

RICHARD NETZER,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR17-02

ORDER

Appellant filed an appeal of the decision of the Baltimore County Board of Education (“local board”) upholding the superintendent’s termination of the Appellant from his position as a Building Service Worker. 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).

The local board issued its decision on September 27, 2016. (Motion, Ex. 3). The cover letter, dated September 28, 2016, attached to the local board’s decision and sent to Appellant’s legal counsel, advised of the right to appeal to the State Board of Education. The cover letter identified the date of the local board’s Opinion and Order. The letter correctly stated that the appeal “must be taken in writing and filed with the Maryland State Board of Education. . . . within 30 calendar days of the date of the County Board’s decision.” (Motion, Ex. 4).

The Appellant’s appeal should have been transmitted to the State Board on or before October 27, 2016, but it was not transmitted until November 3, 2016, the date it was delivered to the State Board. (Motion, Ex. 2). As explained above, the transmittal date is either the date of delivery to the State Board, the date of deposit in the U.S. mail as registered, certified or Express mail, or the date of deposit with a delivery service with verifiable tracking from the point of origin. *See* COMAR 13A.01.05.02B(3). Because Appellant used first-class mail to send the appeal, the transmittal date is the date of delivery to the State Board.

Appellant’s counsel disputes that the appeal deadline was October 27, 2016. He argues that he should have been allowed an extra three days for mailing. Even if we were to accept Appellant’s theory, which we do not, the appeal would still be untimely because it was not transmitted to the State Board until November 3.

Counsel also argues that the local board’s notice of appeal rights did not specify who was the intended recipient of the appeal. To the contrary, the notice clearly states that the appeal was to be made to the State Board of Education. Counsel argues further that he was unable to determine where to send the appeal based on the information provided by the local board, even

after “several calls to the State Board of Education’s office.” We find it difficult to accept that calls to the State Board of Education’s office did not result in an address. But, if so, counsel should have been able to easily discover the address of the State Board in a variety of ways, including the Maryland State Department of Education website. Moreover, counsel has previously represented a party in an appeal before the State Board. *See Westbrook v. Baltimore County Bd. of Educ.*, MSBE Op. No. 05-34 (2005). The State Board’s address has not changed.¹

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). We find no extraordinary circumstance that would justify an exception to the mandatory thirty-day deadline.

Therefore, it is this 28th day of February, 2017 by the Maryland State Board of Education,

ORDERED, that the appeal referenced above is hereby dismissed for untimeliness. *See* COMAR 13A.01.05.03C(2).

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Andrew R. Smarick
President

¹ Appeals to the State Board can be sent to the State Board at the Maryland State Department of Education headquarters, 200 W. Baltimore Street, Baltimore, Maryland 21201, or to the office of legal counsel for the State Board, located at the Office of the Attorney General, 200 St. Paul Place, Baltimore, Maryland 21202.