

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON  
REFERRAL FROM THE ALASKA PROFESSIONAL TEACHING PRACTICES  
COMMISSION**

In the Matter of )  
 )  
BURDETTE L. MAFFIT )  
\_\_\_\_\_)

OAH No. 06-00330-PTP  
Agency Case No. 06-42

**ORDER OF REPRIMAND**

**I. Introduction**

Burdette L. Maffit, a special education teacher in the Nome Public Schools, distributed 24 unredacted individual education plans for special education students to individual members of the Nome School Board. After an investigation triggered by a complaint from the district, the Executive Director of the Professional Teaching Practices Commission filed an accusation alleging that Ms. Maffit violated her ethical responsibility to preserve confidentiality under 20 AAC 10.020(b)(8). The commission staff requested the issuance of a reprimand as a sanction.

After a delay to accommodate Ms. Maffit's scheduling needs, the Professional Teaching Practices Commission heard this case on January 17, 2007. Based on the evidence and the arguments of the parties, the commission has decided that Ms. Maffit committed a serious and potentially damaging breach of confidentiality, and that her misconduct merits a strong reprimand.

**II. Facts**

Burdette Maffit has been teaching for fifteen years, the last twelve of them the Nome School District. She has been a special education teacher for six years. At the time of the events discussed below, she held a regular classroom teacher certificate with endorsements in elementary education, special education, and reading.<sup>1</sup>

During the 2004-2005 school year, Ms. Maffit was supervised by Georganna Takacs, who was then the Director of Special Education for the Nome Public Schools. Ms. Maffit and Ms. Takacs clashed regarding the administration of the program. On May 24, 2005, Ms. Maffit

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<sup>1</sup> Staff Exhibit 5.

e-mailed Stan Lujan, the Superintendent of the Nome Public Schools, with a list of complaints about Ms. Takacs' performance. Her complaints were that Ms. Takacs:

- "did not . . . perform her duties to the same high expectations that she demanded;"
- "has not held all [special education] to the same standards;"
- allowed "inconsistencies and obvious mistakes in . . . paperwork;"
- missed meetings that she was required to attend by federal and state guidelines;
- gave "incorrect orders on how to fill out . . . paperwork;"
- "allowed another person to perform a special education teacher's duties," with the result that one Evaluation Summary and Eligibility Report was untimely;
- gave an "order to discontinue services for a special education student before the student was exited;"
- did not assign an aide to help a student even though there was an aide on staff who had time available; and
- "may have, may have, falsified paperwork" [sic] by signing a report of a meeting she did not attend.<sup>2</sup>

Mr. Lujan corresponded with both Ms. Maffit and Ms. Takacs to obtain further information about the allegations. Notably, he received an extensively documented rebuttal from Ms. Takacs,<sup>3</sup> which he shared with Ms. Maffit, and received an eight-page further letter of accusation from Ms. Maffit.<sup>4</sup> The last suggested that much or most of Ms. Maffit's concern related to how she had been treated by Ms. Takacs, containing the following statements:

- "just another attempt by Ms. Takacs to harass me" (second page)
- "just another attempt to harass me" (third page, middle)
- "just another attempt to harass me" (third page, bottom)
- "I . . . again, was harassed by Ms. Takacs" (fifth page)
- "Again, just another way to harass me" (sixth page)
- "she harassed me continually" (eighth page).

In the meantime, Ms. Takacs retired and move to Wyoming.

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<sup>2</sup> Staff Exhibit 4 at MAF 115.

<sup>3</sup> Staff Exhibit 4 at MAF 319-330.

<sup>4</sup> Maffit Exhibit C.

On August 3, 2005, Mr. Lujan resolved his investigation in a letter to Ms. Maffit.<sup>5</sup> He observed that the requirements of the special education laws are complex, and stated that he was providing her materials to the newly-hired special education director so that the director could better understand the differing interpretations of law and other disagreements of the prior year and could thereby develop a recommendation for appropriate staff training. As to Ms. Takacs herself, he noted that she had “retired from the education profession in Alaska” and hence he would make “no determination as to whether any disciplinary action . . . would have been appropriate had she remained an employee of the district.” Instead, he said he would use the “allegations in a positive vein to improve the services provided by the district.” The letter awaited Ms. Maffit upon her return to school on about August 22.<sup>6</sup>

On October 3, 2005, Ms. Maffit visited the homes of several Nome School Board members and delivered several hundred pages of documents.<sup>7</sup> Board member Candace Peterson received a large packet and left it on her kitchen table; later, Ms. Maffit came by again and spoke with her in person to add a few pages to the packet. Others received similar deliveries. Each packet contained 24 Individual Education Program (IEP) documents for special education students. No names or other identifying information were obscured in any of the documents. They contained information about the assessed learning difficulties, progress, and interventions for the students, including assessments such as “mental retardation.”<sup>8</sup> Also included in the packets were various memoranda identifying students by name and likewise imparting confidential assessments of them, such as “emotionally disturbed.”<sup>9</sup> Before distributing the packets, Ms. Maffit started to redact the names but discontinued her effort, feeling that the redaction made the documents more confusing to review.<sup>10</sup>

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<sup>5</sup> Staff Exhibit 4 at MAF 459-460.

<sup>6</sup> Testimony of Burdette Maffit on questioning from Commissioners Doner and Black. Ms. Maffit may have chosen not to read the letter right away.

<sup>7</sup> The collection of documents is Staff Exhibit 4, but the names of the students were redacted by the staff in preparation for the hearing (Ms. Maffit’s counsel submitted the same documents in advance of the hearing but did not redact them; they were returned to him for redacting pursuant to one of two orders entered January 16, 2007).

<sup>8</sup> Staff Exhibit 4 at MAF 441.

<sup>9</sup> Staff Exhibit 4 at MAF 326-327.

<sup>10</sup> Testimony of Burdette Maffit.

At the end of the packets was a memorandum to the board concerning Ms. Takacs' actions and various other grievances against the district.<sup>11</sup> It contained, for example, the following passage:

Now, there is no doubt in my mind that I was harassed then and I am being harassed now.

This harassment has also continued into my private life as I rent from the district. They have started rumors that I may accuse maintenance of stealing from my apartment. . . . [T]hey have refused to give me a raise even though my paperwork shows I am entitled to it. Every year I have problems with my computer and I am harassed by the computer staff.

The memorandum concluded with a request that the board

review this paperwork and give a just and fair decision to the following[:]

1. Did Mrs. Takacs performed [sic] her duties in an appropriate, professional, and legal manner?
2. Did Mrs. Takacs harass me?

At the time she delivered these packets, none of Ms. Maffit's concerns was on the school board agenda. She did not deliver the packet to the board clerk nor to Mr. Lujan, nor otherwise seek an appeal to the board as a body through conventional means. There was no union involvement in any of her efforts. She had no parental permission to make disclosures regarding any of the 24 students whose IEPs she distributed.

Once they realized they had been given confidential information, the board members called Mr. Lujan and brought the packets to him. After seeking an explanation from Ms. Maffit and receiving no response, Lujan reprimanded Ms. Maffit in writing<sup>12</sup> and filed a Code of Ethics and Teaching Standards Complaint with this body.<sup>13</sup> The Executive Director's investigation and accusation followed.

### **III. Analysis**

It is a core tenet of special education that personally identifiable information regarding the children with disabilities must be held in confidence.<sup>14</sup> This tenet is reflected throughout the legal requirements and policies that govern special education teaching, including federal

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<sup>11</sup> Staff Exhibit 4 at MAF 457-458.

<sup>12</sup> Staff Exhibit 2.

<sup>13</sup> Staff Exhibit 1.

<sup>14</sup> Testimony of Arthur James Arnold, Director of Special Education for Alaska.

regulations<sup>15</sup> and the Alaska Special Education Handbook.<sup>16</sup> The release of personally identifiable information discussing a child’s disabilities, such as the assessments of mental retardation and emotional disturbance found in the documents at issue in this case, can be devastating to a child. While this concern is acute in any community, it is even more critical in a small community such as Nome, where names and details are more likely to be recognized by unauthorized readers.

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.”<sup>17</sup> In harmony with this principle, the Department of Education 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.”<sup>18</sup>

Ms. Maffit contends that her disclosures served a compelling professional purpose, were made for purposes of meeting the special education requirements, and were made to school officials with a legitimate educational interest. We disagree.

By the time she delivered large packets of confidential documents to board members’ homes in October of 2005, Ms. Maffit’s grievance can hardly be said to have been focused on the particular educational needs of individual students. Instead, she was asking for two determinations:

1. Did Mrs. Takacs performed [sic] her duties in an appropriate, professional, and legal manner?
2. Did Mrs. Takacs harass me?

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.

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<sup>15</sup> *E.g.*, 34 C.F.R. § 300.622.

<sup>16</sup> Special Education Handbook, Part VII, Sec. 9 (Staff Exhibit 7) (also available at <http://www.eed.state.ak.us/tls/SPED/>).

<sup>17</sup> 20 AAC 10.020(b)(8).

<sup>18</sup> 4 AAC 52.530(a).

An example is “Packet X,” part of the material Ms. Maffit delivered to each house.<sup>19</sup> Packet X contained the name of a teenaged student and his guardian and identified him as mentally retarded. According to the cover page Ms. Maffit attached to it, Packet X sought to show (a) that Ms. Takacs ordered an unnecessary meeting on May 17, 2005 as “just one last attempt to harass me” and (b) that Ms. Takacs required Ms. Maffit to fill out unnecessary paperwork, causing a risk that “the people from the state are going to think I was an idiot.”<sup>20</sup> It was completely unnecessary to these contentions for Ms. Maffit to identify the student by name.

Had Ms. Maffit been motivated by a desire to modify the educational programs of particular students, it is implausible that she would have done so by means of a massive delivery of papers focused on her own alleged maltreatment. The professional way to pursue a disagreement about the services to be provided a particular student would be to develop an appeal relating to that student only and to move it up the chain of command in an orderly fashion.

Ms. Maffit contends that she was required by a Nome Board of Education policy for personnel complaints<sup>21</sup> to submit “all information” related to her complaint when appealing to the school board. However, the evidence did not indicate that she was following any recognized personnel complaint procedure in her dealings with Mr. Lujan in the spring and summer, still less when she approached the board members six weeks after receiving Mr. Lujan’s August 3 letter. Moreover, the school board exists as a body, not as a collection of individuals, and a professional educator properly appealing to the board under its complaint policy would go through her superintendent, the board chair, or the board secretary, rather than dropping packets at individual board residences. Finally, Ms. Maffit knew very well that she could redact materials she gave to the board members, because she testified that she “started” to do so. She testified she gave up because she feared the documents would be confusing if not identified by name, but this testimony cannot excuse her decision not to redact because she could easily have avoided any confusion by inserting code letters or pseudonyms in place of the obscured names.

When she delivered highly confidential, unredacted files to the homes of individual school board members, Ms. Maffit took a serious risk with information that could damage her

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<sup>19</sup> Staff Exhibit 4 at MAF 439-444.

<sup>20</sup> Staff Exhibit 4 at MAF 439.

<sup>21</sup> Though not put into evidence so that it could be examined in detail or in context, the policy relied upon seems to be Policy Reference Manual section 4144.

students. One board member, unaware of the nature of what she had been given, left the documents on her kitchen table. It is only by good fortune, and by the intervention of the better judgment of others, that Ms. Maffit's action caused no damage to a student.

Because she 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, 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.

#### **IV. Conclusion and Order**

The Commission finds that Burdette L. Maffit violated the Code of Ethics and Teaching Standards through the exercise of poor professional judgment in the handling of confidential information. By its authority under AS 14.20.470(a)(3), the Commission strongly reprimands Burdette L. Maffit for this misconduct.

DATED this 16th day of February, 2007.

PROFESSIONAL TEACHING  
PRACTICES COMMISSION

By:           Signed            
Mark Doner, Chair

[This document has been modified to conform to technical standards for publication.]