

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Ruth Ann Baumberger,

*Appellant,*

v.

Case No. 2016-REM-02-0025

Richland County Children Services Board,

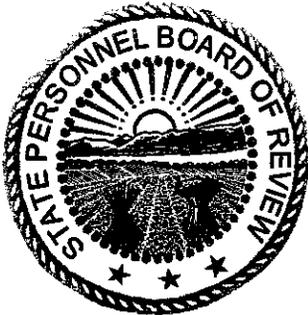
*Appellee,*

**ORDER**

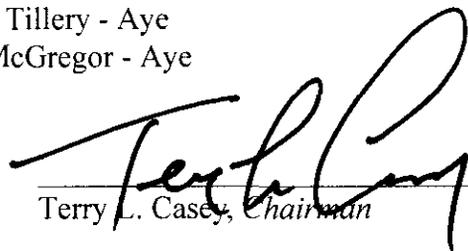
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Appellant's removal is **AFFIRMED** pursuant to R.C. 124.34(B).



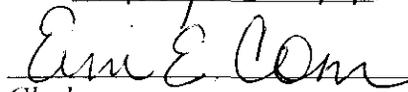
Casey - Aye  
Tillery - Aye  
McGregor - Aye

  
Terry L. Casey, *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, AUGUST 19, 2016.

  
Erin E. O'Mara  
*Clerk*

**NOTE:** Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.

## NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

**METHOD OF PAYMENT:** for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE August 26, 2016. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

**If you have any questions regarding this notice, please contact the Board at 614/466-7046.**

Case Number: 2016-REM-02-0025

Transcript Costs: \$291.00 Administrative Costs: \$25.00

Total Deposit Required: \* \$316.00

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: September 6, 2016

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Ruth Ann Baumberger,

Case No. 2016-REM-02-0025

*Appellant,*

v.

July 22, 2016

Richland County Children Services Board,

*Appellee.*

Elaine K. Stevenson  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant's filing of an appeal with the State Personnel Board of Review ("SPBR or Board") regarding her removal from position as a Social Worker 2 with Appellee, Richland County Children Services Board ("RCCSB"). This Board's jurisdiction to consider Appellant's appeal was established pursuant to O.R.C. § 124.34.

Appellant's O.R.C. § 124.34 Order of Removal states as follows:

Unsatisfactory Performance (Improper use of SACWIS).  
Insubordination – Willful and Wanton Improper use of  
SACWIS.  
Neglect of Duty.  
Violation of Last Chance Agreement dated October 15,  
2015, a copy of which is attached hereto.

**CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT**

On April 26, 2016, a record hearing was held in this matter. Appellant was present at the hearing and appeared *pro se*. Appellee was present at the hearing through its designee, Christopher W. Zuercher, HR Manager/Attorney, and was represented by Matthew S. Teetor, Attorney at Law. Appellee called one witness, Mr. Zuercher.

The consolidated testimony and findings of fact set forth below are based on a thorough review of the record evidence as a whole and, where relevant, witnesses' credibility determinations.

## **I. BACKGROUND**

Appellant was hired by Appellee as a Paralegal in January 2008. On July 21, 2009, Appellant transferred to the position of Social Worker/Caseworker with the Richland County Children Services ("RCCS"). On July 27, 2012, Appellant was promoted to Social Worker/Caseworker 2. Appellant held the position of Social Worker/Caseworker 2 until she was removed on January 29, 2016. Appellant confirmed that she received adequate training on all RCCS policies, including those involving confidentiality and access to the Statewide Automated Child Welfare Information System ("SACWIS").

## **II. APPELLANT'S DISCIPLINARY RECORD**

In April 2015, Appellant received a written reprimand for (1) using unauthorized devices to access SACWIS and (2) violating computer use and responsibility policies. In June 2015, Appellant received a second written reprimand for failing to meet state deadlines for processing cases.

## **III. LAST CHANCE AGREEMENT AND THIRTY-DAY SUSPENSION**

In October 2015, Appellant was charged with unauthorized access to SACWIS and having a backlog of cases. On October 2, 2015, Appellant attended a pre-disciplinary hearing that lasted approximately one and one-half hours. At the pre-disciplinary hearing, Appellee presented the charges and gave Appellant an opportunity to respond. Appellant admitted to accessing more than ten case files in SACWIS that were not assigned to her and she acknowledged that her actions violated agency policies. Mr. Zuercher recalled that Appellant did not regard the policies as serious and did not believe they were enforced. Mr. Zuercher stated that after the pre-disciplinary hearing concluded, Patricia A. Harrelson, Executive Director of RCCSB, decided to draft a last chance agreement instead of terminating Appellant's employment. Appellant received a thirty-day suspension and a last chance agreement instead of removal.

The primary purpose of Appellant's last chance agreement was to address the seriousness of the SACWIS violations. Since SACWIS is state operated, RCCS accesses the database with state permission. Mr. Zuercher explained that the state has very strict administrative rules regarding agency access to SACWIS and maintaining client confidentiality. Mr. Zuercher also explained that legislation has expanded the administrative rules and now requires agencies using SACWIS to directly notify the state of any persons involved with a breach of confidentiality. Mr. Zuercher noted that Appellant's last chance agreement provided for a quarterly review of Appellant's SACWIS record. In an effort to reduce Appellant's backlog of cases, Appellee assigned Appellant to an "ongoing cases" team under the supervision of Charity Hamler.

#### **IV. APPELLEE DETERMINES APPELLANT VIOLATED LAST CHANCE AGREEMENT**

In January 2016, RCCS reviewed a report of Appellant's activity in SACWIS. Mr. Zuercher testified that Appellee identified three cases that were not assigned to Appellant: D.D., T.S., and T.B. (These cases are abbreviated to protect the privacy of the persons involved.). Mr. Zuercher drafted an investigation report after the information from SACWIS was verified. Mr. Zuercher then hand delivered a pre-disciplinary hearing notice to Appellant. Mr. Zuercher recalled that Appellant explained her actions regarding the D.D., T.S., and T.B. cases to him at that time. Mr. Zuercher finalized his investigation report and Appellee moved forward with the scheduled pre-disciplinary hearing.

#### **V. BREACH OF LAST CHANCE AGREEMENT/APPELLANT'S EXPLANATIONS**

On January 21, 2016, Appellant attended her pre-disciplinary hearing regarding allegations that she violated her last chance agreement by accessing three cases in SACWIS that were not assigned to her: (1) Case D.D. - accessed on December 24, 2015; (2) Case T.S. - accessed on December 24, 2015; and (3) T.B. - accessed on December 28, 2015. At her pre-disciplinary hearing, Appellant stated that the three cases she accessed were related to one of her cases, T.P. Appellant explained that she accessed the D.D. case because she wanted to identify and gather information on an individual named "Bucky." Appellant's client, T.P., was living with Bucky and Appellant received information that Bucky had custody of another child assigned to him through RCCS. Additionally, Appellant learned T.P.'s daughter, "J", was also living in Bucky's home. Appellant stated she never met Bucky despite visiting the home twice. Appellant learned this information on or about December 17, 2015, but did not make any attempt to contact Bucky at that time. On December 24, 2015, Appellant accessed the D.D. case, which showed in the system as a related person. Appellant spoke to the caseworker for D.D. and that put her at ease regarding T.P. and "J" living with Bucky. Appellant presented no evidence that there was an emergency situation involving her T.P. case.

Appellant believed her access to the T.S. case was justified because her search was related to finding aliases for T.P. Appellant had spoken to T.P.'s brother-in-law, who informed Appellant that T.P. had aliases and had previously lost custody of another child. Appellant did not document the aliases at that time. Sometime later, Appellant searched for "Smith" (T.S.) in SACWIS hoping to find an alias for T.P. but the T.S. case she found was not T.P. No evidence was presented to indicate whether Appellant pursued this any further.

Appellant explained that her SACWIS search involving the T.B. case was also related to her work on the T.P. case. Appellant claimed to have heard from various family members of T.P. that "S", who was a friend of T.P.'s daughter "J", was a bad influence on "J". Appellant indicated that she first met "S" at a court hearing on

December 11, 2015, where "S" told Appellant she had a case with RCCS and her caseworker would not be happy she was at court and not in school. Appellant never asked "S" her last name or for her caseworker's name. Appellant did not ask any of T.P.'s family if they had additional information regarding "S". Appellant claimed to have seen "S" and "J" outside walking together during school hours but could not speak with them because she was with another client. Appellant conducted a search of S's first name in SACWIS and accessed the T.B. case as a result. Appellant indicated that she was unable to contact the caseworker assigned to "S". Appellant did not follow up with the caseworker regarding "S".

### CONCLUSIONS OF LAW

The issue in this case is whether Appellant violated her last chance agreement with Appellee. In an appeal of a removal order based upon a violation of a last chance agreement, this Board may only determine if the employee violated the agreement and thus affirm or disaffirm the judgment of the appointing authority. See O.R.C. § 124.34(B). Appellee bears the burden to prove by a preponderance of the evidence Appellant engaged in the conduct alleged and the conduct violated the last chance agreement.

The last chance agreement executed by the parties in October 2015 provides, in pertinent part, as follows:

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For a period of twenty-four months from the effective date of this Agreement, Mrs. Baumberger agrees that she will automatically be removed from her employment without the right of appeal to the State Personnel Board of Review or the appropriate commission should she do any of the following:

- a. Commit any offense constituting a violation of any Group 1, 2 or 3 offense regardless of severity if such offenses involve the same or similar conduct as noted in previous disciplines and described above.
- b. Preview or view ANY CASE OR CLIENT HISTORY OR OTHER INFORMATION in the Statewide Automated Child Welfare Information System (SACWIS), other data system or hard files of any person's case not specifically assigned to her by her supervisor or other agency management employees and for any purpose which is not a business purpose or otherwise against agency policies or procedures.

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Appellant admitted that she accessed three cases in SACWIS that were not assigned to her. Appellant further admitted that she did not seek permission to view these cases in SACWIS. Therefore, Appellant previewed or viewed three case or client

histories in SACWIS not specifically assigned to her by her supervisor or another agency management employee in violation of her last chance agreement.

Appellant argues, however, that she did not violate her last chance agreement because she had a legitimate business purpose for accessing all three cases. Appellant claims that she accessed these cases to gather information for one of her assigned cases, T.P. At record hearing, Appellant offered detailed explanations for accessing each of the three cases in question that mirrored the explanations noted above in Section V. It is difficult to understand what Appellant was attempting to achieve when she accessed the three cases for her T.P. case. There was no emergency situation or other reason that would justify accessing these cases. Appellant could have used her time to complete her investigation of T.P. by continuing to speak with T.P. and her family members to assess the situation rather than randomly searching for information in SACWIS. By using SACWIS as a shortcut to try to gather information regarding T.P. and her family, Appellant placed her convenience over the privacy rights of agency clients and accessed information which was unnecessary to perform her job duties, in violation of RCCS Policy 8.10, III 1. Access & Confidentiality.

Lastly, it is important to note that at no time did Appellant seek guidance from her supervisor or any other management employee *before* she accessed cases that were not assigned to her. Appellant could have explained to her supervisor or other management employee her specific reasons for wanting to use SACWIS to access cases not assigned to her. At hearing, Appellant argued that she did not ask her supervisor because she had no way of knowing which cases she needed to access and she did not believe she had to have permission because she was doing her job. Appellant's argument is flawed in that it ignores the critical relevance of Appellant's last chance agreement. The language in Appellant's last chance agreement is very clear and put Appellant on notice that her use of SACWIS to access cases not assigned to her would result in her termination. Therefore, if Appellant believed that she needed to access cases not assigned to her to complete her work on one of her cases; she should have consulted with her supervisor or other management employee *in advance* to obtain approval.

### RECOMMENDATION

Since the evidence demonstrates that Appellant breached her last chance agreement by using SACWIS to access cases that were not assigned to her without obtaining prior approval, and since Appellant had no legitimate business purpose for accessing those cases, I respectfully **RECOMMEND** Appellant's removal be **AFFIRMED** pursuant to O.R.C. § 124.34(B).

  
Elaine K. Stevenson  
Administrative Law Judge