

J.M. and S.J.

Appellants

v.

BALTIMORE COUNTY  
BOARD OF EDUCATION

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 20-02

## OPINION

### INTRODUCTION

J.M. and his mother, S.J. (“Appellants”) appealed the decision of the Baltimore County Board of Education (“local board”) dismissing their appeal for untimeliness. The local board filed a Response to Appeal maintaining that its decision dismissing the case is not arbitrary, unreasonable, or illegal. Appellant responded and the local board replied.

### FACTUAL BACKGROUND

On April 12, 2019, J.M. was suspended from Eastern Technical High School (“ETHS”) for five school days. He was charged with distribution and/or sale of controlled dangerous substances and possession of controlled dangerous substances. (Appeal, Ex. C).

On April 23, 2019, David Konkle, the Superintendent’s Designee, held a suspension conference with the Appellants. (Appeal, Ex. I). Also present were Susan Ensor, the ETHS Assistant Principal, and James Eichelburg, a Pupil Personnel Worker. *Id.* At the meeting, Mr. Konkle advised the Appellants that he found J.M. guilty of the charges. He further advised that he was effectuating an administrative transfer of J.M. from ETHS. *Id.* He also provided the Appellants with information about the mitigation and appeal processes. *Id.* In addition, Mr. Konkle advised the Appellants that he would revisit whether J.M. could return to ETHS after J.M. successfully completed substance screening, counseling as determined by the substance screening, alcohol and drug education, and an alternative education program. (Appeal, Exs., F at p.1 and H).

After the conference, by letter dated for April 25, 2019, Mr. Konkle advised the Appellants that “[J.M.]’s suspension has ended from Eastern Tech High and, [J.M.] is assigned to Home Teaching – Secondary. [J.M.]’s administrative transfer from Eastern Tech High School will begin on Wednesday, April 24, 2019.” (Appeal, Ex. I). The letter specifically referenced BCPS Policy 5560. The policy advised the Appellants of their appeal rights and the 10-day filing deadline for suspensions, expulsions, and administrative transfers.

On June 10, 2019, J.M.’s mother contacted Mr. Konkle to find out if he had decided when and where J.M. could return to school. At that time, Mr. Konkle had not yet made a decision. (Appeal, Ex. F at p.3). By letter dated June 12, 2019, the principal of ETHS advised

J.M.'s mother that J.M., who had attended ETHS through a student transfer, had failed to meet the condition his enrollment requiring that he have no suspension resulting in disciplinary action, and that he would be withdrawn on June 17, the last day of the spring 2019 semester. (Appeal, Ex. M).

On July 5, 2019, the Appellants filed an appeal of the administrative transfer with the local board. The local board referred the matter to a Hearing Examiner for review. The Hearing Examiner dismissed the appeal as untimely because it was not filed with the local board within 10 days of Mr. Konkle's April 25, 2019 decision, as required by BCPS Policy 5560. (Record Extract 6). In a decision issued on September 24, 2019, the local board adopted the Hearing Examiner's decision and dismissed the appeal because it was not timely filed. (Record Extract 7).

The local board dismissed the appeal for untimeliness.

This appeal followed. This appeal concerns only the issue of timeliness of the Appellants' appeal to the local board.

### STANDARD OF REVIEW

Local board decisions involving a local policy or a controversy and dispute regarding the rules and regulations of the local board are considered *prima facie* correct. The State Board will not substitute its judgment for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.06A.

### LEGAL ANALYSIS

The local board maintains that its decision dismissing the Appellants' appeal for untimeliness is not arbitrary, unreasonable or illegal and should, therefore, be upheld.

BCPS Policy 5560 – *Suspensions, Assignment to Alternative Programs, or Expulsions* provides that an appeal of a decision to suspend a student for more than 10 school days, expel the student, or assign the student to an alternative program must be filed with the local board within 10 calendar days after the decision of the Superintendent's designee. (Resp. to Appeal, Sup't. Ex. 1a). Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice of the decree. *See Jatin W. v. Montgomery County Bd. of Educ.*, MSBE Order No. 17-14 (2017) (citing *Scott v. Board of Educ. of Prince George's County*, 3 Op. MSBE 139 (1983)). Accordingly, the State Board has consistently dismissed appeals that were untimely filed with the local board. *See Nonna A. and Dylan C. v. Howard County Bd. of Educ.*, MSBE Order No. OR 10-09 (2010), and cases cited therein.

Mr. Konkle issued his decision on April 25, 2019. He provided the Appellants with information advising them of their appeal rights and the 10-day filing deadline for suspensions, expulsions, and administrative transfers. The Appellants should have filed their appeal with the local board on or before May 6, 2019, but they did not file it until July 5, 2019.

Appellants maintain that Mr. Konkle's April 25, 2019 letter did not represent a final appealable decision of the Superintendent's Designee because it failed to include the length of

J.M.'s placement in the alternative school. Appellants rely on a student suspension case, *K.B. v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 16-12 (2016), to support their argument. In *K.B.*, the student remained on a suspension for an unspecified period of time pending a decision by the Chief Executive Officer ("CEO"). The CEO never issued a decision. *Id.* at 3. This Board held that without the CEO's decision, there was no finality to the disciplinary decision. *Id.* at 5. *K.B.* is clearly distinguishable from this case. Here, Mr. Konkle's decision stated that J.M.'s suspension had ended, that J.M. was being administratively transferred out of ETHS; and that the administrative transfer was effective April 24, 2019. The decision did not state that these actions were pending a decision by the Superintendent or any other school official. There was finality to Mr. Konkle's decision, even though Appellants did not know if or when J.M. would be returning to ETHS.<sup>1</sup>

We find no extraordinary circumstances that would justify an exception to the 10-day filing deadline.

### CONCLUSION

For the reasons stated above, we do not find the local board's decision to be arbitrary, unreasonable or illegal. Accordingly, we uphold the local board's decision dismissing the Appellants' appeal based on untimeliness.

Signatures on File:

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Jean C. Halle  
Vice-President

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Gail H. Bates

\_\_\_\_\_  
Clarence C. Crawford

\_\_\_\_\_  
Charles R. Dashiell, Jr.

\_\_\_\_\_  
Vermelle D. Greene

\_\_\_\_\_  
Justin M. Hartings

\_\_\_\_\_  
Rose Maria Li

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<sup>1</sup>Because this case is before the Board on the issue of timeliness alone and there is no local board decision on the merits to review, the Board will not opine here on the whether the administrative transfer was permissible under the law.

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Joan Mele-McCarthy

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Michael Phillips

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David Steiner

Absent:  
Warner I. Sumpter  
President

January 28, 2020