

S.R.,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION
(II),

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 20-20

ORDER

Appellant challenges the decision of the Montgomery County Board of Education (“local board”) issued on April 21, 2020. In the local board appeal, Appellant maintained that Montgomery County Public Schools’ (“MCPS”) staff failed to incorporate or address comments made by himself and his son, M.R., at an Individualized Education Program (“IEP”) meeting regarding his other son, J.R. Appellant maintained that the failure to address the comments amounted to discrimination against them as Arab-Americans and retaliation for Appellant filing prior complaints against MCPS. In its decision, the local board determined that Appellant’s concerns had been investigated and addressed, and that his claims were not supported by any evidence.

The local board has filed a motion to dismiss based on Appellant’s untimely filing of the State Board appeal. 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). During the COVID-19 emergency, the State Board is also accepting delivery of appeals by email.

The local board issued its decision on April 21, 2020. The cover letter to Appellant accompanying the decision advised him that he had 30 days from the date of the local board decision to appeal to the State Board. The Appellant should have filed his appeal with the State Board on or before May 21, 2020, but he did not file it until May 27, 2020, the date it was received by the State Board via email.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).

Appellant maintains that the deadline should be overlooked because he received the local board’s decision during the COVID-19 emergency and Maryland state courts extended their filing deadlines during this time, as was permitted under the Governor’s executive order. The

¹ Appellant also submitted the appeal via FedEx postmarked May 27, 2020.

court filing deadlines do not apply to the State Board. Unlike the courts, the office of the State Board has not closed for any period of time during the COVID-19 emergency. The office has remained operational throughout the entire time by phone and email, and has been accepting mail regularly. The only alteration to the appeal process made by the Board in response to the COVID-19 emergency was to begin accepting appeals via email rather than requiring in-person delivery, or delivery by mail or other service, and also to correspond to parties to an appeal via email. Thus, the fact that state courts extended their deadlines is not relevant here.

Appellant submitted a Supplemental Reply to Respondent’s Opposition” and additional information in which he maintains that as a practicing physician he “was overwhelmed treating patients and his family during the COVID-19 pandemic.” He also submitted an additional email explaining that he is a gynecologist and reproductive endocrinologist with the largest in vitro lab in Washington, D.C. and that his work days include weekdays and weekends. The State Board appeal procedures do not allow for such submissions after the briefing process and record are closed. The Appellant had his opportunity to raise all of his arguments in his opposition to the local board’s motion to dismiss.

Moreover, none of the information Appellant has provided rises to the level of an extraordinary circumstance that would justify an extension of the filing deadline. *See Reyes-Harding v. Howard County Bd. of Educ.*, MSBE OR20-10 (2020)(premature birth of baby and placement in NICU not extraordinary circumstance); *Herbi and Yvonne M. v. Montgomery County Bd. of Educ.*, MSBE OR18-11 (2018)(birth of baby not extraordinary circumstance); *Ebony H. v. Montgomery County Bd. of Educ.*, MSBE OR18-07 (2018)(transporting parent needing liver transplant to medical appointments not extraordinary circumstance); *Yvette J. v. Montgomery County Bd. of Educ.*, MSBE OR09-05 (2009)(difficulties related to father’s ailing health and matters involving children not extraordinary circumstance); *Hartley v. Montgomery County Bd. of Educ.*, MSBE OR07-11 (2011)(death of close friend, work commitment, and birth of great nephew not extraordinary circumstance).

Therefore, it is this 22th day of September 2020 by the Maryland State Board of Education, ORDERED, that the appeal referenced above is hereby dismissed for untimeliness. *See* COMAR 13A.01.05.03B(2).

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Clarence C. Crawford
President