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# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-000819-MR

TIFFANY M. COVERDELL

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE WILLIAM L. GRAHAM, JUDGE  
ACTION NO. 02-CI-00319

KENTUCKY BOARD OF CLAIMS;  
KENTUCKY DEPARTMENT OF EDUCATION

APPELLEES

### OPINION AFFIRMING

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BEFORE: JOHNSON, TAYLOR AND VANMETER, JUDGES.

TAYLOR, JUDGE: Tiffany M. Coverdell brings this appeal from an April 8, 2003, Order of the Franklin Circuit Court. We affirm.

On August 4, 2000, Coverdell began employment with the Jefferson County Public Schools. On September 23, 2000, Coverdell took the Praxis test to obtain a certificate of eligibility for a teaching internship. She scored a 145 on the test. She was informed that a score of 145 was not passing.

She again took the Praxis test on January 20, 2001. Her score was 145. In a letter dated May 29, 2001, the Director of the Division of Testing and Research at the Education Professional Standards Board (EPSB) informed Coverdell that "[a] review of the minimum score set in January 2000 revealed that the new passing score of 146 is inconsistent with the score intervals for test. . . your score of 145 is now a passing score." It appears the Praxis test was scored in increments of five and, therefore, an individual could score a 145 or a 150 but not a 146.

Consequently, Coverdell filed an action with the Board of Claims alleging negligence against both the EPSB and the Kentucky Department of Education (Department of Education). The Department of Education filed a motion to dismiss, and by Order entered February 21, 2001, the Board of Claims dismissed the Department as a party. Coverdell then filed a Complaint in the Franklin Circuit Court seeking judicial review of Board of Claims' Order dismissing the Department of Education. The circuit court ultimately agreed with the Board and affirmed its decision. This appeal follows.

Coverdell contends the Board of Claims committed error by dismissing the Department of Education. As an appellate court, we step into the shoes of the circuit court and review the administrative agency's decision for arbitrariness. See

American Beauty Homes Corp. v. Louisville and Jefferson County Planning and Zoning Commission, Ky., 379 S.W. 2d 450 (1964). In this instance, we must determine whether the Board of Claims' decision to dismiss the Department of Education was arbitrary and capricious. Id. After review of the record, we must agree with the circuit court that the Board's decision dismissing the Department of Education was proper.

The EPSB was established in 1990 as part of the Kentucky Education Reform Act and was housed within the Department of Education. By Executive Order 2000-851, effective July 1, 2000, the EPSB was established as an independent agency attached to the Governor's Office.

It is uncontroverted that Coverdell was first employed by Jefferson County Schools on August 4, 2000, and first took the Praxis test on September 23, 2000. These events took place months after the EPSB became an independent agency unconnected with the Department of Education. Coverdell, however, argues that the Department of Education "was responsible for the implementation of the standards for the test when the standards for Coverdell's test were originally established." We view such fact as inconsequential. At the time Coverdell first took the Praxis test, the EPSB was solely responsible for teacher certification requirements and for the implementation of testing standards. Simply put, the EPBS had the singular authority to

establish the passing score when Coverdell took the Praxis test; the Board of Education possessed no such authority at that time. Upon the whole, we are of the opinion that the Board of Claims properly dismissed the Department of Education as it owed no duty to Coverdell.

Coverdell next asserts that the Board of Claims February 21, 2001, Order failed to comply with the mandates of Kentucky Revised Statutes (KRS) 44.073. Coverdell failed to cite to a specific subsection of KRS 44.073. Upon review of KRS 44.073, we presume that Coverdell is referring to subsection 3, which states as follows:

The Board of Claims shall have primary and exclusive jurisdiction to make findings of fact, conclusions of law, and legal determinations with regard to whether the alleged negligent act was on the part of the Commonwealth or any of its cabinets, departments, bureaus, or agencies or any officers, agents, or employees thereof.

Upon review of the Order, we are of the opinion that it sufficiently complied with KRS 44.073(3).

Coverdell next argues that the circuit court committed error by not granting her motion for summary judgment. Based upon our disposition of the above issues, we believe this argument was rendered moot.

For the foregoing reasons, the Order of the Franklin Circuit Court is affirmed.

ALL CONCUR.

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