July 20, 2001; several days beyond the limitations deadline.²

Time limitations are generally considered 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 as untimely appeals that have been filed one day late. *See Christine Schwalm v. Board of Education of Montgomery County*, 7 Op. MSBE 1326 (1998); *Marie Friedman v. Board of Education of Montgomery County*, 7 Op. MSBE 1260 (1998); *Eleanor Duckett v. Board of Education of Montgomery County*, 7 Op. MSBE 620 (1997).

The Appellants explain that the appeal was filed beyond the 30 day deadline because they were waiting to receive a signed note from Lauren’s doctor to include with the notice of appeal. Appellants indicate that because Lauren’s doctor was away on vacation, they did not receive the letter until the appeal deadline had passed.³

Appellants’ argument concerning timeliness is confusing because the letter from Ms.

²Appellants were advised of the 30 day deadline for appealing the local board decision to the State Board. *See* 6/13/01 letter from Margolies to Weast and Pescatore.

³Although not explicitly stated, we believe that the letter referred to by Appellants is the July 5, 2001 letter from Anne L. Denicoff, C.P.N.P., “To Whom it May Concern,” attached to Appellants’ notice of appeal to the State Board. Ms. Denicoff opines that “continual changes [in Lauren’s matriculation] will likely have a negative affect on Lauren’s emotional and academic well being.”

Denicoff is dated July 5, 2001, approximately one week prior to the deadline for filing an appeal with the State Board. In any event, even if Appellants had not received Ms. Denicoff's letter until after the filing deadline, Appellants could have timely noted their appeal to the State Board without the letter, explaining that further documentation would be forthcoming.⁴ Thus, we do not find any extraordinary circumstance that would merit an exception to the mandatory thirty day deadline.

CONCLUSION

For these reasons, we dismiss the appeal as untimely. *See* COMAR 13A.01.01.03B(3) and (J)(2)(d).

Raymond V. Bartlett
President

Marilyn D. Maulsby
Vice President

JoAnn T. Bell

Philip S. Benzil

Reginald L. Dunn

Clarence A. Hawkins

Walter S. Levin, Esquire

Karabelle Pizzigati

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

⁴Given the fact that this case has gone through several levels of review prior to reaching the State Board, Appellants have offered no explanation as to why they could not have acquired an opinion from Lauren's pediatrician at an earlier date. The document was not available when the local board made its decision on the transfer request. It appears that the letter was obtained specifically for the purpose of supporting the appeal to the State Board.

October 31, 2001