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FULL BOARD OF THE MISSISSIPPI EMPLOYEE APPEALS BOARD

DEBORAH POWERS RENFRO

FILED

APPELLANT

VS.

APR 20 2015

NO.13-063

**MISSISSIPPI DEPARTMENT OF
EDUCATION**

MISSISSIPPI EMPLOYEE APPEALS BOARD

RESPONDENT

ORDER OF MEAB BOARD, EN BANC

Respondent, The Mississippi Department of Education ("MDE") filed an appeal to the Mississippi Employee Appeals Board, En Banc. MDE appealed the Order entered by Hearing Officer Ray Therrell on June 2, 2014. The MEAB, en banc, has reviewed the brief of the MDE and the record in this matter.¹ The MEAB, en banc, reverses the decision of Hearing Officer Therrell and reinstates the termination of Renfro by MDE. The reasons for the MEAB, en banc, opinion are set forth below:

FACTS

Renfro was employed as an Education Specialist Senior in the Office of Special Education, Special Projects/Outreach Services at MDE. In that position, Renfro was responsible for answering the parent hotline and providing information to parents, school districts and advocates on their rights under federal regulations, policies and procedures under the Individuals with Disability Act (IDEA).

¹ The MEAB granted MDE's Motion to Strike the Brief filed by Renfro

On October 7, 2013, Renfro received a notice of termination citing her for a Group Two offense of insubordination because, "According to an email forwarded to the department on September 19, 2013, from a parent, on or about August 6, 2013, [Renfro] provided guidance to this parent on how the [school] district should have handled an IEP involving her child, indicating that the district was in error."

Renfro was additionally cited for the Group Two offense of insubordination for failing to follow "the proper procedures and adhering to specific timelines as required by State and Federal laws" in processing a Formal State Complaint (FCS) received by the Office of Special Education.

Renfro was also cited for two Group Three offenses of "unauthorized use or misuse of State property or records" and "willful violation of MSPB policies and procedures, including, but not limited to, refusing to cooperate and/or giving false statement in an investigation of possible violation of MSPB policies and procedures." Specifically, Renfro sent two emails to a parent who had contacted her through the parent hotline. The first email was a September 9, 2013 email stating, "Hey Girl. Just wanted to ask a favor! We are under new administration and my division is always getting told that we are not doing what we are supposed to be doing! HA! If you would, would you write an email to [Renfro's supervisor Therrell Myers] and I won't tell you what to say, but if you will, let him know

that hopefully I was helpful to you when you called with some concerns as a parent. Then you can say anything you wish about our conversation and the friendship that I think we have now. I'm kidding when I say this, but make me look and sound Good!!! Ha. I just want him to know that at least I'm doing my job and what is expected from Parent Outreach! If you would blind copy me that would be great for my records." The second email "Subject: Please sit at my table" was an "inspirational" chain letter. Both emails were sent from Renfro's personal email account.

The parent to whom these emails were sent contacted Dr. Joy Hogge, Executive Director of the Mississippi Families Alliance, an advocacy organization for families with disabled children. Dr. Hogge asked the parent to forward the emails to her. Dr. Hogge then contacted Dr. Amerita Tell, Bureau Director of Special Projects, Office of Special Education and Renfro's second level supervisor, about the emails. Hogge later forwarded the emails to Tell with the names of the recipients blocked out because the Parent was concerned about her confidentiality and Hogge was concerned about violating the Family Educational Rights and Privacy Act ("FERPA").

OPINION

MEAB Rule 18 A. provides that "The purpose of the hearing is to ascertain the truth." MEAB Rule 20. B. states that "[a]n appealing party shall have the burden of proving that the reasons stated in the notice of

the agency's final decision are not true or are not sufficient grounds for the action taken.

Having reviewed the testimony and evidence with regard to the first charge of insubordination, the MEAB, en banc concludes that Hearing Officer Therrell was correct in concluding that based on the evidence, there was nothing to support the assertion that Renfro committed the act of insubordination as alleged by MDE. It is important to note in this instance that the testimony was unclear as to whether Renfro solicited the September 19, 2013 email, or whether the recipient [REDACTED] offered to send the email of her own accord.

With regard to the third allegation of insubordination for failure to properly process the FSC complaint, Hearing Officer Therrell concluded that the appellant proved that the allegation that she failed to properly process a FSC was unsupported by the evidence, and this is also correct.

With regard to the complaint about the September 9, 2013 email Hearing Officer Therrell found as follows:

Dr. Hogge and Dr. Myers testified for MDE that they were aware that several parents had complained about receiving emails from the Appellant. However, they were unable to identify or provide any substantial evidence to support their contention that parents had complained about the emails. Moreover, there is nothing in the record to suggest the Appellant pressured any parents to send feedback to the MDE. In fact, two parents testified they were thankful for the service they received. They did not feel that their confidentiality was in anyway compromised by

any email they received from the Appellant, nor did they feel pressured into sending feedback to MDE.

MDE argues that both using the parents' email addresses to send the emails and using her personal email account to send the emails were a misuse of state property or records. The hearing officer does not find any misuse of MDE property or records. First, all the names on the emails were redacted; thus, it could not be clear as to who was sent the emails. Secondly, the record indicates that use of the computers for personal use was common place in the agency, and the Appellant seems to be the only employee cited for such use. In fact, the record tends to suggest that use of the state computers for personal use was more common than MDE may have claimed. For the above reasons, the hearing officer finds that the Appellant has met her burden of proof as it relates to the Group III offense of unauthorized use or misuse of State property or records, and the Group III offense of willful violation of policies and procedures, including, but not limited to, refusing to cooperate and/or giving false statement in an investigation of possible violation of policies and procedures.

Having considered the testimony of all the witnesses and exhibits introduced into evidence, the hearing officer finds the record lacks any substantial evidence to show any confidentiality was breached by the "favor" or "inspirational" email sent by the Appellant. There was no clear evidence to show who the emails were sent to, and whether those individuals were receiving services from MDE. The Appellant has met her burden of proof and has proven that the allegation that she misused the email addresses of parents is unsupported by the evidence.

The MEAB, en banc, reverses Hearing Officer Therrell's Order with regard to the final charges of unauthorized use of state property and willful violation of MPSB policies and procedures for the following reasons:

The two emails in question are both dated September 9, 2013.

Renfro admitted that she sent the September 9, 2013 email to a parent

whose email information she obtained from her job. This is clearly a misuse of state property. Additionally, Dr. Hogge testified that she had received a complaint from a parent regarding the September 9, 2013 emails, complaining that the emails had violated her confidentiality.

We agree with Hearing Officer Therrell's conclusion that Renfro's use of MDE computers to access her personal email is a nonissue. However, the September 9, 2013 email, "Subject: need a favor" is of a coercive nature on its face, under the circumstances. Renfro was using her personal email to solicit a favorable review from the parent of a disabled student, when the parent had understood that her information was confidential. Additionally, the parent as a recipient of services has no way of knowing whether if she refuses to provide a review or provides an unfavorable review if it will affect the services her child receives. The fact that two parents testified that they received good service from Renfro is irrelevant.

With regard to the second "inspirational" email, although there was no evidence to prove exactly to whom the email was sent, the testimony shows that the email was sent to more than one person. There was ample evidence that Renfro had received substantial training regarding confidentiality requirements under FERPA and IDEA. There was no evidence that Renfro had received permission to use the parent's email.

There is no requirement that the agency support their decision to terminate an employee with "substantial evidence." The burden is on the employee to show that reasons for the agency's decision are not true or are not sufficient grounds for the action taken. Given that it is true that Renfro sent a personal request on her personal email to a parent whose information she received through her position at MDE, and also placed that parent's email address on another email that was sent to multiple email addresses, there was a clear misuse of state records. The evidence of Renfro's extensive training with regard to breach of confidentiality also supports MDE's conclusion that Renfro was insubordinate in using the parent's email on the "inspirational email."

For the foregoing reasons the MEAB, en banc, finds that Renfro committed a Group Two infraction of insubordination rather than a Group Three offense of willful violation of MSPB policies and procedures because there was no evidence of willfulness. However it is clear that Renfro failed to comply with applicable established written policy. Renfro also committed the Group Three offense of misuse of state records. "Commission of one (1) Group Three offense may be disciplined by the agency with . . . dismissal." For the foregoing reasons, MDE's termination of Renfro is reinstated.

SO ORDERED this the 20th day of August, 2014.

MISSISSIPPI EMPLOYEE APPEALS BOARD
FULL BOARD

BY: 
INGRID DAVE WILLIAMS
Hearing Officer