

DARYL HUNSBERGER

Appellant

v.

WASHINGTON COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR13-01

ORDER

Appellant challenges the decision of the Washington County Board of Education reassigning him from his position as an Assistant Principal to a teaching position.

The local board filed a Motion to Dismiss the appeal 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." 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).

Appellant and his attorney were each sent a copy of the local board's Opinion under a cover letter dated December 17, 2012. The letter pointed out that the local board's decision was approved on December 11, 2012. The letter made clear that an appeal of the decision must be taken in writing and received by the Maryland State Board of Education within 30 calendar days of the date of the decision. Using the December 11, 2012 date to compute the 30 day deadline, Appellant's appeal should have been transmitted to the State Board on or before January 10, 2013. Appellant did not transmit his appeal until January 11, 2013.

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). 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).

Appellant maintains that his appeal should be considered timely filed because the local board waited several days to mail him the Opinion and Appellant transmitted his appeal to the State Board within 30 days of his receipt of the decision through the mail.<sup>1</sup>

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<sup>1</sup>Appellant also maintains that the appeal should be deemed timely filed because the local board filed its Motion to Dismiss late. Appellant is incorrect in his assertion as the local board timely filed its Motion. Moreover, the State Board has the authority to dismiss cases for untimeliness on its own accord. COMAR 13A.01.05.03C(2).

The State Board has previously dealt with the issue of delayed mailing in *Mohan G. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 08-48 (2008) and *Foundations Charter School v. Baltimore City Bd. of Sch. Commissioners*, MSBE Order No. OR09-03. In those cases, the State Board found that the 3 and 5 day mailing delays did not warrant extending the time for filing an appeal. We stated that there was sufficient time remaining in the limitations period for the appellants to timely file their appeals with the State Board. *Id.*

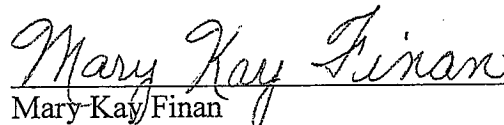
We reiterate that the cover letter provided to the Appellant and his attorney in this case specifically states the date of the local board's decision and advises that the appeal to the State Board must be taken within 30 calendar days of that date. The letter also cites the applicable COMAR provision on appeal deadlines.

Based on the above facts and precedent, we find that the 6 day mailing delay (4 business days) is not an extraordinary circumstance that would merit an exception to the mandatory thirty day deadline.

Therefore, it is this 28<sup>th</sup> day of March, 2013 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

  
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Mary Kay Finan  
Vice-President