

SUSAN BALLINGER,

Appellant

v.

ST. MARY'S COUNTY
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 18-01

ORDER

This is an appeal of the decision of the St. Mary's County Board of Education ("local board") to terminate the Appellant from her teaching position. The local board filed a Motion to Dismiss the appeal based on untimeliness. Appellant opposed the Motion and the local board submitted a reply.

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 December 4, 2017. (Local Bd. Opinion). The cover letter, also dated December 4, 2017, attached to the local board's decision and sent to the Appellant, advised of the right to appeal to the State Board of Education. The cover letter stated that the "thirty-day appeal deadline for transmitting an appeal to the State Board runs from the date of the Board's enclosed Decision." (Mancini Letter).

The Appellant's appeal should have been transmitted to the State Board on or before January 3, 2018, but it was not transmitted until January 8, 2018, the date it was hand delivered to the State Board. 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).

In this case, however, the Appellant maintains that her appeal was due on January 8, 2018 because she received the local board's decision by mail. She argues that the 30 day appeal deadline, set forth in COMAR 13A.01.05.02B(1), is modified by COMAR 13A.01.05.02B(5). COMAR 13A.01.05.02B(5) states: "Whenever a party has the right or is required to do some act or take some proceeding within a prescribed period after service upon the party of a notice or other paper and service is made by mail, 3 days shall be added to the prescribed period." Using the Appellant's reasoning, her appeal would have been due on January 6, 2018, but because

January 6 fell on a Saturday, the appeal would have been due the next business day on Monday, January 8.¹

The Appellant's application of COMAR 13A.01.05.02B(5) to the time frame for filing an appeal with the State Board is misplaced. *See Netzer v. Baltimore County Bd. of Educ.*, MSBE OR 17-02 (2017). The time frame for filing a State Board appeal is not within a prescribed period after service of notice of the local board's decision on an appellant. Rather, as stated above, the trigger for calculating the date of the filing deadline is the date of the local board's decision. The fact that the local board sent its decision to the Appellant by mail does not result in adding three days to the filing deadline.

We point out that COMAR 13A.01.05.02B(5) is modeled after and identical to Maryland Rule 1-203(c), which governs computation of time in the Maryland courts after service by mail. The Maryland Court of Special Appeals has explained that there are two conditions that must be met for a party to gain three additional days pursuant to Maryland Rule 1-203(c):

First, a party must have received service of process *by mail*. Second, the party served must have a right or obligation to perform an action *after* being served by mail within a specified period of time. Only when *both* conditions are satisfied, is a party exercising such right, or performing an obligation, afforded three days beyond the applicable period to avail such right or perform the obligation.

Bush v. Pub. Serv. Comm'n of Maryland, 212 Md. App. 127, 133 (2013)(emphasis in original). Maryland Rule 1-203(c) "only applies when service triggers the clock." *Kamara v. Edison Bros. Apparel Stores, Inc.*, 136 Md. App. 333, 338 (2001). It does not apply to the filing of an appeal following the entry of a court's order or judgment. *Chance v. Washington Metro. Transit Auth.*, 173 Md. App. 645, 654-655 (2007). Our analysis is consistent with this interpretation.

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

Therefore, it is this 27th day of February 2018 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"The last day of the period of time prescribed by this chapter shall be included, unless it is a Saturday, Sunday, or a State legal holiday, in which event the period ends on the next day which is not a Saturday, Sunday, or legal holiday." COMAR 13A.01.05.02B(4).