

RICHARD J. LEARY,

Appellant

v.

WICOMICO COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-52

OPINION

INTRODUCTION

The Appellant has challenged the decision of the Wicomico County Board of Education (local board) denying the Appellant's grievance alleging employment discrimination and violations of the negotiated agreement between the local board and the Wicomico Education Support Personnel Association. The local board has filed a Motion to Dismiss the case for untimeliness. The Appellant has responded to that motion and the local board has replied.

FACTUAL BACKGROUND

This appeal rose as a result of a grievance filed by the Appellant. The local board argues that the appeal was not timely filed.

STANDARD OF REVIEW

State Board regulations govern this appeal. The State Board exercises its independent judgment in interpreting its regulations. COMAR 13A.01.05.05(E).

LEGAL ANALYSIS

The local board has filed a Motion to Dismiss the case for 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." An appeal is deemed "taken" within the limitations period if it has been "delivered to the State Board or deposited in the United States mail, as registered or certified mail, before the expiration of the time period." COMAR 13A.01.05.02B(3).

The local board issued its Opinion and Order in this case on March 24, 2011. The appeal should have been taken by April 25, 2011. Appellant's appeal arrived at the State Board on April 26, 2011, the date the appeal was delivered to the office of legal counsel for the State Board via FedEx.¹ The FedEx package was dated April 25, 2011. Appellant maintains that the State Board should acknowledge the April 25 send date displayed on the FedEx Airbill as the appeal filing date rather than the April 26 date of delivery.

The State Board's regulations specify that in order to be timely filed the appeal must either be "delivered" to the State Board or "deposited in the United States mail, as registered or certified mail." See COMAR 13.01.05.02B(3). We have read that regulation quite literally to mean that only those appeals sent by certified or registered mail can be deemed "taken" on the date they are postmarked. Further, we have read that regulation to mean that appeals sent by any other method can be deemed "taken" only on the actual date of delivery.

At the time the regulation was promulgated, the different treatment of appeals sent by delivery methods other than certified or registered mail may have been because certified or registered mail provided verifiable proof from the United States Postal Service (USPS) that the item was placed in the mail delivery system, such as through a USPS certificate of mailing. Today, there are so many additional ways to mail appeals through reliable delivery services that provide verifiable tracking from the item's point of entry into the delivery system, including delivery services such as Fed Ex, UPS, DHL, and others. As such, the transmission of an appeal as certified or registered mail or the transmission of an appeal through a reliable delivery service that provides tracking is a distinction without a difference. We, therefore, recognize that our prior interpretation of the regulation cannot stand.

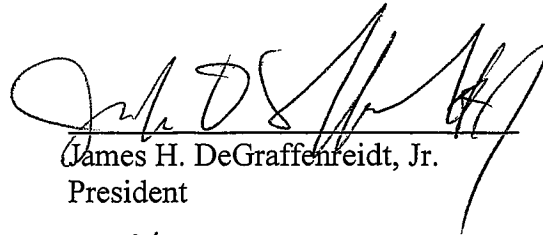
In this case, the Appellant transmitted his appeal to the State Board via Fed Ex by placing the item in the Fed Ex delivery system on April 25, 2011, prior to the expiration of the thirty day time period. There is evidence of the April 25, 2011, transmission by a reliable carrier that provides verifiable tracking from the item's point of origin in the delivery system. In our view, there is no basis to find that this appeal was untimely filed.

We also take this opportunity to announce our intent to revise the regulation to reflect the acceptability of other mailing and delivery options.

CONCLUSION

For the reasons stated above, we deny the local board's Motion to Dismiss the appeal based on untimeliness.

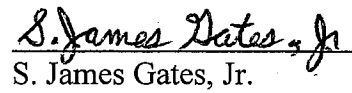
¹ Appeals to the State Board are received at the Maryland State Department of Education (MSDE) headquarters and at the office of the State Board's legal counsel.

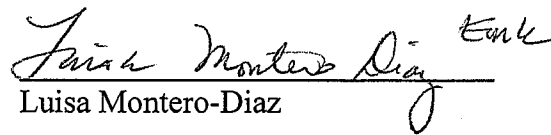

James H. DeGraffenreidt, Jr.
President

Absent

Charlene M. Dukes
Vice President

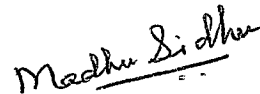

Mary Kay Finan


S. James Gates, Jr.

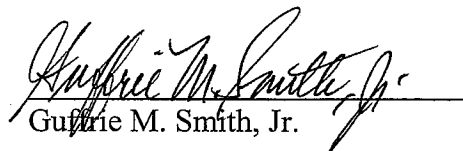

Luisa Montero-Diaz

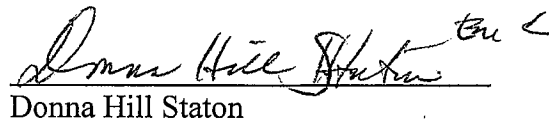
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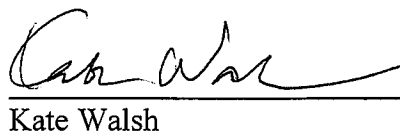


Madhu Sidhu


Guffie M. Smith, Jr.


Donna Hill Staton


Ivan C.A. Walks


Kate Walsh

December 6, 2011