Summary of SC98959, *Tammy Ferry v. The Board of Education of the Jefferson City Public School District*

Appeal from the Cole County circuit court, Judge Jon E. Beetem
Argued and submitted September 14, 2021; opinion issued January 11, 2022

Attorneys: The board was represented by Duane A. Martin, J. Drew Marriott and Ryan VanFleet of EdCounsel LLC in Independence, (816) 252-9000. Ferry was represented by David J. Moen of David J. Moen PC in Jefferson City, (573) 636-5997; Dennis E. Egan of The Popham Law Firm PC in Kansas City, (816) 221-2288; and Roger G. Brown, an attorney in Jefferson City, (573) 634-8501.

The Missouri School Boards' Association, which filed a brief as a friend of the Court, was represented by Keith R. Powell, an attorney at the association in Columbia, (573) 445-9920.

This summary is not part of the opinion of the Court. It is provided by communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A board of education appeals from a judgment reversing its decision to terminate a teacher's contract after the teacher transferred confidential student information to her personal e-mail account. In a unanimous decision written by Judge Patricia Breckenridge, the Supreme Court of Missouri vacates the circuit court's judgment and enters judgment affirming the school board's decision to terminate the teacher's contract. There was competent and substantial evidence to support the board's decision that the teacher willfully and purposefully effectuated a prohibited disclosure of confidential information in violation of district policy when she transferred the files to her personal e-mail account without any legitimate educational purpose.

Judge Michael E. Gardner – a judge on the Missouri Court of Appeals, Eastern District – sat in this case by special designation in place of Judge Mary R. Russell.

Tammy Ferry served the Jefferson City school district as an instructional technology coordinator for 11 years. In 2019, Ferry used a Google application to transfer work files – including confidential student information – to her personal Google account. Upon learning Ferry had transferred confidential student information, the district placed her on administrative leave. After an investigation, the board sought to terminate Ferry's employment for transferring the confidential student information, failing to return district property, talking to district employees during an ongoing investigation, and returning to the district's premises without authorization. Following a hearing, the board terminated Ferry's employment on the basis she violated the Family Educational Rights and Privacy Act (FERPA) and district policy by disclosing confidential student information when she transferred the files to her personal Google account. Ferry sought judicial review. The circuit court reversed the board's decision and ordered Ferry be reinstated. The board appeals.

VACATED.

Court en banc holds: (1) There was competent and substantial evidence to support the board's finding that Ferry effectuated a prohibited disclosure under FERPA from the district to herself, thereby violating district policy, when she accessed and transferred confidential student information to her personal Google account without a legitimate educational interest. The record shows Ferry admitted she copied and transferred hundreds of files, which she did not create and which contained confidential student information. She further admitted there was no legitimate educational interest in accessing and transferring the confidential information. Although Ferry did not redisclose the confidential information to another party, she effectuated a prohibited disclosure from the district to herself when she accessed and transferred confidential information without a legitimate educational interest.

(2) There was competent and substantial evidence to support the finding Ferry willfully violated the board's policies and procedures. Ferry had received training relating to the district's policies, and the testimony she offered did not support her assertion that the district permitted employees to transfer confidential information to private e-mail accounts.