

STATE BOARD OF EDUCATION

STATE OF GEORGIA

Ronnie D.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1987-8
v.	:	
	:	DECISION OF STATE
COBB COUNTY BOARD	:	HEARING OFFICER
OF EDUCATION, and DEPARTMENT	:	
OF HUMAN RESOURCES.	:	
	:	
Appellees.	:	

PART I

SUMMARY

This is an appeal by the mother (hereinafter “Appellant”) of Ronnie D. from a decision of a Regional Hearing Officer that neither the Department of Human Resources, the State Department of Education, or the Cobb County Board of Education (hereinafter “Local Board”) were required to maintain the Student’s private placement; and that the Local Board could provide the Student with an appropriate education. The Local Board contends the appeal was not timely filed. The Appellant contends the rule requiring the filing of an appeal within thirty days of the decision of the Regional Hearing Officer (hereinafter “Thirty Day Timeline”) is invalid, service by mail was timely, and the delay in filing should be excused.

PART II

FACTUAL BACKGROUND

On January 23, 1987, the Regional Hearing Officer issued her decision in the case below. On February 18, 1987, the attorney for the Appellant mailed a request for an appeal from the decision of the Regional Hearing Officer. The request for appeal was not received in the Office of the State Superintendent of Schools until March 6, 1987.¹

¹ It is possible the reason for the delay in delivery is that the wrong zip code was placed on the envelope in which the appeal was mailed.

The State Board of Education has adopted an appeals policy which includes the Thirty Day Timeline. That appeals policy has been included in the State Plan for Special Education, which was approved by the federal government as a condition to the State of Georgia receiving funds under the Education for All Handicapped Children's Act of 1975 (hereinafter "the Act").

DISCUSSION

Appellant contends on appeal that the Thirty Day Timeline is invalid, the service by mail was timely, and the delay in filing should be excused. First, Appellant argues that neither the Act nor the Federal Regulations promulgated pursuant to the Act (hereinafter "Regulations") provide for the Thirty Day Timeline, and that the State Board of Education does not have the authority to impose the Thirty Day Timeline. Second, Appellant contends that because the appeal letter was mailed prior to the expiration of the Thirty Day Timeline, the appeal was timely filed. Third, Appellant contends that "a delay in filing an appeal or notice may be excused in a proper case under the discretionary power of the appellate administrative tribunal to relax the time provisions of its procedural rules."

The fact that neither the Act nor the Regulations provide for the Thirty Day Timeline does not make the State Board of Education's Thirty-Day Timeline invalid. Neither the Act nor the Regulations require that any right to appeal to a State Hearing Officer exist at all. Under the Regulations the State Board of Education could have provided for a one step hearing process with the only administrative hearing process being before a regional hearing officer. No right to appeal is required. Thus, Appellant has not lost any right guaranteed her by the Act or Regulations. Additionally, the Thirty-Day Timeline applies both to parents and to local boards of education. The Thirty-Day Timeline requires a party to exercise its right to an administrative

appeal within thirty days or accept the decision of the regional hearing officer as the final decision, at least as far as the administrative process is concerned.² The requirement promotes a quick resolution of a student's placement, which is consistent with the purposes of the Act.

Appellant's second argument, that the appeal was timely filed because it is filed when mailed, is unsupported by relevant law. Appellant cites Carlson v. Stuart, 22 S.D. 560, to support her argument that filing is perfected upon mailing. Carlson is not binding precedent as it is not a Georgia case. Additionally, Appellant has not shown any reason why Carlson should be considered as persuasive as to the law in Georgia. Georgia law requires appeals to be timely filed and does not provide that mailing is sufficient to accomplish filing. See Stonecypher v. State, 168 Ga. App. 507 (1983); Moncrief v. Tara Apartments. Ltd., 162 Ga. App. 695 (1982).

Appellant's third contention, that a delay in the filing of the appeal may be excused in a proper case under the discretionary power of the hearing officer, does not warrant an exception to the requirement that an appeal be timely filed. To date, the State Hearing Officer is aware of only one exception which has been allowed with respect to the thirty-day rule. In Misty W. v. Walker County Board of Education, State Board of Education Case No. 1986-16, it was shown that the parent had not been notified, as is required by State and Federal Regulations, that the final decision was binding on all parties unless appealed within thirty days of the decision of the regional hearing officer. Thus, in Misty W., the Thirty-Day Timeline was deemed tolled by the actions of the Local Board. No such showing has been made in the present case. Appellant was represented by counsel at the hearing below, and if counsel was going to rely on the mails to deliver the appeal, counsel should have checked to see that it was timely delivered.

² Whether Appellant has any other remedies, legal or administrative, is not an issue that needs to be addressed in this opinion.

DECISION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion the appeal was not timely filed and no reason exists for allowing the appeal to be pursued out of time. The appeal is, therefore, DISMISSED.

This 6th day of April, 1987.

L. O. BUCKLAND
State Hearing Officer