

JANELLE M.,  
  
Appellant  
  
v.  
  
CARROLL COUNTY  
BOARD OF EDUCATION,  
  
Appellee

BEFORE THE  
  
MARYLAND  
  
STATE BOARD  
  
OF EDUCATION  
  
Order No. OR14-05

ORDER OF DISMISSAL

The State Board received an appeal challenging the decision of the Carroll County Board of Education (local board) denying Appellant's request to prohibit the use of candy as a reward for academic achievement as part of a Halloween math activity for 8<sup>th</sup> grade students at Shiloh Middle School.

The local board filed a Motion to Dismiss the appeal to the State Board based on untimeliness. COMAR 13A.01.05.02B(1) provides that an appeal to the State Board "shall be taken within 30 calendar days of the decision of the local board" and that the "30 days shall run from the later of the date of the order or the opinion reflecting the decision."<sup>1</sup> An appeal is deemed transmitted within the limitations period if, before the expiration of the time period, it has been delivered to the State Board, deposited in the U.S. mail as registered, certified or Express, or deposited with a delivery service that provides verifiable tracking from the point of origin. COMAR 13A.01.05.02B(3).

The local board issued an order denying Appellant's appeal on January 8, 2014, indicating that a written decision setting forth the local board's findings and conclusions would be issued at a later date. The local board issued its decision reflecting the basis for its denial on January 29, 2014. The Appellant's appeal should, therefore, have been transmitted to the State Board on or before February 28, 2014. Appellant did not transmit the appeal until March 1, 2014.

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 Educ. of Prince George's County*, 3 Op. MSBE 139 (1983) (receipt of local board decision eight days after issuance because of omitted zip code did not excuse compliance with filing deadline). The State Board has consistently applied this rule of law, dismissing appeals that have been filed one day late based on untimeliness. *Twu v. Montgomery County Bd. of Educ.*, MSBE Op. No. 01-11 (2001).

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<sup>1</sup> Alternatively, the local board filed a Motion for Summary Affirmance maintaining that its decision should be upheld because the Appellant failed to prove that it is arbitrary, unreasonable or illegal.

Appellant maintains that her appeal should not be dismissed because she had postal service issues that routinely prevented mail from being delivered to her home, including the local board's decision in her case. The local board concedes that the envelope containing the decision was returned to the local board office on February 7, 2014 as undeliverable. That same day, the local board's administrative assistant contacted the Appellant, who picked up a copy of the decision from the local board office on February 10, 2014.<sup>2</sup>

This matter is an issue of late notice rather than lack of notice, through no fault of the local board. The Appellant was aware of the local board's rationale for its decision 18 days prior to the expiration of the 30 day filing deadline. We believe that this was sufficient time for the Appellant to have filed her appeal with the State Board. At a minimum, Appellant could have filed notice of her intent to appeal, and requested leave to amend the appeal as allowed by COMAR 13A.01.05.04A. We note that it is the State Board's regular practice to allow an appellant to "amend" the appeal by supplementing the initial filing with a more definite statement of the matters at issue in the case. Here, the Appellant chose to do nothing, even though she had notice as early as the middle of January that the local board had not found in her favor.

Therefore, finding no extraordinary circumstance that would merit an exception to the mandatory thirty day filing deadline, it is this 27<sup>th</sup> day of June, 2014 by the Maryland State Board of Education,

ORDERED, that the appeal referenced above be and the same is hereby dismissed.

MARYLAND STATE BOARD OF EDUCATION



Charlene M. Dukes  
President

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<sup>2</sup> We note that the envelope containing the order issued January 8, 2014 was also returned to the local board office as undeliverable. Per Appellant's request, the administrative assistant emailed it to the Appellant on January 15. Thereafter, the administrative assistant contacted the Appellant before mailing the local board's January 29 decision given that the order had previously been returned by the postal service. The Appellant advised that her mail delivery problems had been resolved and requested that the decision be mailed to her home address. (Richards' Affidavit).