

EASTERN MIDDLE SCHOOL
WORKGROUP,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR10-03

ORDER OF DISMISSAL

The State Board received an appeal challenging the decision of the Montgomery County Board of Education (local board) to uphold the change from an eight period class schedule to a seven period class schedule at Eastern Middle School.

The local board has filed a Motion to Dismiss the appeal based on untimeliness.¹ 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 run from the latter of the date of the order or the opinion reflecting the decision.” 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. COMAR 13A.01.05.02B(3).

The local board issued its Opinion and Order in this case on October 13, 2009. The appeal should have been filed with the State Board by November 12, 2009, but it was not filed until November 13, 2009. Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice of the decree. *See Scott v. Bd. of Educ. of Prince George’s County*, 3 Op. MSBE 139 (1983). The State Board has strictly applied this rule of law, and has dismissed appeals that have been filed a mere one day late based on untimeliness. *See Schwalm v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 98-50 (1998); *Friedman v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 98-41 (1998); *Duckett v. Bd. of Educ. of Montgomery County*, MSBE Op. No. 97-14 (1997).

The Appellant argues that the filing deadline should run from the date of the cover letter transmitting the local board’s decision rather than the date of the decision itself. (App’s. Resp. to Mtn.). The cover letter from the board’s Staff Assistant is dated October 14, 2009, one day after the local board rendered its decision. Under the Appellant’s theory, its appeal to the State Board would have been timely filed.

There is no basis for this Board to adopt the Appellant’s theory. The 30 day filing

¹Ironically, the Appellant has requested that the State Board disregard the local board’s motion because it was filed late. Because the State Board has the authority, *sua sponte*, to dismiss a case that is untimely filed, it need not rely upon the local board’s Motion to Dismiss. COMAR 13A.01.05.03C(2). It is unnecessary, therefore, to respond to the Appellant’s request.

deadline takes into consideration the fact that it might take several days for an individual to receive notice of the local board's decision. Here, the local board's Staff Assistant mailed the decision to the Appellant within one day of its issuance. The cover letter clearly informed the Appellant that any appeal to the State Board "must be received by the State Board *within 30 days of the date of the Board's decision* and should either be hand delivered or sent by certified mail." (Emphasis added). We believe that the Appellant had sufficient time to file the appeal in a timely manner.

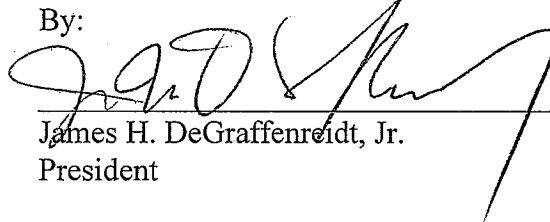
The Appellant cites several cases in support of the position that the start of the 30 day filing period is triggered by the date of the transmittal letter and not the date of the local board's decision. None of the cited cases stand for that proposition. For instance, in *Potomac Charter School v. Prince George's County Bd. of Educ.*, MSBE Op. No. 05-08 (2005), *Foundations Charter School v. Baltimore City Bd. of Sch. Comm'r*, Order 09-03 (2009), and *Imagine Belair v. Baltimore City Bd. of Sch. Comm'r*, MSBE Op. No. 06-16 (2006), the letters from the local boards to the appellants formally conveyed the local boards' decisions and rationales. For this reason, the dates of the letters served as the dates triggering the filing deadline. The letters were not simply transmittal letters with an attached opinion reflecting the decision, as is the October 14 cover letter in this case.

Therefore, finding no extraordinary circumstance that would merit an exception to the mandatory thirty day deadline, it is this 3rd day of March, 2010, by the Maryland State Board of Education,

ORDERED, that the appeal referenced above be and the same is hereby dismissed for untimeliness. See COMAR 13A.01.05.03C(1)(e).

MARYLAND STATE BOARD OF EDUCATION

By:



James H. DeGraffenreidt, Jr.
President