

HERBI AND YVONNE M.,

Appellants

v.

MONTGOMERY COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 18-11

### ORDER

This is an appeal of the decision of the Montgomery County Board of Education (“local board”) denying Appellants’ request for early entrance to kindergarten for their son. The local board filed a Motion to Dismiss the appeal based on untimeliness. Appellants 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 July 30, 2018. (Motion, Exh. A). The cover letter, dated July 31, 2018, attached to the local board’s decision and sent to the Appellants, advised of the right to appeal to the State Board of Education. The cover letter stated that, in order to meet the 30-day deadline, the State Board regulations require the appeal to “be transmitted to the State Board on or before the 30<sup>th</sup> day following **the date of the enclosed Decision and Order.**” (Emphasis added). (Motion, Exh. B).

The Appellants’ appeal should have been transmitted to the State Board on or before August 29, 2018, but it was not transmitted until August 30, 2018, the date it was deposited with the United States Postal Service as Priority Mail Express. 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. *See Cathy G. v. Montgomery County Bd. of Educ.*, MSBE Order No. OR17-04(2017) and cases cited therein.

The Appellants maintain that the State Board should overlook the time limitation in this case because “in the month that [they] received the County Board’s decision [they] were expecting [their] third child and delivered [their] daughter on August 11<sup>th</sup>” and that this was “an extraordinary time in [their] lives.” (Appellants’ response to Motion). The circumstances described by the Appellants, however, do not amount to an extraordinary circumstance that

would justify an exception to the mandatory thirty-day deadline. *See Ebony H. v. Montgomery County Bd. of Educ.*, MSBE Order No. OR18-07 (2018)(finding no extraordinary circumstance where appellant needed to provide weekly transportation for medical appointments for children’s father who needed liver transplant); *Hartley v. Montgomery County Bd. of Educ.*, MSBE Order No. OR17-11(2017)(finding no extraordinary circumstance where close friend passed away, work commitment required attention, and great nephew was born); *Yvette J. v. Montgomery County Bd. of Educ.*, MSBE Order No. OR09-05(2009)(finding no extraordinary circumstance where appellant was under tremendous strain and pressure from personal difficulties related to her father’s failing health and matters involving the children.).

Therefore, it is this 4th day of December 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:

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Justin M. Hartings  
President