

TYBOIA B.

Appellant

v.

SOMERSET COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Order No. OR 20-03

### ORDER

This is an appeal of the decision of the Somerset County Board of Education (“local board”) affirming the Superintendent’s decision that the Appellant was not subjected to discrimination, retaliation, or a hostile work environment while working as a temporary emergency basketball coach. The local board filed a motion to dismiss 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 on September 17, 2019. On September 18, 2019, the Superintendent sent the local board’s decision to the Appellant with a cover letter from the local board’s attorney by both certified and regular U.S. mail. (Motion, Ex. 2, Gaddis Affidavit). The cover letter, dated September 18, 2019, advised the Appellant of her right to appeal the decision to the State Board “within thirty (30) days.” (Motion, Ex. 1).

The Appellant should have filed her appeal with the State Board on or before October 17, 2019, but she did not file it until October 22, 2019. 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 Appellant argues that the 30-day time frame should be waived for lack of notice, claiming that she did not receive the local board’s decision sent to her on September 18, 2019 by either certified or regular mail.<sup>1</sup> When a party alleges lack of timely notice of the local board’s decision, the State Board’s appeal procedures provide as follows:

- (1) A party who alleges lack of timely notice in a local board or State Board proceeding must file an affidavit with the State Board affirming under oath that the notice at issue

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<sup>1</sup> In response, the local board’s attorney provided the Appellant a copy of his cover letter and the local board’s decision by email and regular U.S. mail sent on October 15, 2019. (Motion, Exs. 5 & 6).

was not timely received, the facts that support that affirmation, and that the party was prejudiced as a result.

- (2) Failure to submit an affidavit shall result in the State Board declining to consider the claim of lack of notice.

COMAR 13A.01.05.04G. The Appellant did not file the required affidavit. For this reason, we decline to consider Appellant's claim of lack of notice.

Therefore, it is this 28th day of January 2020 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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Jean C. Halle  
Vice-President