

KIMBERLY LOVING

Appellant

v.

PRINCE GEORGE'S COUNTY BOARD  
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-48

### OPINION

#### INTRODUCTION

In this appeal, Appellant challenges the decision of the Prince George' County Board of Education affirming her written reprimand for providing confidential litigation materials to a Prince George' County Public Schools (PGCPS) vendor who was not authorized to provide legal advice or services in connection with that litigation. The local board filed a Motion for Summary Affirmance maintaining that its decision to issue a written reprimand was not arbitrary, unreasonable, or illegal. Appellant did not file an opposition to the local board's Motion.

#### FACTUAL BACKGROUND

The Appellant works as an 'Absence Management Specialist' on worker's compensation issues for PGCPS. In the course of her duties she obtains medical records of PGCPS employees who have filed for worker's compensation. On March 13, 2010, the PGCPS Internal Audit office received a phone tip alleging that Appellant was engaged in a conflict of interest by directing work to Ergomedix, a company owned by her friend, Samuel A. Robertson. (Interim Internal Audit Report of 7/8/10 at 6.) The office began an investigation into the conflict of interest based on the call.

During its investigation of the conflict of interest allegations, the office obtained information that Appellant had forwarded confidential medical information to Mr. Robertson at Ergomedix. Neither Mr. Robertson nor Ergomedix was authorized to review the materials Appellant had forwarded. Appellant does not dispute that she shared documents with Mr. Robertson. (Letter of 3/11/11 at 2.)

On September 17, 2010, Appellant received a written reprimand for the unauthorized disclosure. She was exonerated on the conflict of interest allegations. (Letter of 11/16/10.) On October 8, 2010, Appellant filed a grievance regarding the letter of reprimand. In response, PGCPS stated it was unable to accept the October 8 letter as a grievance since it did not cite any provision of the negotiated agreement between the local board and the Association of Supervisory and Administrative School Personnel. However, PGCPS stated that if Appellant so

desired, it would handle the grievance letter as a request for a § 4-205 administrative appeal to the local superintendent. (Letter of 10/19/10.)

On October 27, 2010, Eugene Kane, counsel for Appellant, requested that PGCPs re-evaluate its decision, claiming that the letter of reprimand was unsupported. In the alternative, Mr. Kane sought to refute the statements against Appellant.

On November 16, 2010, James Whattam, PGCPs' Director of Employee and Labor Relations, stated on behalf of PGCPs that the letter of reprimand was appropriate. Mr. Whattam reiterated that Appellant could seek review by the local superintendent pursuant to Md. Code Ann., Educ. § 4-205(c). On November 19, 2010, Appellant filed a written appeal to the local superintendent. On February 9, 2011, the local superintendent upheld the letter of reprimand.

On March 11, 2011, Appellant requested an appeal to the local board. On August 8, 2011, the local board affirmed the superintendent's decision to uphold the letter of reprimand.

This appeal followed in which Appellant seeks the reversal of the August 8, 2011 decision of the local board and the removal of any negative findings from her personnel file.

#### STANDARD OF REVIEW

Because this case involves a local policy or dispute regarding the rules and regulations of a local board, the standard of review is that the decision of the local board shall be considered prima facie correct, and the State Board may not substitute its judgment for that of the local board unless the decision is arbitrary or illegal. COMAR 13A.01.05.05A.

#### LEGAL ANALYSIS

Appellant argues she should not have received a letter of reprimand for unauthorized disclosure of medical records that she had received from PGCPs legal counsel. She claims that sharing litigation documents with a vendor not involved with the litigation is proper as she claims "a right to review documents prepared by [PGCPs] counsel with persons under contract who have knowledge and a business purpose consistent with the County [school system's] interest." She claims to "own or control" the confidentiality of these documents, and therefore her disclosure of medical records to an outside vendor was not a breach of confidentiality.

In response, the local board maintains that the disclosure was improper because Appellant had no authority to share the documents which were confidential. The vendor was not an attorney and not involved in any board-related litigation. The board explains that the proper course of action for Appellant was to consult with board counsel, the board's risk management office, or the board's third party claims administrator to determine beforehand if she could share the documents. The board argues here that the decision of the board was based on sufficient evidence to show its actions were not arbitrary or illegal.

For the local board's decision to be arbitrary or unreasonable, it must be contrary to sound educational policy, or a reasoning mind could not have reasonably reached the decision the local board reached. Although Appellant claims she had the authority to disclose the medical records to Mr. Robertson, she has not demonstrated that to be the case. We do not find it arbitrary or unreasonable for the local board to reprimand the Appellant for sharing confidential medical records with a person who is not authorized to see them. We note that such improper disclosure exposes the school system to liability.

For the local board's decision to be illegal, it must be unconstitutional, *ultra vires*, a misconstruction of the law, result from an unlawful procedure, be an abuse of discretionary powers, or be affected by any other error of law. The Appellant makes no showing of illegality on any of these bases, and we have no obligation to comb the record to make the showing for her.

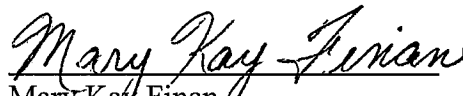
On October 23, 2012, the Appellant filed an amended appeal petition seeking referral of this case to the Office of Administrative Hearings (OAH) pursuant to COMAR 13A.01.05.07A. We have reviewed the amended petition and conclude that it does not meet the regulatory requirements for referral to OAH.

CONCLUSION

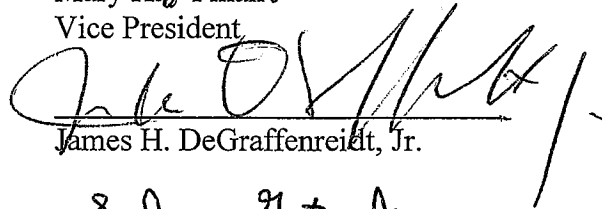
For the reasons stated above, we affirm the decision of the local board.



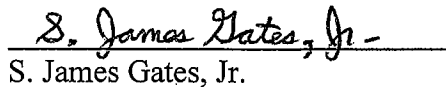
Charlene M. Dukes  
President



Mary Kay Finan  
Vice President



James H. DeGraffenreidt, Jr.



S. James Gates, Jr.

Absent

Luisa Montero-Diaz



Sayed M. Naved

*Madhu Sidhu*

Madhu Sidhu

*Donna Hill Staton*

Donna Hill Staton

Ivan C.A. Walks

*Guffie M. Smith, Jr.*

Guffie M. Smith, Jr.

*Absent*

Kate Walsh

October 31, 2012