

TERRI WESTBROOK,

Appellant

v.

BALTIMORE COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-34

### OPINION

This is an appeal of Appellant's termination of employment as a fingerprint technician for Baltimore County Public Schools on the grounds that the Appellant inappropriately disclosed confidential information related to criminal background checks. The local board submitted a Motion for Summary Affirmance asserting that the decision to terminate the Appellant was not arbitrary, unreasonable or illegal. The Appellant submitted a Reply in opposition to the Motion, asserting that progressive discipline, not termination, should have been imposed.

### FACTUAL BACKGROUND

The Appellant, Terri Westbrook, was hired as a fingerprint technician at Baltimore County Public Schools in 1993. In her job, she fingerprinted new applicants and submitted the required paperwork to the Criminal Justice Information System (CJIS) which conducted the criminal background checks. The Appellant was also responsible for keeping the records related to the criminal background checks and, if CJIS reported a criminal record, the Appellant was responsible for notifying the proper parties, the human resources department of the school system or the employee's direct supervisor. One of the essential conditions of her job was to keep confidential the records that CJIS forwarded to her. Confidentiality is a specific requirement of the law establishing the criminal background check. *See* Md. Code Ann., Family Law Article § 5-560 (e) (information obtained "shall be confidential and may be disseminated only to the individual who is the subject of the criminal history records check and to the participants in the hiring or approval process.")

According to the local board, on three occasions the Appellant disclosed confidential information to improper parties. Specifically, the local board states that upon learning that a particular applicant had been hired, the Appellant disclosed the applicant's file to Donald Krempel, the Executive Director of Physical Facilities, even though Mr. Krempel was not the employee's direct supervisor. Next, the local board asserts that during an argument with her boss, Charles Jenkins, the Appellant referred to Mr. Jenkins' son's alleged "criminal background" loudly enough for others to overhear. Finally, the local board states that in a conversation with a co-worker, Barbara Utz, the Appellant said she was going to release confidential information to the media and she disclosed to Ms. Utz confidential details about a fellow co-worker's criminal background.

Because of those three alleged breaches in confidentiality, and after an investigation by Cornell Brown, Manager of Maintenance, the Appellant was placed on administrative leave on March 25, 2002. Mr. Brown thereafter recommended that the Appellant be terminated.

Mr. Brown's recommendation was reviewed by Randall Grimsley, Executive Director of Human Resources. Ms. Grimsley held two separate meetings with the Appellant; she was represented by counsel at each meeting. After those meetings, Mr. Grimsley also recommended that the Appellant's employment be terminated. Mr. Grimsley's recommendation, in turn, was reviewed by Christine Johns, Deputy Superintendent for Curriculum and Instruction. Dr. Johns held a meeting with the Appellant on September 18, 2002. At that meeting, the Appellant asserted to the Deputy Superintendent that she believed her recommended termination was in retaliation for a complaint of sexual harassment that she allegedly lodged against Charles Jenkins, her boss, in December of 2001. Dr. Johns found that that claim was unsupported by fact.<sup>1</sup> By letter dated November 22, 2002, Dr. Johns advised the Appellant that she concurred with Mr. Grimsley's termination recommendation.

On December 4, 2002, the Appellant filed a timely appeal of her termination with the local board. On July 31, 2003, Hearing Examiner, Gordon Peltz conducted a full evidentiary hearing. At the hearing, the Appellant testified about her nine year history as an employee of Baltimore County School System, about one incident of alleged sexual harassment by Charles Jenkins, her supervisor, about the conversation with Ms. Utz, which she denied was about anyone's criminal history. She admitted on cross examination that she disclosed criminal background information to Mr. Krempel, even though Mr. Krempel was not the employee's supervisor. Three witnesses testified on behalf of the Appellant concerning issues not relevant to this appeal. The third witness, Mr. William Downs, one of the Appellants' former supervisors, testified about her good work history. He also testified that he witnessed the alleged sexual harassment incident. The Hearing Examiner summarized his testimony on that issue:

Mr. Downs also indicated that he was present during the incident involving the comments made by Mr. Jenkins in which he offered to polish the badge on Ms. Westbrook's uniform and during which he suggested that she need not remove it. He further indicated that he felt that Mr. Jenkins was just "playing around again", noting that he would make such comments to any one, both male and female employees. He stated that Mr. Jenkins was known for trying to "make a joke". (T. 146-150)

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<sup>1</sup>On January 4, 2004, the Maryland Commission on Human Relations issued a finding of no probable cause to believe that Appellant was unlawfully discharged in retaliation for her complaint of sexual harassment by her supervisor.

Thereafter, Dr. Christine John, Deputy Superintendent testified about her reasons for terminating the Appellant. She explained that progressive discipline was not an option “because the confidentiality that must be maintained as to employee records . . . was necessary for people to have confidence in the school system, that their records would be secure and they would not be threatened by the release of the information.”

In answer to the Hearing Examiner’s questions, Dr. Johns explained that when a criminal history report would come in on a prospective employee, Ms. Westbrook was aware that she was not to tell her supervisor or to tell Mr. Krempel, but to tell only the immediate supervisor of the person who is doing the hiring, that is, the appropriate supervisor. If Ms. Westbrook felt that a supervisor had not understood a report, then it would be appropriate for Ms. Westbrook to advise the supervisor to look more thoroughly at a report. If as a result, a final determination by the supervisor did not change and Ms. Westbrook felt that it was necessary, she should go to that person’s immediate supervisor and not to Mr. Krempel.

Several other witnesses testified on behalf of the Superintendent. Ms. Barbara Utz testified that in a conversation with the Appellant, the Appellant disclosed criminal history information to her about at least two people and talked about going to the newspaper. That conversation bothered her so much she submitted a written statement about it to her supervisor, Cornell Brown, Manager of Maintenance. She said no one directed her to do so - - “it became a moral or ethical issue to her” - - even though she was a friend of the Appellant’s.

Mr. John Jackson, from the Equal Employment Opportunity office also testified. He recalled that he received the Appellant’s sexual harassment complaint in March 2002. He investigated the complaint and found no grounds to support a sexual harassment complaint because “he did not find there were unwanted sexual advances of a sexual nature that interfered with the work environment.” He did admit that, while sexual humor was not tolerated, it did exist at the Appellant’s worksite.

On or about January 30, 2004, Hearing Examiner Peltz issued his Findings of Fact and Conclusions of Law recommending that the Board of Education of Baltimore County affirm the Superintendent’s decision to terminate the Appellant.

By letter dated February 6, 2004, the Appellant requested oral argument before the local board. Oral argument was held on March 23, 2004. No decision was reached because several of the board members had retired upon the expiration of their terms. The newly constituted board requested that a second oral argument be scheduled for April 26, 2005. Based on the record and the argument of counsel, the local board adopted the Findings of Fact, Conclusions of Law and Recommendation of Hearing Examiner Peltz by Order dated May 10, 2005. This timely appeal followed.

## STANDARD OF REVIEW

In *Livers v. Charles County Board of Education*, 6 Op. MSBE 407 (1992), *aff'd* 101 Md. App. 160, *cert. denied*, 335 Md. 594 (1994), this Board held that a noncertificated support employee is entitled to administrative review of a termination pursuant to § 4-205(c)(4) of the Education Article.<sup>2</sup> The standard of review that we apply to such a termination is that the local board's decision is *prima facie* correct and the State Board will not substitute its judgment for that of the local board unless its decision is arbitrary, unreasonable, or illegal. *See* COMAR 13A.01.01.03E(1).

A decision may be arbitrary or unreasonable if it is contrary to sound educational policy; or reasoning mind could not have reasonably reached the conclusion the local board or local superintendent reached. A decision may be illegal if it is unconstitutional; exceeds the statutory authority or jurisdiction of the local board; misconstrues the law; results form an unlawful procedure; is an abuse of discretionary powers; or is affected by any other error of law.

The appellant has the burden of proof to establish by a preponderance of the evidence that the local board's decision is incorrect.

## ANALYSIS

Appellant argues that termination is too harsh a penalty in light of her unblemished employment record and that an oral or written reprimand or a suspension should have been imposed. She asserts that the breaches of confidential criminal record information were not proven and that she never divulged confidential information to the media.

Given that Maryland law mandates that criminal background check information be kept strictly confidential, Family Law Article § 5-560(e), it is our opinion that the local board's decision to terminate the Appellant without progressive discipline, is neither arbitrary, unreasonable, nor illegal. It is supported by the law and by the facts. It rests on sound reasoning. As explained by the Deputy Superintendent at the hearing:

When we hire an employee, they must know that when they come in and they're going to be fingerprinted, that at all times that they're protected and that the information is secure. And one of the principles of this school system that our board expects and this administration expects is that

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<sup>2</sup>In its 2002 session, the Maryland General Assembly amended § 6-510 of the Education Article by providing that due process for discipline and discharge of noncertificated employees is a permissive subject of bargaining. Because that matter has not been negotiated in Baltimore County, the *Livers*' decision is controlling on the due process procedures afforded the Appellant.

people do have the confidence of the school system and that they do, when something is there, that they know it will be safe and secure. And at no point in time should anyone feel that the information is going to be used in a way that is inappropriate or should they be threatened that that information is going to be released to anyone in an intentional way or even an unintentional way because someone is just having a casual conversation. It's just not right. And if one cannot recognize that or maintain confidentiality, then that's problematic for the school system. (T. 178).

There is no dispute that at least once the Appellant disclosed criminal background check information to a person who was not the employee's supervisor. Indeed, the Appellant admitted to disclosing such confidential information to Mr. Krempel during cross examination at the hearing. The record also contains the credible testimony of Barbara Utz, a friend of the Appellant, who was so concerned about the disclosures the Appellant made to her that she felt a moral or ethical obligation to report to her supervisor about the contents of that conversation. Although the Appellant denies that she disclosed the criminal history of others to Ms. Utz, the Hearing Examiner did not find her denial credible. We agree with the Hearing Examiner.

#### CONCLUSION

For the reasons described above and based on our review of the record in this matter, we affirm the decision of the Baltimore County Board of Education.

Edward L. Root  
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JoAnn T. Bell

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September 27, 2005