

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

BURDETTE L. MAFFIT,

Appellant,

vs.

STATE OF ALASKA, PROFESSIONAL
TEACHING PRACTICE COMMISSION,

Appellee.

Case No. 3AN-07-5902 CI

MEMORANDUM OF DECISION

I. INTRODUCTION

This matter comes before the Court on Appellant Burdette Maffit's ("Maffit") appeal of Appellee State of Alaska, Professional Teaching Practice Commission's (the "Commission") decision to issue Maffit a professional reprimand for disseminating confidential information regarding special education students of Nome Public Schools ("Nome Schools"), which she obtained in her capacity as a special education teacher, to members of the Nome Board of Education (the "School Board"). Maffit claims that Nome Schools' policy, state law, and federal law justify her disclosure. The Commission argues that disclosure of confidential information pertaining to special education students clearly violates Alaska's Code of Ethics and Teaching Standards.

II. FACTS AND PROCEDURAL BACKGROUND

During the 2004-05 school year, Maffit was employed as a special education teacher by Nome Schools. Georganna Takacs ("Takacs") was the special education director for Nome Schools and Maffit's supervisor. Maffit and Takacs clashed regarding the administration of Nome Schools' special education program. On May 24, 2005, Maffit emailed Nome Schools Superintendent Stan Lujan ("Superintendent Lujan") with a list of complaints regarding Takacs's performance as special education director. Superintendent Lujan corresponded with Maffit and Takacs to obtain information about the allegations. On March 28, 2005, Maffit supported her allegations with substantial documentation, which included confidential information regarding Nome Schools' special education students. Takacs submitted to Superintendent Lujan a memorandum responding to each of Maffit's allegations.¹ In a June 16, 2005 letter, Superintendent Lujan asked Maffit to review Takacs's responses and to submit final information regarding her allegations.² In a July 27, 2005 letter, Maffit addressed Takacs's response to her allegations and made further allegations.³ Maffit made several references to her strained relationship with Takacs.

¹ Exc. 269-75.

² Exc. 269.

³ Exc. 283-290.

In an August 3, 2005 letter, Superintendent Lujan resolved his investigation.⁴ He noted that Takacs had retired and relocated out-of-state, so he made no determination regarding the appropriateness of disciplinary actions against Takacs. Superintendent Lujan noted the complexities of special education laws and informed Maffit that Nome Schools would work to improve staff understanding of special education requirements. The letter did not indicate appropriate procedure for appealing Superintendent Lujan's determination.

On October 2, 2005, Maffit visited the homes of School Board members and delivered a packet⁵ containing documents associated with her allegations against Takacs.⁶ The packet contained a number of confidential documents pertaining to Nome Schools' special education students. Maffit did not have parental consent to disclose these confidential documents.⁷ Maffit did not redact these documents; however, Maffit testified that she started to redact the names but stopped because she believed redaction made the documents confusing.⁸ Maffit included a memorandum in which she discussed her allegations emphasizing the disparate treatment received by special education teachers and made new allegations against Nome Schools. Maffit requested the School Board members review the packet to

⁴ Exc. 410-11. Lujan delivered this letter to Maffit's school mail box; however, Maffit spent summer vacation in Montana and didn't return to Nome until August 22, 2005. Maffit claims she did not pick up her school mail until late September.

⁵ Exc. 64-410.

⁶ Tr. 168.

⁷ Tr. 168.

⁸ Tr. 164.

determine whether Takacs performed her duties in an appropriate, professional, and legal manner and to determine whether Takacs harassed her.⁹

A School Board member realized the documents contained confidential information and delivered the packet to Superintendent Lujan. On October 3, 2005, Superintendent Lujan sought an explanation from Maffit regarding her actions. On October 12, 2005, after receiving no response, Superintendent Lujan issued Maffit a formal reprimand for "violating Board Policy 4119.23, Unauthorized Release of Confidential Materials; [Board Policy] 4119.21(b)(8), [Nome Schools] code of Ethics; Alaska State Professional Teaching Practices Code of Ethics 20 AAC 10.020(b)(8); and other related state and federal statutes."¹⁰ Lujan noted that Maffit had disseminated confidential documents including "internal e-mails between [Nome Schools] staff communicating about special education needs of children, including student names" and "twenty-four [Nome Schools] student IEPs, student assessment information, program plans, and other related documents with student names and parent and staff signatures."

On October 12, 2005, Lujan filed a complaint with the Commission.¹¹ The Commission Executive Director (the "Executive Director") conducted an investigation and concluded that Maffit's actions constituted a violation of 20 Alaska

⁹ Exc. 408-409. Maffit did not deliver this packet to the School Board clerk or to Superintendent Lujan. Maffit did not seek an appeal of Superintendent Lujan's determination through conventional means.

¹⁰ Exc. 413-14.

¹¹ Exc. 415-16.

Administrative Code 10.020(b)(8), which requires an educator to keep information obtained in the course of providing professional service confidential.¹² The Executive Director's December 16, 2005 accusation recommended Maffit receive a reprimand.¹³ On February 1, 2006, pursuant to AS 44.62.390, Maffit requested a hearing.¹⁴

On January 17, 2007, Administrative Law Judge Chris Kennedy conducted an administrative hearing before a full panel of Commission members. The Executive Director presented six witnesses: Stan Lujan, Arthur Arnold, Candace Peterson, Georganna Takacs, Dave Keller, and Bonnie Barber. Maffit testified on her own behalf and presented no witnesses. After hearing testimony, the Commission issued its oral decision finding that Maffit had violated 20 AAC 10.020(b)(8).

On February 16, 2007, the Commission issued a written decision reprimanding Maffit for her conduct.¹⁵ The Commission noted the importance of confidentiality regarding special education records as reflected in both federal and state law.¹⁶ The Commission stated:

Alaska's Code of Ethics and Teaching Standards requires that an educator "keep in confidence information that has been obtained in the course of providing professional service, unless disclosure serves a compelling professional purpose or is required by law." In harmony with this principle, the Department of Education

¹² Exc. 418.

¹³ Exc. 417-18.

¹⁴ Exc. 51.

¹⁵ Exc. 52-59.

¹⁶ Exc. 56.

regulations forbid dissemination of special education records with personally identifiable information unless done for purposes of meeting the special education requirements or made to a very limited roster of authorized recipients, including "a school official . . . who has a legitimate educational interest."¹⁷

The Commission concluded that Maffit's disclosure did not serve a compelling professional purpose and were not made with a legitimate educational interest.¹⁸

Maffit's "appeal" asked the School Board to determine whether Takacs performed her duties in an appropriate, professional, and legal manner and whether Takacs harassed Maffit. The Commission concluded that neither of these determinations required disclosure of unredacted, confidential records.¹⁹

Maffit argued to the Commission that Nome Schools procedure for personnel complaints required her to submit "all information" related to her complaint when appealing a formal decision to the School Board. The Commission concluded that evidence did not indicate Maffit followed any recognized personnel complaint procedure.²⁰ Further, the Commission concluded that "all information" does not include the identity of students.²¹ The Commission noted that Maffit knew she could redact materials, because she testified that she "started" to redact the documents.²²

Ultimately, the Commission concluded:

¹⁷ Exc. 56.

¹⁸ Exc. 57.

¹⁹ Exc. 57.

²⁰ Exc. 58.

²¹ Exc. 58.

²² Exc. 58.

Because [Maffit] had no "compelling professional purpose" to disclose personally identifying information regarding assessment of her special education students, and because she was not required to make the disclosure by law, Ms. Maffit violated provision (b)(8) of the Code of Ethics and Teaching Standards. Her recklessness with this confidential information is too serious to merit only a warning. We impose the next most serious sanction available to us by law, and the sanction requested in the accusation: a reprimand. In our view, the misconduct that occurred in this case approached the level that would justify a suspension.²³

On March 23, 2007, Maffit filed this appeal. Maffit argues that she did not violate confidentiality requirements by presenting information concerning special education students to members of the School Board since (1) the School Board can properly hear confidential information about students,²⁴ (2) Nome Schools appeal procedure requires presentation to the School Board of all records presented to the Superintendent,²⁵ and (3) disclosure served a compelling professional purpose and legitimate education interest.²⁶

III. STANDARD OF REVIEW

Alaska courts review action taken by an administrative agency to ensure that the agency has given reasoned discretion to all the material facts and issues.²⁷ Generally, Alaska courts employ four recognized standards to review administrative

²³ Exc. 58-59.

²⁴ Br. Appellant 12-13.

²⁵ Br. Appellant 13-15.

²⁶ Br. Appellant 15-20.

²⁷ Area G Home and Landowners Org., Inc. (HALO) v. Anchorage, 927 P.2d 728, 744 -745 (Alaska 1996).

decisions: (1) substantial evidence test for questions of fact; (2) reasonable basis test for questions of law involving agency expertise; (3) independent judgment test for questions of law where no expertise is involved; and (4) reasonable and not arbitrary test for review of administrative regulations.²⁸

IV. DISCUSSION

The Professional Teaching Practices Act²⁹ (the "Act") provides a means of policing ethics and for improving the standards and practices within the education profession. The Act created a nine-member Professional Teaching Practices Commission charged with the responsibility of developing, through the teaching profession, criteria of professional practice in areas such as ethics and professional performance.³⁰ Regulations pertaining to ethical and professional behavior adopted by the Commission are known as the Code of Ethics and Teaching Standards (the "Code")³¹ and all members of the teaching profession must abide by the Code.³² The Commission can conduct investigations and hearings on alleged violations of ethical or professional teaching performance³³ and warn or reprimand members of the teaching profession for violations.³⁴

²⁸ Municipality of Anchorage, Police and Fire Ret. Bd. v. Coffey, 893 P.2d 722, 726 (Alaska 1995).

²⁹ AS 14.20.370-.510.

³⁰ AS 14.20.400, .450.

³¹ 20 AAC 10.020.

³² AS 14.20.480.

³³ AS 14.20.460(2).

³⁴ AS 14.20.470(3).

In the instant case, the Commission, exercising its power under the Act, concluded that Maffit violated 20 AAC 10.020(b). 20 AAC 10.020(b) states:

In fulfilling obligations to students, an educator . . . shall keep in confidence information that has been obtained in the course of providing professional service, unless disclosure serves a compelling professional purpose or is required by law.

There is no question that Maffit disseminated confidential student information when she delivered the packet to School Board members.³⁵ The Court must determine whether Nome Schools' policy creates an exception for Maffit's actions or whether Maffit's actions "served a compelling professional purpose or [was] required by law." Whether Nome Schools' policy creates an exception presents a legal question to which the Court will apply the independent judgment test.³⁶ Under this test, the Court can substitute its own judgment for that of the Commission's, even if the Commission's decision had a reasonable basis in law.³⁷ The Court will adopt the rule of law most persuasive in light of precedent, reason, and policy.³⁸ Determining whether Maffit's disclosure constitutes a "compelling professional purpose" presents a legal question involving agency expertise to which the Court will apply the

³⁵ Tr. 168.

³⁶ The Commission argues that the Court should employ the reasonable basis test since the Commission's expertise is implicated in the interpretation of its regulations. The Commission's expertise does not aid the Court's review of this issue. 20 AAC 10.020(b) is unambiguous and the Court can apply this regulations without deferring to the Commission's interpretation.

³⁷ Fraiman v. State, Dept. of Admin., Div. of Motor Vehicles, 49 P.3d 241, 243-44 (Alaska 2002).

³⁸ Chugach Electric Ass'n, Inc. v. Regualtory Comm'n of Alaska, 49 P.3d 246, 249 (Alaska 2002).

reasonable basis test. When applying the reasonable basis test, the Court determines whether the Commission's decision is supported by fact and has a reasonable basis in law, even if the Court may not agree with the Commission's ultimate determination.³⁹

A. Nome Schools Policy Does Not Allow Dissemination of Records Pertaining to "Exceptional Students."

Maffit argues that School Board members can receive confidential student information. Maffit relies on two provisions of the Nome Board of Education Policy Reference Manual (the "Manual"). First, Maffit quotes the Model Notification of Rights Under FERPA⁴⁰ for Elementary and Secondary Schools, which the Manual incorporates:

[FERPA] affords parents and students over 18 years of age ("eligible students") certain rights with respect to the student's education records. These rights are:

The right to consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent. One exception, which permits disclosure without consent, is disclosure to school officials with legitimate educational interests. A school official is a person employed by the School as an administrator, supervisor, instructor, or support staff member . . . a person serving on the School Board A school official has a legitimate educational interest if the

³⁹ See Tesoro Alaska Petroleum Co. v. Kenai Pipe Line Co., 746 P.2d 896, 903 (Alaska 1987).

⁴⁰ Family Educational Rights and Privacy Act.

official needs to review an education record in order to fulfill his or her professional responsibility.⁴¹

Second, Maffit quotes from the Manual part of a section pertaining to accessing student records without consent ("AR 5125(g)"):

The district shall not permit access to or the release of student records or the personally identifiable information contained therein without the consent of a parent . . . except that access without consent to student records, other than those containing personally identifiable information specifically collected or maintained in conjunction with the provisions of services to exceptional children, shall be permitted to those persons or under these circumstances listed below:

School officials and employees within the District who have a legitimate educational interest in having access to the records. A school official is a person employed by the School as an administrator, supervisor, instructor, or support staff member . . . a person serving on the School Board A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.⁴²

Essentially, Maffit argues, based on these provisions, that an educator can provide student records to the School Board without parental consent, if the school board has a legitimate educational interest. While FERPA seems to authorize disclosure without consent under such circumstances, AR 5125(g) of the Manual limits this exception. Under AR 5125(g), this exception does not apply to student records "containing personally identifiable information specifically collected or maintained in conjunction with the provisions of services to exceptional children."

⁴¹ Nome Board of Education Policy Reference Manual E 5125(a).

⁴² AR 5125(g) (emphasis added).

The Manual defines "exceptional children" as "children with disabilities, and gifted children, who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective."⁴³

The documents Maffit submitted to the School Board pertained to exceptional children. Thus, Maffit was not allowed to disclose such information. The provisions of the Manual quoted by Maffit do not support her contention that disclosure of the records was permitted. In fact, AR 5125(g) seems to create stricter confidentiality requirements than those requirement imposed by 20 AAC 10.020(b), which the Commission relied on in reprimanding Maffit.

B. Nome Schools Appellate Procedure Did Not Require Maffit to Disclose Confidential Student Records.

Maffit argues the Manual's requirement that "[a]ll information presented at Steps 1 and 2 [of the formal complaint procedure] shall be included with the appeal [to the School Board]" coupled with the Code's requirement that an educator "conduct professional business through appropriate channels"⁴⁴ justifies her improper disclosure. While Maffit is correct that the complaint procedure requires her to submit all information previously reviewed, this does not justify the mass disclosure of personally identifiable information specifically collected or maintained in conjunction with providing services to exceptional children. Further, the Code's requirement that educators conduct professional business through appropriate

⁴³ Nome Board of Education Policy Reference Manual AR 5125(c).

⁴⁴ 20 AAC 10.020(d)(16).

channels does not excuse disclosure of confidential documents. To the extent any confidential documents were necessary to illustrate Takacs's inadequacies as a special education administrator or to show harassment, Maffit could have easily redacted these documents to fulfill her obligation to keep information obtained in the course of providing professional service confidential. Further, under AR 5125(g), the disclosure of the documents to Superintendent Lujan may not have been proper.

C. No Compelling Professional Purpose Exists to Support Maffit's Disclosure of Confidential Student Records.

The Commission concluded that "[b]ecause [Maffit] had no 'compelling professional purpose' to disclose personally identifying information regarding the assessment of her special education students, and because she was not required to make the disclosure by law, [Maffit] violated provisions (b)(8) of the Code" ~~Maffit seems to argue that the Commission ignored her allegations regarding~~ Takacs's inadequacies as a special education administrator and only reviewed her allegations regarding Takacs's harassment. Maffit argues that this constituted a violation of due process. Maffit argues that:

[The Commission] simply ignored the procedural regulations of the Nome School Board and found the School Board was not engaged in any "legitimate education interest". The Commission ignored the portion of the appeal concerning whether Mrs. Takacs performed her duties in an appropriate professional and legal manner, and simply focused on the issue of harassment. The Commission then concluded that there was no legitimate professional or educational purpose for the

School Board to resolve such complaints in spite of their own regulations.⁴⁵

This is a misstatement of the Commission's conclusion. The Commission held:

It is not our role to decide whether either of these determinations was a legitimate goal for Ms. Maffit to seek through a direct appeal to the school board. What is clear is that neither determination required disclosure of personally identifiable student information. The board members did not need to know the students by name to review the paperwork and process issues that Ms. Maffit wished to put before them.⁴⁶

Maffit's interpretation of the Commission's conclusion is incorrect. The Commission did not find the School Board "was not engaged in any 'legitimate education interest.' " The Commission concluded that Maffit had no legitimate education interest or compelling professional purpose to disclose personally identifying information regarding the assessment of her special education students. Maffit seems to misunderstand the purpose for the Commission's hearing. The Commission reviewed Maffit's disclosure of confidential information not the legitimacy of her complaint. Whether Maffit's complaint raises legitimate educational issues or was made for compelling professional purposes is not for the Commission or the Court to determine. At issue is whether Maffit's disclosures served a compelling professional purpose.

⁴⁵ Br. Appellant 19-20 (internal citations omitted).

⁴⁶ Exc. 57.

To the Commission's finding that neither issue Maffit presented to the School Board "required disclosure of personally identifiable student information" the Court applies the reasonable basis test. Maffit failed to present to the Commission or the Court a professional purpose, compelling or otherwise, for releasing the confidential information. Maffit knew the information was confidential, understood that she could redact the records to protect student identity, and has asserted no viable reason for failing to fulfill her obligation to keep in confidence information obtained in the course of providing professional service. The Commission's determination is supported by facts and has a reasonable basis in law.

V. CONCLUSION

Maffit's disclosures to the School Board violated 20 AAC 10.020(b)(8). The Commission's decision is AFFIRMED.

DATED at Anchorage, Alaska, this 21st day of April 2008.

MARK RINDNER
Superior Court Judge

I certify that on 4-22-08 a copy was mailed to:

Administrative Assistant