

BEFORE THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

TAMMY FERRY,)	
Petitioner,)	
vs.)	Case No. 19AC-CC00343
THE BOARD OF EDUCATION OF THE)	
JEFFERSON CITY PUBLIC SCHOOL)	
DISTRICT,)	
Respondent.)	

JUDGMENT

This cause comes before this Court on Petitioner Tammy Ferry’s request for administrative review of this contested case pursuant to §§ 536.110 and 168.120.2 RSMo. At issue is the Decision of the Jefferson City School District Board of Education terminating the employment of Petitioner. Petitioner appealed that decision to this Court. The parties filed their briefs, and appeared on December 9, 2019, along with attorneys Moen and Brown for Petitioner, and attorneys Rackers and Bertels for Respondent. Argument was heard. The parties filed their proposed Findings of Fact and Conclusions of Law, and the case was taken under advisement. This Court now enters its judgment.

The Board of Education conducted a hearing pursuant to § 168.118 RSMo, which began on July 10, 2019, and extended into the early hours of July 11, 2019. The Board terminated Tammy Ferry based on one finding: she willfully violated the Family Educational Rights and Privacy Act (FERPA) and Board policy when she disclosed confidential student information to herself by transferring some of her own District work files to her personal account.

There is no substantive dispute of facts, and the issue before this Court is a question of law. Tammy Ferry used the TakeOut Application and transferred some of her District work files to her personal account. Some of the files contained confidential student information. It is

undisputed that no disclosure was made to any third party. The issue before this Court is whether the Board was authorized by law to terminate Tammy Ferry for making an unlawful disclosure under FERPA and Board Policies JO and JO-AP(1) when she transferred her work files to her personal account; and whether such a disclosure was a willful violation of Board policy.

THERE WAS NO DISCLOSURE

Central to the case presented against Ms. Ferry was the argument that she violated various district policies by “disclosing” FERPA protected information. There is no evidence in the record that this information was ever disclosed to a third party. The District seizes upon the FERPA provision referencing “any party” as opposed to “another” and asserts that Ms. Ferry, by copying the information to her personal Google ® account “disclosed” the protected information to herself, an “any party.” The fallacy of this argument is best illustrated by the Board’s repeated finding that the disclosure was to her “personal Google® account” which by any reasonable definition is not a party. Said differently, Ms. Ferry’s reading aloud of protected information would constitute a disclosure even she was locked in a soundproof room where no one else could hear her.

FERPA protects confidential student data in educational records by preventing its disclosure to third parties without parental consent. Under FERPA, “disclosure” is defined as “to permit access to or the release, transfer, or other communication of personally identifiable information contained in educational records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record.” 34 C.F.R. § 99. Board Policies JO and JO-AP(1) align with the federal law of FERPA. Rec. 12. Therefore the FERPA definition of “disclosure” controls.

Under this definition, Tammy Ferry did not commit a disclosure because she was the party that had legal access to confidential data in her work file and transferred the data to herself. Based on the FERPA definition and Respondent's Board policies, there was no disclosure as a matter of law.

With respect to what constitutes a "disclosure", this Court is guided by the Department of Education's interpretation of FERPA and its implementing legislation and rules. This Court should defer to a federal agency's interpretation of its rules. *Prince v. Division of Family Services*, 886 S.W.2d 68, 72 (Mo. App. W.D. 1994).

The Department of Education ("DoE") Compliance Office has evaluated whether FERPA forbids disclosure of confidential student information by a school employee that had access to the school's database. *Letter to Strayer University*.

FERPA prohibits a school official from using her authority to access and disclose information where no legitimate educational purpose or other exception applies. *Letter to Strayer* at 9. The agency interpretation of "disclosure" indicates that a disclosure of information to a third party triggers a violation under the law.

The Board impermissibly expands the definition of "disclosure" beyond the bounds of the agency definition, and beyond reason. Tammy Ferry could not "disclose" to herself information she already knew. As with hundreds of other staff, confidential student information naturally "resides" in the memory of the staff member as well as in the District Google account. The real issue under the law is not where the information is stored by an authorized user of confidential student data. The issue is disclosure to unauthorized third parties. Because Tammy Ferry did not disclose any confidential student information, a violation of FERPA did not occur as a matter of

law.

While the disclosure of confidential student information would constitute a violation of FERPA and Board Policies JO and JO-AP(1), no disclosure occurred. If no disclosure occurred, it is axiomatic that no willful and persistent violations occurred.

The Board finally argues that Board policy EHBC was violated because Tammy Ferry's transfer of data to her personal Google account made confidential student data unsafe and posed a threat of some possible hypothetical disclosure. However, no evidence was adduced at the hearing to establish that the student data located in Tammy Ferry's personal account was any less secure than the same student data located in the District Google account. Respondent did not meet its burden of proof that Tammy Ferry violated EHBC or any other Board policy.

The Court finds that the Decision of the Board terminating the employment of Ms. Ferry was unauthorized by law and was not supported by competent and substantial evidence on the record as a whole. That decision is reversed and the Board is directed to restore Ms. Ferry to permanent teacher status as provided for § 168.120.4. RSMo. The Board shall provide her full compensation for the period between her discharge and reinstatement in accordance with the law.

Costs taxed to Respondent.

SO ORDERED this 2nd day of March, 2020.



Jon E. Beetem, Circuit Judge - Division I