

**STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION
BUREAU OF CONTROVERSIES AND DISPUTES**

In the Matter of Tenure Hearings of Bonita Baskay and John Nartowicz:

**SCHOOL DISTRICT OF THE
BOROUGH OF CARTERET**

and

Case Nos. 324-11/12
321-11/12

BONITA BASKAY

**OPINION
and AWARD**

and

JOHN NARTOWICZ

Before:

Edmund Gerber, Arbitrator

Appearances:

For the Carteret Board of Education:

Bruce W. Padula, Esq.

Dustin F. Glass, Esq., On the Brief

Cleary Jacobbe Alfieri Jacobs, LLC

For the Respondent Bonita Baskay:

Nancy Iris Oxfeld, Esq.

Oxfeld Cohen

For Respondent John Nartowicz:

Stephen E. Klausner, Esq.

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Bonita Baskay is employed by the School District of the Borough of Carteret as a tenured teaching staff member. On October 5, 2012, she was charged by the Board with conduct unbecoming a teaching staff member. It is specifically alleged that she: (1) misappropriated and disclosed confidential student records, (2) intentionally violated the Family Education Rights and Privacy Act, 20 U.S.C. § 1232G, (3) intentionally violated the New Jersey Pupil Records Regulations, N.J.A.C. 6A:32-7.1, et. seq., (4) intentionally violated of Board policies. She was also charged with (5) dereliction of duty, (6) insubordination, (7) official misconduct by a certificated guidance counselor, and (8) conspiracy to misappropriate and/or disclose confidential student records.

John Nartowicz is employed by the School District of the Borough of Carteret as a tenured teaching staff member. On October 12, 2012, he was charged by the Board with conducting unbecoming a teaching staff member. It was specifically alleged that he: (1) misappropriated and disclosed confidential student records, (2) intentionally violated the Family Education Rights and Privacy Act, 20 U.S.C. § 1232G, (3) intentionally violated the New Jersey Pupil Records Regulations, N.J.A.C. 6A:32-7.1, et. seq., (4) intentionally violated Board policies concerning: (5) dereliction of duty, and (6) insubordination.

Pursuant to N.J.S.A. 18A:6-16, as amended by *P.L. 2012, c, 26* (TEACHNJ) the tenure charges brought against Nartowicz and Baskay were consolidated and referred to me for hearing and decision. Hearings were conducted on April 11, and 23, and October 29 and 30, 2013¹ at which time the parties examined and cross-examined witnesses, introduced evidence and make argument. The parties submitted briefs which were received by November 28, 2013.

BACKGROUND

John Nartowicz has been employed by the Borough of Carteret Board of Education as a Biology teacher at the Carteret High School since the beginning of the 2000-2001 school year. Bonita Baskay first began working in the Carteret schools in 1978-1979 and as of October 2012 had been employed by the Board for thirty five years.

TESTIMONY

In July or early August of 2011 Nartowicz received a telephone call from Susan Ivanitski, a school crossing employed by the Borough of Carteret, not the Board of Education. Nartowicz knew Ivanitski from casual interactions in local Carteret politics.

¹ The parties also meet on January 17, 2013, March 2, 2013 and May17, 2013 for conferences.

Ivanitski told Nartowicz that she had an envelope for him and he drove to her house to pick up the envelope. The envelope contained a transcript, or "quick look-up", of C.J., a senior at the high school. The transcript revealed that the student had excessive absences and was receiving failing grades. Nartowicz believed that C.J. had graduated with the senior class that June so he brought the matter to the attention of Board members Jerome Mitchell and Andy Halkovich and provided them with C.J.'s transcript.

Mitchell and Halkovitch were apparently already familiar with C.J.. Former Assistant Superintendent of Schools Kathleen Skobo Gawaski (hereinafter, "Skobo") testified that on June 29, 2011, at the conclusion of a Board meeting, a resident of the Borough, Saad Radwan told her, Mitchell and Halkovitch that C.J. had graduated from the high school but did not meet the graduation requirements. The next day Skobo spoke to the high school principal about the student. The principal told her that, although C.J. did attend commencement ceremonies and walked with the graduating class, he never received a high school diploma. He received an empty envelope.

On August 8, 2011 Mitchell and Halkovitch had a meeting with Skobo and showed her C.J.'s transcript. Halkovitch pointed out that the transcript indicated that the student had graduated from the high school even though it was apparent from his grades that he did not meet graduation requirements. Skobo explained that the computer software used by the school automatically places students in the next grade and when a student is in the twelfth grade it automatically states that the student will graduate. When a student is held back or as in C.J.'s case, a senior does not graduate, the records have to be manually changed.

Halkovich told Skobo that he received C.J.'s transcript from Nartowicz. Shortly thereafter Skobo told School Superintendent Kevin Ahern about the meeting.

In September of 2011, Superintendent of Schools Kevin Ahern met with Skobo, Nartowicz and the then President of the Carteret Education Association Jackie Ligate. At the meeting, Nartowicz was asked how he obtained the student's confidential records. Nartowicz said that he got it from Ivanitski. Ligate testified that she talked to Ahern after the meeting and Ahern said that the students' confidentiality was violated by Nartowicz and he should be subject to some form of discipline, perhaps a day or two of suspension.

This matter was also brought to the attention of the Borough. Ahern provided a copy of C.J.'s transcript to the Carteret Borough Attorney and in the fall of 2011, the Borough Attorney asked Ivanitski about the incident but she denied any involvement. Ivanitski testified that she heard nothing further until June of 2012 when she was called to a meeting with two attorneys who represented the Board of Education. Ivanitski was specifically asked if she received the student's records from Bonita Baskay. Ivanitski testified that she never offered Baskay's name, it was asked by the Board's attorneys. Subsequently, Ivanitski was discharged by the Borough.

Bonita Baskay is one of five guidance counselors in the high school. Ahern testified that in the fall of 2011, the hard drive of Baskay's computer was removed for analysis. The hard drive of one other guidance counselor was also removed but this second guidance counselor had C.J. for a student. C.J. was not one Baskay's students and she had no educational reason to access C.J.'s records. According to Ahern, he was told that the hard drives of the three other guidance counselors were "wiped clean" and therefore they were not removed for analysis.

In June of 2012, Tino Kyprino, a forensic information technology expert, examined Baskay's hard drive and determined that C.J.'s records

were accessed on Baskay's computer on May 18, June 8 and June 11, 2011.²

Baskay denied that she that she accessed C.J.'s records and/or gave the student's records to Ivanitski. Baskay acknowledged that she has an exclusive identification name and password for the computer and the computer cannot be accessed without them. But she would log onto the computer in the morning and leave it on all day, even though she would leave her office on occasion. Since her office cannot be locked, other people had access to her computer when she was not present.

Nartowicz testified that he was a witness in a federal suit brought by another member of the Education association against Ahern and Nartowicz became President of the Carteret Education Association in the spring of 2012. It was only in October of 2012 that the tenure charges signed by Ahern were brought against him. Nartowicz testified that he did not bring this matter to the attention of the school administration because he "didn't trust Ahern" due to the bad relationship between the Union (the Carteret Education Association) and the District.

Ahern however testified that for several months Baskay's hard drive was in the possession of the law firm then representing the Board but no

² It is noted that the copy of the student transcript introduced in evidence was dated August 2011. It is apparent that the copy of C.J.'s transcript in evidence is not the actual document given to Mitchell and Halkovich.

action was taken to investigate the hard drives. It was only after he retrieved the hard drives and had them examined that action was taken.

The Carteret Board of Education has a series of policies and regulations concerning the confidentiality of student records. Policy No. 3211, Code of Ethics, provides that an educator shall not disclose information about pupils obtained in the course of professional service unless the disclosure contains compelling professional purpose. Policy No. 8330 provides that access to student records is limited to authorized persons and limits access of such records to certified education personnel who have assigned education responsibility for the pupil and requires teaching staff to comply with New Jersey Pupil Records Regulations, N.J.A.C. 6A:32-7 et. seq. and the Federal Family Educational Rights and Privacy Act, 34 C.F.R. par 99. N.J.A.C. 6A:32-7.5 governs access to student records and mandates that only authorized persons shall have access thereto. An authorized person includes in pertinent part, certified school district personnel who have assigned education responsibility for the pupil. 20 U.S.C. § 1232G and 34 C.F.R. ¶99.31 a school may only disclose student records to a district staff members who have legitimate educational interests in the student record.

Nartowicz, Baskay and Ligate all testified that the Board of Education has not provided any training about student record confidentiality or provide copies of its confidentiality policies to its staff. Ligate and Nartowicz testified that at the end of the marking period when report cards are given out, the report cards are not in envelopes and anyone can look at the report cards.

DISCUSSION

The Board argues that N.J.A.C. 6A:32-7.5 and the Federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 34 C.F.R. par. 1232g permit only authorized persons to access confidential student records. It asserts that its policies are consistent with the law and prevent unauthorized persons access to student records. Records may only be seen by students, their parents and certified school district and educational personnel with educational responsibility for the pupil. The Board contends the respondents' conduct, even when viewed as single acts, was so egregious that it warrants removal. In support of its argument for discharge it cites a series of cases: In re tenure Hearing of Jill Kubicki 2011 WL 111678 (2011). In re Tenure Hearing of Tordo 1974 97, 98-99 (*sic*), In re Tenure Hearing of DePasquale, 92 N.J.A.R. 2d (EDU) 537, 540 and

In re Tenure Hearing of Janet Ingram, 2002 WL 1238418. While these cases stand for the proposition that a denial of tenure may be sustained for a single act, not one of these cited cases concern the issue here: the unauthorized access and limited dissemination of a student's confidential record.

There is no question but that Nartowicz improperly accessed the confidential record of a student and showed that record to two Board members. Nartowicz testified that he was not aware of the Board's policies concerning confidentiality of student records. He never received training from the Board in student confidentiality. Nartowicz, however, is a professional certified teacher and is presumed to know and understand that student records are confidential. There is no question but that Nartowicz violated the confidentiality of C.J. Nartowicz showed poor judgment. His proper response would have been to have first addressed this issue to a school administrator without accessing the student's records. I am not impressed by Nartowicz's testimony that he, "he did not trust Ahern." Regardless of any possible strain between the Education Association and the Administration, Nartowicz's first duty was to act as a professional and raise this issue with the school administration.

However, Nartowicz did not release C.J.'s records to the public or handle the records in a way that they would become known to the public. Further, Nartowicz was confronted with a legitimate issue – an unqualified student apparently graduated without sufficient passing grades. He brought this to the attention of two Board members and, although they may not have had the right to know the identity of the student, they unquestionably had the right and obligation to ensure that the schools are properly run and administered. Such an obligation includes ensuring that unqualified students do not graduate. The improper exposure of this record was narrow and confined. Significantly, the records were not made public and, although their retrieval and use were improper, it was understandable. It is also noteworthy that the Superintendent of Schools himself saw fit to provide the Borough of Carteret Attorney an unredacted copy of C.J.'s transcript, yet there was obviously no educational need to do so.

The Board of Education and specifically the Superintendent of Schools, although aware of Nartowicz's actions, did not seek to impose sanctions or discipline him for over a year after this incident and allowed him to continue teaching. It was only after Nartowicz became President of the Education Association that Superintendent Ahern brought tenure proceedings against him. The Board argues that it waited until Baskay's

hard drive was examined before it filed tenure charges. However, Nartowicz had admitted that he obtained the student records and gave them to the two Board members. There was no reason to think that there was anything on the hard drive concerning Nartowicz. In any event, it is apparent that the Board did not see Nartowicz' conduct as so egregious that it sought his immediate suspension or removal.

The standard to be applied in arbitration proceedings is that of just cause: Was the discipline imposed just and reasonable under the circumstances? Under all the factors here, including the applicable law, I find that the Carteret Board of Education did not demonstrate that there is just cause to deny tenure to John Nartowicz. I do find that there is just cause to impose discipline. Regardless of his relationship with the school administration, Nartowicz knew or should have known that he had no right to access and disseminate a student's file. While his concerns might have been legitimate, there were other, professional ways to have handled this matter without violating a student's right to privacy. Accordingly, I will reduce John Nartowicz's discipline to a twenty (20) day suspension.

Bonita Baskay denies that she had anything to do with the copying of student C.J.'s records, but Ivanitski specifically named Baskay as the person who gave her the records and Baskay's computer was used to at

least look at those records. Baskay had motivation to dissemble; she was facing the instant tenure charges. By contrast, there is no reason apparent in the record to show why Ivanitski would falsely claim that she received the records from Baskay. Admittedly, when Ivanitski was examined by the two School Board attorneys they brought up Baskay's name. Ivanitski might have seen that as an opportunity to protect someone else and agree it was Baskay, but such a possibility is pure speculation. On balance, I find that Baskay did improperly access Student C.J.'s records and forward them to Ivanitski with the understanding that Ivanitski would turn them over to Nartowicz.

I note that Baskay placed the records in a sealed envelope so that the record itself was not divulged to Ivanitski and was meant for Nartowicz only. Baskay did seek to protect the identity of the student to a degree. Nonetheless, Baskay also exercised poor judgment in her conduct.

However, Baskay has been a teacher in the district for thirty five years and her record as a teacher is not an issue in the tenure charges. It would be an injustice to deny her tenure for one error in judgment after such a long and apparently spotless career. Her involvement in the improper accessing and dissemination of a student's record is more limited than Nartowicz's, nevertheless it was an error in judgment and some

discipline is appropriate. Accordingly, I reduce the discipline imposed on Bonita Baskay to a ten (10) day suspension.

AWARD

The Carteret Board of Education did not have just cause to bring tenure charges against John Nartowicz. The demand of the Board of Education to terminate John Nartowicz' employment, forfeit his teaching certificate and refer this matter to the Teachers' Pension and Annuity Fund for forfeiture are all denied. The Board of Education had just cause to suspend John Nartowicz and he shall be suspended for twenty (20) days.

Nartowicz shall be reimbursed for all salary denied during his suspension following the filing of the instant tenure charges and shall be credited with all appropriate rights and seniority had he worked for the entire period of his suspension, less the salary, benefits and tenure rights which otherwise would have accrued to him during his twenty (20) day suspension.

The Carteret Board of Education did not have just cause to bring tenure charges against Bonita Baskay. The demand of the Board of Education to terminate Bonita Baskay's employment, to forfeit her teaching certificate and to refer this matter to the Teachers' Pension and Annuity

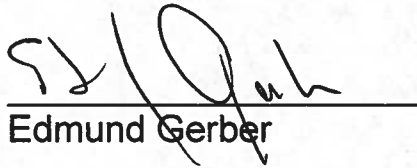
Fund for forfeiture are all denied. The Board of Education had just cause to suspend Bonita Baskay and she shall be suspended for ten (10) days.

Baskay shall be reimbursed for all salary denied during her suspension following the filing of the instant tenure charges and credited with all appropriate rights and seniority had she worked for the entire period of her suspension, less the salary, benefits and tenure rights that otherwise would have accrued during her ten (10) day suspension.



Edmund Gerber, Arbitrator
December 10, 2013

I, Edmund Gerber, affirm that I have executed this document as my Award in Department of Education Docket Nos. 324-11/12 and 321-11/12 on Tuesday, December 10, 2013.



Edmund Gerber