

SCOTT JENKINS,

Appellant

v.

PRINCE GEORGE'S COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 99-39

OPINION

This appeal contests the transfer denial of Scott Jenkins from Stephen Decatur Middle School to James Madison Middle School in Prince George's County. Scott's parents claim that the local board's decision should be reversed because Decatur is unsafe and provides a bad learning environment for their son. The local board has filed a Motion to Dismiss the Appeal based on untimeliness. Alternatively, the local board has requested summary affirmance maintaining that the local board's decision should be upheld because it is not arbitrary, unreasonable or illegal. Although requested to do so, Appellants have not filed a response to the motion.

BACKGROUND

Scott was assigned to attend Stephen Decatur Middle School in Prince George's County when he began seventh grade in the 1998-99 school year. In early 1998, Scott's parents requested that Scott be transferred to James Madison Middle School. In the transfer request, Appellants indicated that Madison's close proximity to Appellants' home would make it easier for Scott's mother, who is disabled, to drive him to and from school, and would allow Scott to attend school with his neighborhood friends.¹ Appellants also claimed in the transfer request that Decatur was racially unbalanced, dangerous and provided a bad learning environment for their son.

By letter dated June 18, 1998, the Office of Student Transfers advised Appellants that their transfer request was denied. The letter stated the following:

We regret that we are unable to grant requests based upon proximity of the home to a particular school. Additionally, no transfer shall be granted to a pupil for reasons related to the racial balance at the school from which transfer is sought.

¹Appellants claim to live 1.3 miles from Madison and 5 miles from Decatur.

Therefore, the reasons given for the transfer request do not meet the requirements for approval which have been established by the Board of Education and your child should attend the assigned school.²

Appellants challenged the decision of the Office of Student Transfers. The Administrative Assistant for Appeals reviewed the information involved in the case and denied Appellants' transfer request.

Appellants appealed the denial to the local board. A hearing before the local board was held on October 19, 1998. By letter dated October 20, 1998, Appellants were advised that the local board affirmed the denial of the transfer request. Within thirty days of the decision, Appellants requested a reconsideration of the local board's opinion. In the request, Appellants emphasized their concern for Scott's safety at Decatur and indicated that it is difficult for Scott's mother to home school him because of her disability.³ The local board denied the request.⁴ This appeal followed.

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). 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.01.01.03B (3).

²In Prince George's County, voluntary student transfers are governed by local board policy number 5110.3 which permits transfers only in specified circumstances, including "cases of extreme hardship where it is clearly evident to the Office of Student Transfers and Records that the pupil shall obtain an additional educational benefit by virtue of the transfer."

³Scott claims to have been threatened with physical harm by other students on the first day of school. Thereafter, Scott's parents removed him from Stephen Decatur and began home schooling him.

⁴Appellants also sent the reconsideration request to the local superintendent who responded that he lacked authority to overturn a decision of the local board. The superintendent encouraged Appellants to enroll Scott in school and to work with the new administrative staff at Stephen Decatur to address their concerns about the academic program and school safety. He also invited them to visit the school regularly and encouraged Scott's mother to become involved with the school as a volunteer or as a member of its parent organization.

The local board decision in this matter was issued on October 20, 1998. However, Appellants filed a request for reconsideration of the local board decision. In denying Appellants' request, the local board advised Appellants to treat its November 20, 1998 letter advising them of the denial as the board's final decision which could be appealed to the State Board. The appeal to the State Board should therefore have been filed with the State Board on or before December 21, 1998. It was not received by the State Board until April 28, 1999.

The appeal letter to the State Board was sent by regular mail. The postmark date is illegible. Attached to the appeal letter is correspondence from Appellants to Dr. Nancy S. Grasmick, State Superintendent of Schools, dated January 25, 1999. The letter requests Dr. Grasmick's assistance with regard to Appellants' transfer request. There is no evidence that Dr. Grasmick received the January 25th letter. However, even if Appellants' letter to Dr. Grasmick were deemed sufficient to note an appeal of the transfer decision to the State Board, that correspondence was not submitted until far more than thirty days had elapsed from the time of the local board's final decision dated November 20, 1998.

The State Board has held that time limitations are generally considered mandatory and will not be overlooked except in extraordinary circumstances such as affirmative proof that the appealed decree was procured by fraud or that the Appellant had no notice of the decree. *Scott v. Board of Education of Prince George's County*, 3 Op. MSBE 139 (1983). This board has strictly and consistently applied the above principle, dismissing appeals based on untimeliness when taken a mere one day late. *See Christine Schwalm v. Board of Education of Montgomery County*, MSBE Opinion No. 98-50 (September 24, 1998); *Marie Friedman v. Board of Education of Montgomery County*, MSBE Opinion No. 98-41 (July 29, 1998); *Eleanor B. Duckett v. Board of Education of Montgomery County*, MSBE Opinion No. 97-14 (March 26, 1997). Here, Appellants did not note their appeal to the State Board until several months had elapsed from the time of the local board's final decision. Appellants have offered no reason for their failure to appeal in a timely manner. We therefore find no extraordinary circumstance that would merit an exception to the mandatory thirty day deadline.

CONCLUSION

For these reasons, we dismiss the appeal on the basis of untimeliness. *See* COMAR 13A.01.01.03J(2)(d).

Walter Sondheim, Jr.
President

Edward Andrews
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Philip S. Benzil

ABSTAIN*

Reginald Dunn

George W. Fisher, Sr.

Marilyn D. Maultsby

Judith McHale

ABSTAIN*

Edward Root

John Wisthoff

* Reginald Dunn and Edward Root, newly appointed members of the State Board of Education, did not participate in the deliberation of this appeal.

August 24, 1999