

DIANA WILLIAMS,

Appellant

v.

NEW BALTIMORE CITY BOARD OF
SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-23

OPINION

Appellant contests her termination from employment with Baltimore City Public Schools (“BCPS”) for misconduct in office based on her improperly obtaining and using confidential student information and disrupting the operation of the school system by disseminating erroneous information regarding potential health hazards to parents and to the public. Appellant primarily alleges that her termination was BCPS’s attempt to punish or quiet her for legitimate activity and that the basis for her termination as stated by the school system was mere pretext.

A full evidentiary hearing took place before a hearing examiner for BCPS.¹ The hearing examiner recommended that the local board reject the Chief Executive Officer’s (CEO) recommendation terminating Appellant’s employment. Upon review of the entire record, the local board rejected the hearing examiner’s recommendation, and affirmed the CEO’s recommendation to dismiss Appellant for misconduct in office.

Appellant appealed the local board’s decision to the State Board and the matter was transferred to the Office of Administrative Hearings where a hearing was held on February 7, 2001. At the hearing, the parties agreed that no new testimony would be given and that the case would be decided on the submission of documents, including a transcript of the hearing before the hearing examiner. The Administrative Law Judge (ALJ) issued a proposed decision upholding the local board’s decision to terminate Appellant. A copy of the ALJ’s proposed decision is attached as Exhibit 1.

Oral argument by the parties before the State Board occurred on May 22, 2001. With the following points of clarification, we adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge.

Appellant argues that the March 1, 1999 letter regarding her suspension without pay and the May 1999 Statement of Charges, both written by Robert Booker, then Chief Executive Officer for BCPS, do not support the local board’s claim that the termination decision was based

¹In this memorandum, citations to the transcript are to the transcript of the hearing before the hearing examiner.

on her unauthorized access to and use of confidential student information. First, we do not believe that Appellant raised this issue below. She has therefore waived her right to raise it now. *See, e.g., Carol Pence v. Harford County Board of Education*, MSBE Op. 00-24 (May 24, 2000) at 5 n. 8 (failure to raise issue before local board precludes review by State Board). However, if we were to address this issue on its merits, we would find as follows. Although the documents do not explicitly set this forth as the basis for dismissal, both documents reference the fact that Appellant used student information to send parents a letter with erroneous information about lead in the school's drinking water. Moreover, the statement of charges indicates that Appellant's dismissal was based on misconduct in office, a charge broad enough to encompass the improper acquisition and use of student information. Thus, we believe that Appellant was sufficiently notified of the reasons for her termination and the record evidence supports the termination decision. Appellant's own testimony reveals that she lacked authorization to access and use the information in order to send the parents the letter. Tr. 255-259, 265.

Appellant also claims that the information she obtained is not confidential student information, thus her access to and use of the information is not barred. To the contrary, the confidentiality of student home addresses is protected under the Family Educational Rights and Privacy Act (FERPA)² and the Maryland public records law (St. Gov't § 10-616). Pursuant to these laws, such information may be disclosed under certain limited circumstances, none of which is present in this case.³ Even if disclosure of the information were permissible, by Appellant's own testimony, she did not seek the information or access it in the proper manner. Tr. 255-259, 265.⁴ Moreover, Appellant did not have authorization to use the information as she saw fit.

²20 U.S.C. §1232g. FERPA's implementing regulations are found at 34 C.F.R. §99.1 *et seq.* The Maryland student records regulations, COMAR 13A.08.02, essentially mirror FERPA and its regulations.

³A local school system may designate student addresses as directory information under COMAR 13A.08.02.03B(2)(c). Once designated as directory information, there are fewer restraints on the disclosure of the information provided that the school system meets certain requirements, and provided that a student's parent has not objected to the designation of the information with regard to his/her child. COMAR 13A.08.02.25. The COMAR provisions regarding student directory information must be read in conjunction with the Maryland public records law which places further limits on the disclosure of certain directory information. *See* section 10-616(k) of the State Government Article. Appellant has made no assertion that she was using directory information.

⁴We note that Appellant is not the official custodian of school records for BCPS or Southeast Middle School.

CONCLUSION

For these reasons, as well as those stated by the Administrative Law Judge, we affirm the decision of the New Baltimore City Board of School Commissioners.

Philip S. Benzil
President

Marilyn D. Maulsby
Vice President

Raymond V. Bartlett

JoAnn T. Bell

Reginald L. Dunn

George W. Fisher, Sr.

Walter S. Levin, Esquire

Judith A. McHale

Edward L. Root

Walter Sondheim, Jr.

John L. Wisthoff

June 20, 2001

EXHIBIT 1

DIANA WILLIAMS	*	BEFORE D. HARRISON PRATT
APPELLANT	*	ADMINISTRATIVE LAW JUDGE
v.	*	OF THE MARYLAND OFFICE OF
NEW BOARD OF SCHOOL	*	ADMINISTRATIVE HEARINGS
COMMISSIONERS FOR BALTIMORE	*	
CITY	*	OAH NO: MSDE-BE-01-20000003
* * * * *	*	* * * * *

DECISION

STATEMENT OF THE CASE
ISSUE
SUMMARY OF THE EVIDENCE
FINDINGS OF FACT
DISCUSSION
CONCLUSIONS OF LAW
ORDER

STATEMENT OF THE CASE

The Appellant was a teacher employed by the Baltimore City Public School System (“BCPSS”). In March 1999, the BCPSS terminated the Appellant because, according to the BCPSS, she had obtained and used confidential student information and she had disrupted the operation of the school system by disseminating erroneous information to the parents and the public. The Appellant filed an appeal of her dismissal and on August 26, 1999 a hearing was held by a hearing examiner of the BCPSS. The hearing examiner recommended that the termination not be imposed. The BCPSS rejected the hearing examiner’s recommendation and instituted the termination. The Appellant then filed an appeal to the Office of Administrative Hearings (“OAH”).

On December 8, 2000, the BCPSS filed a Motion for Summary Decision pursuant to Code of Maryland Regulations (“COMAR”) 13A.01.01.03K. On January 8, 2001, a hearing on the Motion for Summary Decision was held at the Office of Administrative Hearings, 11101 Gilroy Road, Hunt Valley, Maryland. The Motion for Summary Decision was denied and the case was scheduled for a hearing on the merits. The hearing on the merits was held on February 7, 2001 before D. Harrison Pratt, Administrative Law Judge (“ALJ”) pursuant to Md. Code Ann., Education Article, Sections 2-205 and 2-602 and COMAR 13.01.01.03. The record was kept open until February 15, 2001 at the request of the Appellant so that she might file additional exhibits.⁵ The Appellant was present at the hearing and represented herself. The BCPSS was represented by attorney Brian Williams.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, and the Rules of Procedure of the Office of Administrative Hearings. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (1999 & Supp. 2000); and COMAR 13A.01.01.03 and 28.02.01.

ISSUE

The issues are:

1. Whether the BCPSS properly terminated the Appellant.
2. Whether the Appellant’s termination was in retaliation for the Appellant’s actions in disclosing environmental hazards.

⁵ Several documents were submitted as exhibits by the Appellant after February 15, 2001. As the BCPSS did not object to the submission or admission of these documents, they have been admitted into evidence. The Appellant also submitted a written closing statement after February 15, 2001. The written closing statement was taken into consideration in this decision.

SUMMARY OF THE EVIDENCE

Exhibits:

The Appellant submitted the following items which were admitted into evidence:

1. Letter from Chief Executive Officer to the Appellant, dated March 1, 1999
2. Memorandum from Principal Jane Fields to Dr. Abernathy, dated February 25, 1999
3. Notification of Appellant's work status, dated March 17, 1997
4. Appellant's application for employment with the BCPSS, dated January 27, 1981
5. Letter from Jane Fields to Appellant, dated September 4, 1997
6. Statement of Charges against the Appellant signed by Robert Booker, undated
7. Invoice for ambulance service, dated November 29, 1996
8. Letter of Agreement between the Kennedy Kreiger Institute and the City of Baltimore, dated November 19, 1996
9. Letter from the Coalition to End Childhood Lead Poisoning, Inc., dated November 16, 1996
10. Treating Physician's Statement, dated January 22, 1997
11. Physician's statement of care, dated September 30, 1996
12. Psychiatric evaluation of the Appellant, dated October 16, 1997
13. Letter from Appellant to Oprah Winfrey, dated September 17, 1997
14. Letter from attorney Keith Zimmerman to the Appellant, dated March 16, 1999
15. Recommended decision of James Wiggins, the BCPSS hearing examiner
16. Appellant's exhibits admitted during the BCPSS hearing

17. Transcript of the hearing before the BCPSS hearing examiner
18. Index to the exhibits admitted at the hearing before the BCPSS hearing examiner
19. Exhibits admitted by the BCPSS at the BCPSS hearing
20. Letter from Appellant to Judith Donaldson, dated October 21, 1999, requesting transcript of hearing
21. Exceptions of the BCPSS to the findings of fact, conclusions of law and recommendation of the BCPSS hearing examiner
22. Appellant's exceptions to the BCPDD exceptions
23. Copies of various sections of the Maryland Code Annotated
24. Fax memorandum from Office of Legal Counsel for the BCPSS to the Appellant, dated March 24, 2000, with appeal procedures attached
25. Appeal procedures for the BCPSS, dated October 14, 1997
26. Copies of excerpts from the United States Constitution
27. Letter from the BCPSS to the Appellant, dated December 8, 1999, concerning Appellant's dismissal
28. Memorandum from the Appellant to the BCPSS, dated February 4, 2000, requesting copy of final order of dismissal
29. Letter from Appellant to the BCPSS, dated July 11, 2000, requesting final order of dismissal
30. Final order of dismissal from the BCPSS, undated, with copy of envelope attached and postmarked August 16, 2000
31. Transcript of the hearing before the Federal Administrative Law Judge, held on August 17, 2000
32. Letter from the Appellant to the BCPSS, dated August 21, 2000, requesting documents
33. Letter from the Appellant to the State Board of Education, dated September 11,

- 2000, appealing the decision to the BCPSS
34. Memorandum from State Board of Education to the BCPSS, dated September 20, 2000, concerning appeal of the BCPSS decision
 35. Memorandum from the Appellant to Carmen Russo, dated September 29, 2000
 36. Response of the BCPSS to appeal, dated October 13, 2000
 37. Letter from the State Board of Education to the OAH, dated October 20, 2000, transferring the case for a hearing on the appeal
 38. Notice of Hearing from the OAH, dated October 27, 2000
 39. Memorandum from Appellant to Attorney Brian Williams, dated October 30, 2000, requesting documents
 40. Memorandum from the Appellant to Attorney Brian Williams, dated November 2, 2000
 41. Memorandum from the Appellant to Federal Office of Administrative Law Judges, dated November 2, 2000, requesting transcript
 42. Letter from the Federal Office of Administrative Law Judges to the Appellant, dated November 3, 2000
 43. Exhibits submitted to the Maryland Occupational Safety and Health (“MOSH”) office by the Appellant
 44. Memorandum of Complaint of Discrimination from the Appellant to MOSH, dated March 15, 1999
 45. Memorandum from the Appellant to the ACLU, dated March 17, 1999, with response of March 18, 1999 attached
 46. Correspondence from the Appellant to the Environmental Protection Agency
 47. Documents related to Appellant’s workers compensation claim
 48. Documents pertaining to investigation undertaken by the Maryland Department of the Environment

49. Additional documents pertaining to Appellant's complaint of discrimination
50. Documents pertaining to Appellant's claim for unemployment benefits
51. Copy of Code of Maryland Regulations, Title 9⁶
52. Memo from the Department of Labor, Licensing and Regulation ("DLLR") titled "How to File a Discrimination Complaint."
53. Letter to Appellant from U. S. Department of Labor, dated December 23, 1999
54. Letter from DLLR to Appellant, dated December 21, 1999
55. Copy of federal Safe Drinking Water Act, Employee Protection Provision
56. Copy of federal Clean Air Act, Employee Protection Provision
57. Copy of federal Toxic Substances Control Act, Employee Protection Provision
58. Copy of federal Solid Waste Disposal Act, Employee Protection Provision
59. Copy of Title 29 CFR Part 24, Subtitle A (7-1-95 Edition)
60. Letter from Principal Jane Fields to Staff Members, dated August 1997⁷
61. Various documents as follows:
 - a. Memo to Appellant from Elaine White, Principal, dated March 19, 1997
 - b. Confidential memorandum from Elaine White to Sandra Wighton, dated April 10, 1997
 - c. Letter from Elaine White to Appellant, dated April 17, 1997
 - d. Copy of certified mail receipt #2367997251
 - e. Memo from Elaine White to Sandra Wighton, dated September 2, 1997
 - f. Memo from Patricia Payne to Elaine White, dated October 6, 1997
 - g. Memo from Elaine White to Sandra Wighton, dated October 6, 1997
 - h. Memo from Sandra Wighton to Rubin McClain, dated September 3, 1997
 - i. Memo from Southeast Middle School to Sandra Wighton, dated August 28, 1997

⁶ Appellant's exhibits 51 through 59 were submitted by the Appellant by mail after the hearing. The BCPSS has not objected and the exhibits are admitted.

⁷ Appellant's exhibits 60 and 61 were offered as exhibits A1 Prime and A1 Two Prime during the hearing. The exhibit numbers here are changed for continuity.

- j. Letter to Staff from Jane Fields, dated August 1997
- k. Letter to Mrs. Fields from Appellant, dated September 7, 1997
- l. Note from Dr. Allan Peck, dated September 3, 1997
- m. Memo from Jane Fields to Sandra Wighton, dated September 9, 1997
- n. Memo from Appellant to Sandra Wighton, dated September 10, 1997
- o. Appellant's attendance record for 1996-97 with telephone message attached
- p. Memo from Jane Fields to Betty Chase, dated October 10, 1997
- q. Department of Personnel action notice, dated October 10, 1997
- r. Memo from John Lennon to Appellant, dated October 22, 1997
- s. Memo from Appellant to Sandra Wighton, dated October 24, 1997
- t. Memo from Sandra Wighton to O. Albrie Love, dated November 10, 1997
- u. Memo from Sandra Wighton to O. Albrie Love, dated November 10, 1997 with hand written note attached
- v. Memo from Sandra Wighton to Jane Fields, dated April 20, 1998
- w. Letter from Appellant to Manager of Facilities, dated April 5, 1998
- x. Appellant's hand printed letter to parents, undated
- y. Memo from Jane Fields to Sandra Wighton, dated April 22, 1998
- z. Memo from Wilbur Giles to Cascelia Spears, dated May 11, 1998
- aa. Appellant's hand printed letter to parents, undated
- bb. Memo from Appellant to Jane Fields, dated August 26, 1998
- cc. Memo from Jane Fields to Repair Shop, dated February 16, 1999
- dd. Letter from Appellant to parents, dated February 24, 1999
- ee. Fax cover sheet from Jane Fields to Dr. Abernathy, dated February 25, 1999
- ff. Health Inspectors notes from inspection of Southeast Middle School on February 11, 1999
- gg. Memo from Jane Fields to Dr. Abernathy, dated February 25, 1999
- hh. Letter to parents from Jane Fields, dated February 26, 1999
- ii. Letter from Robert Booker to Appellant, dated March 1, 1999
- jj. Memo from Jane Fields to Appellant, dated March 1, 1999
- kk. Memo from Jane Fields to Dr. Abernathy, dated March 11, 1999
- ll. Memo from Jane Fields to Dr. Abernathy, dated March 11, 1999
- mm. Memo from Jane Fields to Dr. Abernathy, dated March 11, 1999
- nn. Memo from Jane Fields to Dr. Abernathy, dated March 11, 1999
- oo. Memo from Jane Fields to Dr. Abernathy, dated March 11, 1999
- pp. Computer printout concerning Appellant's employment status
- qq. Appellant's attendance record for 1988
- rr. Appellant's attendance record for 1996-97
- ss. Memo from Patricia Abernathy to Michael Mayer, dated April 22, 1999
- tt. Memo from Michael Mayer to Alan Harris, dated April 26, 1999
- uu. Memo from Patricia Abernathy to Michael Mayer, dated April 26, 1999
- vv. Letter from New Board of School Commissioners to Rubin McClain, dated April 26, 1999

- ww Letter from Monzella Saunders-Owings, Esq., to Keith Zimmerman, Esq., dated May 4, 1999
 - xx. Memo from Robert Booker to New Board of School Commissioners, dated May 7, 1999
 - yy. Statement of Charges against Appellant
 - zz. Letter from New Board of School Commissioners to Appellant, dated May 10, 1999 with attached Statement of Charges
 - aaa. Memo from Robert Booker to the New Board of School Commissioners, dated May 7, 1999
-
- 54. Video of inside of school
 - 55. Video of inside of school
 - 56. Cassette tape

FINDINGS OF FACT

After considering the evidence presented I find the following facts by a preponderance of the evidence:

1. The Appellant is a former teacher with the BCPSS. She has an undergraduate degree in mathematics from the College of Notre Dame and a Masters in Administrative Science from Johns Hopkins University.
2. The Appellant taught math at Fairmount-Harford Middle School (“Fairmount”) beginning in 1981. She was teaching at Fairmount during the 1996-1997 school year.
3. A study conducted in 1992 and 1993 confirmed that Fairmount contained lead paint and asbestos.
4. At the beginning of the 1996-1997 school year, teachers and staff at Fairmount were informed that the school would be undergoing renovation. At the same time as the renovation was being completed, Fairmount was undergoing an asbestos abatement project. The Appellant expressed concern to the principal about the safety of the building during renovation. Of particular concern to the Appellant were asbestos and lead paint hazards. The principal and the contractor assured the Appellant and other employees that the building would be safe during the renovation.
5. The principal also contacted the BCPSS safety officer, who confirmed that the building in fact contained lead paint and asbestos. Nevertheless, the safety officer determined that the building would be safe during renovation.
6. During the asbestos abatement project at Fairmount, a sign was posted noting that the project was in progress.

7. The Appellant filed a complaint with the federal Occupational Safety and Health Administration (“OSHA”) and the Maryland Occupational Safety and Health Administration (“MOSH”) concerning her fears over lead paint and asbestos hazards at the school.
8. In October 1996, the BCPSS hired an independent environmental contractor to collect and analyze dust samples and to determine lead levels at the school. Various samples were collected and analyzed. Some of the samples contained lead levels in excess of what is permitted by HUD for post-abatement occupancy. Elevated lead levels were found in samples taken from above lockers on the first and second floor and on a third floor windowsill.
9. As a result of the testing completed by the environmental contractor, the BCPSS hired a certified lead abatement contractor to clean the entire building.
10. In September 1996, OSHA inspected the Fairmount School. The inspector noted that all of the paint at the school contained lead and that there was a potential for lead exposure. BCPSS agreed that repainting would be completed in accordance with lead paint standards. The inspector also noted that air-monitoring samples for asbestos were negative and that the BCPSS has already hired a lead paint abatement contractor. No violations were noted during the inspection and no citations were issued.
11. As part of the asbestos abatement project, whenever an asbestos hazard was identified, occupants of Fairmount were removed from the area and allowed to return after the area was cleared by an industrial hygienist. The asbestos abatement project included wet scraping of painted surfaces in several classrooms to reduce paint flaking and encapsulating the ceiling with suspended ceiling tiles, which was done in November 1996.
12. The Appellant contacted MOSH a second time in October 1996 to request that it conduct its own investigation of Fairmount. On November 1, 1996, MOSH responded to the Appellant that it had conducted its own investigation and found no violations of MOSH standards.
13. In early November 1996, a staff meeting was held at Fairmount. During the staff meeting, MOSH inspectors reviewed the results of testing by the City Safety Department. Inspectors also addressed teachers concerns about the high levels of dust. The Appellant was not present at this staff meeting but she did obtain a copy of the report handed out by the inspectors. She voiced her concerns over hazards caused by lead dust to the principal.
14. On November 8, 1996, after the staff meeting and after receiving the inspection report, the Appellant went to her physician to have her blood tested for lead. The blood test was normal, showing that she had five micrograms of lead per centiliter. The Appellant informed the principal at Fairmount that she had lead in her blood and further that the students needed to be tested.
15. A few days later, the Appellant contacted a local television station to report that Fairmount School had a lead paint hazard. The Appellant gave the television

- reporter a copy of the report distributed at the staff meeting. The reporter also interviewed the Appellant and the interview was aired on local television along with interviews of several parents.
16. During this time, the BCPSS contracted with the Johns Hopkins Bayview Medical Center and the Kennedy Kreiger Institute to screen all of the occupants of the Fairmount School. All occupants of the building were afforded an opportunity to have blood tests and the testing was conducted between November 14 and November 21, 1996. The physicians who conducted these tests found no link between lead levels found in the children and exposure in the school building. Some who were tested showed signs of previous exposure. The results were shared with those who were tested.
 17. The decision to offer testing to occupants of the building was announced to the public by the BCPSS. The BCPSS also announced to the public the decision to have an independent environmental contractor clean up during the renovation project. There was also a follow-up report to the public that blood testing showed no widespread exposure to lead.
 18. The Appellant declined to participate in the blood-testing program offered by the BCPSS.
 19. The Appellant filed a workers compensation claim in 1996, claiming exposure to lead and asbestos while working for BCPSS.
 20. The Appellant took sick leave from Fairmount in early November 1996 for health reasons and returned in March 1997. During this period, the Appellant made contact with several civic and government organization to report her concern for lead and asbestos hazards at Fairmount. In her correspondence, the Appellant disagreed with the results of the investigation conducted by Johns Hopkins and, among other actions, requested the Mayor to evacuate the Fairmount building. The Mayor responded by outlining all that had been done by the BCPSS to date and that the inspections had failed to show any lead or asbestos hazards.
 21. When the Appellant returned to work at Fairmount on March 17, 1997, she completed an incident report indicating that she had had a blood test on November 8, 1996. The Appellant indicated that the blood test showed that she had lead in her system, including, according to the Appellant, lead in her bones and other parts of her body.
 22. After returning to school in March 1997, the Appellant made a video tape of a student who claimed to have lead in her system. She also video taped inside the school building to show, according to the Appellant, that the dust was worse and that barriers were not properly containing construction areas. The Appellant met with several parents of students to show them the tapes and to inform them that there was lead paint and dust in the school.
 23. In April 1997, the Appellant was present at a city Council meeting and handed out copies of the videotapes. She also explained to those present that there were high levels of lead in the school building. She also informed those at the meeting that

- MOSD had determined that there was lead in the building.
24. At this time the Appellant gave an interview to a local television station and claimed that areas at the school were not properly enclosed and that she would not return to the school until everyone had been tested. She also provided copies of her videotapes, portions of which were aired.
 25. The Appellant's complaints as to lead and asbestos in the school continued.
 26. In August 1997, the Appellant was assigned to work at Southeast Middle School ("Southeast"). She was transferred to Southeast because of her concerns as to lead and asbestos at Fairmount.
 27. In the fall of 1997, the Appellant drafted a letter concerning the lead and asbestos problems at Fairmount. She went to the school to distribute the letter to staff but was instructed by the principal not to do so. The Appellant placed a copy of the letter on staff vehicles in the parking lot. She also distributed the letter in the neighborhood around the school. She also sent the letter to the Baltimore Times which printed the letter. She also sent the letter to Oprah Winfrey.
 28. In February 1999, the Appellant obtained the names and addresses of approximately 500 students of the Southeast Middle School. The list of names and addresses was obtained from an employee of the school. During testimony, the Appellant could not recall the names of the employee. The Appellant used the names and addresses to mail a letter to parents concerning the existence of lead in the water at the school. The Appellant included her business card in the letter sent to parents. As a teacher in the BCPSS, the Appellant was a "custodian" of the information she had obtained.
 29. The Appellant did not have permission of the BCPSS to obtain the names and addresses of the students or to use the names and addresses to correspond with parents or students. The Appellant was not authorized to speak on behalf of the BCPSS about lead or asbestos hazards.
 30. The Appellant also again spoke to news media concerning the existence of lead in water at the Southeast school. The Appellant did not have permission of the BCPSS to speak to the media concerning lead in the water at the school. The Appellant did not inform the BCPSS that she was going to speak to the media concerning the existence of lead in the water at the school.
 31. On or about March 1, 1999, the Appellant was suspended without pay by the BCPSS. The reason for the suspension was the obtaining and using of the students' names and addresses without permission.
 32. In May 1999, the Appellant was terminated from her position as a teacher in the BCPSS. On August 26 & 27, 1999, a hearing was held by a Hearing Examiner of the BCPSS. After the hearing, the Hearing Examiner recommended against the Appellant's termination. Both the Appellant and the BCPSS filed exceptions to the Hearing Examiner's recommendation.
 33. The BCPSS Board of Education (New Board of School Commissioners for Baltimore City) rejected the recommendation of the Hearing Examiner and

- terminated the Appellant.
34. As a result of the letters received by the parents from the Appellant and the media coverage, several parents contacted the principal. Some of the parents were upset that their names and addresses had been obtained by a teacher and used for such purposes. Some parents were also upset as to the allegations made by the Appellant in her letter. Several teachers complained that the letter had been sent to parents without their knowledge.
 35. Information as to student names and addresses is privileged and confidential information. Teachers must have permission to have access to and to use such information.

DISCUSSION

Did the BCPSS Properly Terminate the Appellant?

In this case, the BCPSS has terminated the Appellant pursuant to Md. Code Ann., Education Article, Section 6-202(a) for misconduct in office. The BCPSS further alleges that the Appellant's misconduct bears upon her fitness to teach in the BCPSS system. The BCPSS claims that the Appellant improperly and illegally obtained the names and address of approximately 500 students and used this information to contact parents about what the Appellant perceived as environmental hazards in schools buildings. The BCPSS also claims that the Appellant made contact with and distributed information to parents and staff without the knowledge and permission of the BCPSS.

Md. Code Ann., State Gov't, Section 10-616(k) provides in pertinent part that:
[A] custodian shall deny inspection of a school district record about the home address, home phone number, biography, family, physiology, religion, academic achievement, or physical or mental ability of a student.

Additionally, COMAR 13A.08.02.04(B) requires that student records must be kept confidential.

The Appellant has not contested and in fact has acknowledged that she obtained the names and address of approximately 500 students and that she used this information to mail correspondence to the parents of these students. Having obtained this information, the Appellant became its custodian. The Appellant has not contested the allegation that obtaining and using the student information violated Maryland law and COMAR regulations concerning the confidentiality of such information.

I find that the BCPSS has met its burden of showing that the Appellant is unfit to teach in the BCPSS system. The BCPSS has met this burden by showing that the Appellant violated the law pertaining

to the confidentiality of student records, that she used this confidential information to contact parents to distribute untrue information about environmental conditions in school buildings and that her actions disrupted the functioning of the BCPSS system.

I have conducted an exhaustive review of the voluminous documents submitted by the Appellant in this case, including the transcripts of two previous hearings. It is patently clear to me that the actions of the Appellant indeed caused substantial disruption in the BCPSS' efforts to deal with the problem of lead and asbestos in school buildings. The Appellant acknowledges, or does not dispute, that not only did she make her concerns known to the school administration but she went on local television on several occasions to criticize the BCPSS and to accuse it of failing to attend to the needs of the students and staff. The record of the Appellant's attempts to publicize what she perceived as a cover-up are well documented. And lest we forget, most of the actions of the Appellant were perfectly legal. This is not to say that she was correct in her assertions, but only that she had the right, as long as she acted legally, to express her opinions.

Once, however, the Appellant took the illegal action of obtaining student information and then using that information to contact parents in furtherance of her campaign to discredit the BCPSS she overstepped the bounds of prudence. Clearly information as to students' addresses and parents' names is confidential and privileged information. Until this illegal act, the BCPSS had been extremely patient with the Appellant and her efforts to publicize her point of view.

It is also clear that the use of the student information to contact parents caused considerable disruption for the school administration. After the Appellant mailed letters to the parents, several contacted the administration concerned not only with the allegations being made by the Appellant but also with the

fact that she had been able to obtain their names and addresses and use this information for her own purposes.

The Appellant would have been somewhat more justified in her illegal action if the BCPSS in fact had been trying to cover-up the environmental problems at the schools. I find that this was not the case. I find nothing that even hints, as the Appellant would have me believe, that the school system was in any way trying to cover up or diminish the significance of these problems. The record is replete with evidence of the BCPSS's efforts to investigate, correct and inform the public about the problems. As early as 1993 the BCPSS had conducted testing for environmental hazards. It took measures to address the problems by reporting to the staff and parents, hiring independent contractors to clean up the problems, hiring Johns Hopkins Hospital personnel to conduct further investigation and offering blood tests to those who wanted them. The BCPSS also took steps to keep the parents and public advised of the status of the problems and efforts to resolve them. Both MOSH and OSHA were satisfied that the BCPSS was proceeding appropriately. The Appellant simply, and unreasonably disagreed with the findings and determinations of the numerous experts retained by the BCPSS. It is not her disagreement that is significant however, but the illegal actions she took based on those disagreements.

The Appellant did violate the law as to confidentiality of student records. This, along with the use of the confidential information and the other actions of the Appellant disrupted the functioning of the BCPSS. These actions do bear on the Appellants fitness as a teacher in that they bear on her trust-worthiness. Her termination was justified. Md. Code Am., Education Article, Section 6-202.

Was the Appellant’s Termination in Retaliation for Disclosing Information Concerning Environmental Hazards?

In her argument at the close of the hearing in the instant case, as well as in argument in previous hearings, the Appellant claims that her termination was improper because it was made in retaliation for her disclosure of dangerous environmental conditions. Without being specific she claims that her termination was in violation of “whistleblower” regulations.

Md. Code Ann., State Pers. & Pens., Section 5-305 and 5-306 and COMAR 17.04.08.05 constitute the core of Maryland’s “whistleblower” protections. Sections 5-305 and 5-306 provide:

5-305. Disclosure of information – Reprisal prohibited.

Subject to the limitations of Section 3-506 of this subtitle, a supervisor, appointing authority, or the head of a principal unit may not take or refuse to take any personnel action as a reprisal against an employee who:

- (1) discloses information that the employee reasonably believes evidences:
 - (i) an abuse of authority, gross mismanagement, or gross waste of money;
 - (ii) a substantial and specific danger to public health or safety; or
 - (iii) a violation of law; or
- (4) following a disclosure under item (1) of this section seeks a remedy provided under this subtitle or any other law or policy governing the employee’s unit.

5-306 Same – Protected disclosures.

Section 5-305 of this subtitle applies to a disclosure that is specifically prohibited by law only if that disclosure is made exclusively to the Attorney General in the manner allowed in Section 5-313 of this subtitle.

COMAR 17.04.08.05 permits an employee to file a complaint with the Secretary of the Department of Budget and Management if the employee believes that a personnel action was taken in violation of Md. Code Ann., State Pers. & Pens., Section 5-305.

I note that the Appellant has not filed any formal complaint alleging a violation of Section 5-305

of Md. Code Ann., State Pers. & Pens., Section 5-305. Her references to violations of the “whistleblower” laws then are made in defense of her termination. The burden of proving such a violation rests with the Appellant and I find that she has failed to meet that burden. Furthermore, I find that the BCPSS has shown that the Appellant’s termination was not a reprisal for any actions taken or disclosures made by the Appellant. As stated above, the BCPSS has made every reasonable effort to address the environmental hazards in the schools where the Appellant worked. The efforts of the BCPSS are well documented and include several independent investigations, the hiring of contractors to clean the school buildings and reporting their findings to the staff and public. The Appellant disagrees with the several experts hired by the BCPSS as to the environmental dangers present in the schools.

The Appellants complaints and allegations against the BCPSS have been long standing and persistent. Starting in 1996 and continuing to the present, she has made her concerns and fears known to the administration of BCPSS, government agencies and representatives and other school staff, all without any hindrance by the BCPSS. She has written articles in local newspapers and been interviewed on local television stations on several occasions. She has complained to MOSH and OSHA and she has been informed by these agencies that the BCPSS is proceeding in an appropriate manner and within accepted governmental standards. Not until the Appellant violated rules of confidentiality of student records did the BCPSS move to discipline her. In fact the BCPSS has shown great patience and afforded great deference to the Appellant over the past five years. I find no evidence of reprisal in the actions of the BCPSS in terminating the Appellant for violations of the rules of confidentiality. The significance of such a violation on the part of the Appellant is evident in the response from the parents whom she contacted. The Appellant’s actions in illegally obtaining and using confidential student information clearly disrupted the

functioning of the schools. Furthermore, given the Appellant's persistence over the past several years and even after her termination, there is little doubt that she would continue her unreasonable actions if maintained as an employee.

The Appellant has not shown that her termination resulted from her disclosing information which the BCPSS was trying to hide. As stated previously, the BCPSS made every reasonable effort to investigate, resolve and report about the environmental problems in the schools. It is that the Appellant simply disagreed with the findings of the experts retained by the BCPSS, MOSH and OSHA. Even if the Appellant had or has a belief that there was a "substantial and specific danger to public health or safety" because of the presence of lead or asbestos in the schools, the evidence before me convinces me that such a belief is not reasonable. Even if reasonable, there is no evidence that the Appellant's termination was made as a reprisal.

CONCLUSIONS OF LAW

The BCPSS acted properly in terminating the Appellant for violating rules of confidentiality. Md. Code Ann., Education Article, Section 6-202. The Appellant's termination was not made as a reprisal for disclosing information in violation of Maryland's "whistleblower" statute. Md. Code Ann., State Pers. & Pens., Section 5-305.

ORDER

I **ORDER** that termination of the Appellant by the Baltimore City Public School System be and it is hereby **AFFIRMED**.

March 29, 2001

D. Harrison Pratt
Administrative Law Judge