

BRUCE HARTLEY AND
KATHLEEN SAMPLE,

Appellant

v.

MONTGOMERY COUNTY
BOARD OF EDUCATION

Appellee.

ORDER OF THE
STATE BOARD
OF EDUCATION

Order No. OR 17-11

ORDER

Appellants filed an appeal of a decision of the Montgomery County Board of Education denying their request for a bona fide resident or tuition waiver for two Brazilian students who, along with their parents, were living with Appellants for four months during a visit to the U.S.

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 denying the appeal on May 9, 2017 and mailed it to Appellants on the following day. The decision included a cover letter that correctly informed Appellants of the 30-day time requirement calculated from “the date of the enclosed Decision and Order.” Appellants acknowledge receiving the decision by fax and regular mail on May 12, 2017. The Appellants’ appeal should have been transmitted to the State Board on or before June 8, 2017. It was placed with Federal Express on June 9, 2017 and arrived at the State Board on June 12, 2017.

Time limitations are generally mandatory and will not be overlooked except in extraordinary cases 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) (listing cases).

Appellants raised two arguments against the Motion to Dismiss. First, they argue that they should have received additional time to respond because the decision did not reach them until May 12. This Board has previously explained that the 30-day filing deadline takes into consideration the fact that it might take several days for an individual to receive notice of the local board’s decision. *Id.* The State Board has consistently found that minor delays in receiving a local board’s decision do not warrant an extension of time for filing an appeal. *Id.* (citing cases). We find the delay of four days between the issuance of the decision and its receipt by Appellants does not constitute extraordinary circumstances that justify a waiver of the deadline.

Second, Appellants argue that life circumstances delayed the filing of the appeal, specifically the death of a close friend in Massachusetts, a work commitment on the following weekend, and the early birth of a great nephew. The State Board has generally declined to find the existence of extraordinary circumstances absent fraud or lack of notice. *See Sandra A. v. Montgomery County Bd. of Educ.*, MSBE Order No. OR16-14 (2016) (concluding that a mother of four with three jobs who attended school part-time had not demonstrated extraordinary circumstances excusing a late filing). In the absence of extraordinary circumstances, we decline to waive the deadline for transmitting the appeal.¹

Therefore, it is this 22nd day of August 2017, by the Maryland State Board of Education, ORDERED, that the appeal referenced above is hereby dismissed.

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

Andrew R. Smarick
President

¹ This case also raises a question of standing, as Appellants are challenging residency and tuition decisions as applied to the Brazilian family, not to them directly. Given that the appeal was untimely, we need not reach the question of standing.