

BEVERLY G. KELLEY,

Appellant

v.

QUEEN ANNE'S COUNTY  
BOARD OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 18-24

## OPINION

### INTRODUCTION

Beverly G. Kelley (Appellant) appeals the decision of the Queen Anne's County Board of Education (local board) to censure her. The local board filed a Motion for Summary Affirmance, maintaining that its decision was not arbitrary, unreasonable, or illegal. Appellant responded to the motion and the local board replied.

### FACTUAL BACKGROUND

Appellant joined the local board in 2011 after being appointed to complete the remainder of another board member's term. Voters elected her to a four-year term in 2012 and re-elected her to a second term in 2016. Appellant retired from the U.S. Coast Guard in 2006 after 30 years of service. Her son attends Queen Anne's County Public Schools. (Appeal, Ex. 2 Kelley Affidavit).

On April 13, 2018, an alleged hazing and assault incident occurred at Kent Island High School involving the Junior Varsity Men's Lacrosse Team. Administrators became aware of the incident after someone posted a video of it to social media. The school system began investigating the incident, along with the sheriff's office. Dr. Andrea Kane, superintendent of schools, sent a letter home to parents about the incident a few days after it happened. On April 20, 2018, Dr. Kane canceled the remainder of the season for the Junior Varsity Men's Lacrosse Team after the school system concluded that a significant number of the team members actively or passively engaged in inexcusable behavior in connection with the incident. The matter garnered extensive media and community attention. (Dr. Kane letters, April 17 and April 20, 2018; Appeal, Ex. 2 Kelley Affidavit).

Sometime after this incident, Annette DiMaggio, the local board president, became concerned that Appellant had communicated with school administrators about the incident. Ms. DiMaggio believed this constituted a conflict of interest because Appellant's son was a member of the lacrosse team. Ms. DiMaggio met with the local board's attorney and requested that counsel draft a resolution of censure based on Ms. DiMaggio's concerns about Appellant. (Motion Ex. 1, DiMaggio Affidavit).

On April 17, 2018, Ms. DiMaggio sent an email to the other board members calling for an emergency meeting to discuss the incident with school system counsel. The next day, the board met in closed session. At the start of the session, Appellant recused herself, explaining that her son was a member of the lacrosse team and she knew most of the team members, including those accused in the incident. Appellant left after her recusal. The board met in open session later that day to discuss budget matters. After the budget session, the board voted to go into closed session to discuss a personnel matter. Appellant states that she did not attend the closed session. (Appeal, Ex. 2 Kelley Affidavit; Recording of April 18, 2018 Meeting).

On April 23, 2018, Ms. DiMaggio sent Appellant a letter on behalf of the board requesting that Appellant retire or resign immediately. If Appellant chose not to resign, the letter stated that the board would pursue a resolution to request that the State Board of Education remove Appellant from office. The letter explained the board members' reasoning:

Unfortunately, the events and circumstances of the past ten days involving the lacrosse teams and players at Kent Island High School (one of whom is your son) have changed things. Your decision last Wednesday to recuse yourself from Board discussions and proceedings related to the Kent Island High School situation was commendable. However, it will not be enough to avoid significant conflicts of interest or the appearance of impropriety as the school system and law enforcement investigations continue, or when this Board, inevitably, must review any resulting cases or take follow-up actions. Moreover, it . . . has become apparent to us that some of your actions, both before and after your recusal, were inconsistent with your official obligations. While we empathize with you as a mother who must act in her son's best interests, we have lost confidence that you can focus on your personal role while also serving on the Board. We do not believe there is any way for you to continue as a Board member and effectively, ethically perform the duties and responsibilities of the position as provided by law and in accordance with our policies and handbook. Accordingly, we urge you to step down at this time. If you do so, we will certainly emphasize recognition and celebration of your service, rather than the current difficult situation.

(Appeal, Ex. 2 Kelley Affidavit; Ex. 2D, DiMaggio Letter).

On May 2, 2018, during the local board's meeting, Ms. DiMaggio reviewed a draft resolution of censure. Having discussed the situation individually with board members, and aware that a majority believed Appellant should resign, Ms. DiMaggio decided at the meeting to present the resolution for censure and put it to a vote. She did not know prior to the meeting whether she would present the resolution. Before the vote, Ms. DiMaggio explained that the board "had decided" on a resolution, which she read in full. The resolution stated:

WHEREAS, during the week of April 9, 2018, one or more incidents of student misconduct occurred involving athletes at Kent Island High School (the "Incident"), which resulted in various allegations, investigations and other responses by administrators and law enforcement;

WHEREAS, during the investigations, social media attention and other follow-up activity, the Board became aware that one of its Members, Beverly Kelley, has a direct personal interest in the matter;

WHEREAS, Capt. Kelley eventually acknowledged said personal interest and recused herself from proceedings before the Board, effective April 18, 2018;

WHEREAS, other Board Members have since learned that Capt. Kelley has engaged in certain actions related to the Incident, both before and since her recusal, which call into question her ability to act impartially, ethically and in a manner consistent with her duties as a Board member. These actions include communicating with school administrators and possibly parents about the Incident; undermining the functioning of the Board and/or the Superintendent of Schools in addressing the Incident; and failing to promptly inform interested parties and other members of the public about her recusal from all QACPS and Board proceedings involving the Incident; and

WHEREAS, members of the Board of Education must hold to the highest standards of conduct and leadership in fostering an environment within the Queen Anne's County Public Schools community where student misconduct is investigated and administered in a fair and equitable manner;

NOW, THEREFORE, BE IT RESOLVED THAT:

The Board of Education hereby formally expresses its displeasure and disapproval of Capt. Kelley's actions;

The Board hereby declares that Capt. Kelley's actions have impaired the functioning of the Board as a body and has negatively impacted operation of the school system;

The Board hereby publically censures Capt. Kelley for these actions; and

The Board expresses its belief that Captain Kelley should resign and further, that if she does not resign, the Board will consider other possible action, including but not limited to a formal request to the Maryland State Board of Education to remove Capt. Kelley from her position as a local board member for statutory cause.

(Appeal, Ex. 1; Recording of May 2, 2018 Meeting).

After Ms. DiMaggio read the resolution, Appellant stated that she had no intention of resigning or retiring. Ms. DiMaggio told her, "That's fine . . . that's not what we're here to discuss." Appellant continued reading a short statement in which she explained that, although not required to recuse herself, she decided to do so to avoid any potential conflicts of interest or appearance of bias. She stated that she intended to continue serving through the remainder of her term. The local board voted 4 to 1 in favor of adopting a resolution censuring Appellant.

Appellant was the sole board member to vote against the censure resolution.<sup>1</sup> (Recording of May 2, 2018 Meeting).

This appeal followed.

### STANDARD OF REVIEW

A local board of education does not have the statutory authority to issue fines, suspensions, expulsions, or reprimands to its members. A local board does, however, have “the power to adopt a resolution that, while having no formal legal effect as a sanction, criticizes what the Board perceives as improper conduct.” *Burroughs v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 11-23 (2011) (quoting 65 Op. Att’y Gen. 347, 350 (1980)). We have previously stated that reversing a censure decision from a local board would be appropriate only if the censure were an “egregious abuse of discretion or were blatantly illegal and discriminatory.” *Id.*

### LEGAL ANALYSIS

As a preliminary matter, the local board argues that this case should be dismissed because the State Board does not have jurisdiction to hear the appeal and Appellant lacks standing to bring it.

#### *Jurisdiction*

The local board argues that the State Board lacks jurisdiction to hear Appellant’s case. We agree with the local board that this issue is not one that involves a matter decided by the local superintendent then appealed to a local board under Md. Code, Educ. § 4-205. But the State Board retains a grant of original jurisdiction through Md. Code, Educ. § 2-205 that permits us to determine the true intent and meaning of state education law and to decide all cases and controversies that arise under the State education statute and State Board rules and regulations. *See Sartucci v. Montgomery County Bd. of Educ.*, MSBE Op. No. 10-31 (2010). This category of cases applies to State education law, regulations, or a policy that implicates State education law or regulations on a statewide basis. *Id.*; *see also In Re: Board of Education of Howard County v. Renee Foose*, MSBE Op. No. 17-08 (2017) (discussing the State Board’s jurisdiction).

The State Board retains this original jurisdiction, in part, so that the courts are not burdened with reviewing every dispute that might occur within the administration of Maryland’s public schools. *See Wiley v. School Commissioners*, 51 Md. 401, 406 (1879). The local board’s position – that the State Board lacks jurisdiction - would either make a censure resolution entirely unreviewable or leave it to the courts to resolve, contrary to *Wiley*. Accordingly, we have on occasion reviewed censure decisions issued by local boards. *See Payne v. Dorchester County Bd. of Educ.*, MSBE Op. No. 15-32 (2015); *Burroughs*, MSBE Op. No. 11-23. In our view, the smooth administration of local boards of education – including the circumstances under which local boards seek to remove or express disapproval of their members – is a matter of statewide education policy and of interest beyond Queen Anne’s County. Accordingly, we shall exercise our jurisdiction to review the appeal.

---

<sup>1</sup> The local board, to date, has not requested that the State Board remove Appellant from office.

### *Standing*

The general rule on standing is that “for an individual to have standing, even before an administrative agency, he must show some direct interest or ‘injury in fact, economic or otherwise.’” *Adams, et al. v. Montgomery County Bd. of Educ.*, 3 Op. MSBE 143, 149 (1983). *See also Schwalm v. Montgomery County Bd. of Educ.*, MSBE Opinion No. 00-10 (2000). This showing of a direct interest or injury in fact requires the individual to be personally and specifically affected in a way different from the public generally and is, therefore, aggrieved by the final decision of the administrative agency. *See Bryniarski v. Montgomery County Bd. of Educ.*, 247 Md. 137, 144 (1967); *see also Lockwood v. Howard County Bd. of Educ.*, MSBE OR No. 17-12 (2017).

The local board maintains that, because the censure had no legal effect, Appellant has suffered no injury in fact or deprivation that would confer standing. We observe, however, that the general rule on standing allows for an individual to have standing if they have a direct interest in a matter. Appellant, as the one whom the local board censured, certainly has an interest in the local board’s decision that is different from the public at large. We therefore conclude that she has standing to challenge the decision and turn to the merits of the appeal.

### *Unlawful procedure*

Appellant argues that the board acted illegally by censuring her because, in the process, the board violated the Open Meetings Act. She characterizes passing a resolution under those circumstances as an abuse of discretion. Appellant alleges two violations of the Open Meetings Act: (1) the board failed to include the resolution on the agenda of the May 2, 2018 meeting and did not amend its agenda to include it; and (2) the board must have improperly discussed the resolution during an earlier closed session without following the proper process for closing a meeting or releasing the minutes.

We have previously held that the Open Meetings Compliance Board, rather than the State Board, is the proper forum for bringing an Open Meetings Act complaint. *See Dr. Ben Carson Charter School, et. al., v. Harford County Bd. of Educ.*, MSBE Op. No. 05-21 (2005). We have accepted final decisions of the Open Meetings Compliance Board as evidence in other cases, but we have declined to make independent findings about Open Meetings Act violations.

Appellant argues that the board violated her right to due process by failing to provide her notice of the pending resolution or an opportunity to respond. A video of the May 2, 2018 meeting indicates that, although initially cut-off by Ms. DiMaggio, Appellant had the opportunity to read a brief statement that responded to the resolution. We have previously ruled that a censure is a “legislative” act on the part of a local board and does not require the due process protections required in a quasi-judicial proceeding. *See Payne*, MSBE Op. No. 15-32. A local board’s provision of an opportunity to speak during a board meeting in response to a censure motion is sufficient. *Id.* Accordingly, we find no due process violation.

### *Arbitrary and Unreasonable Decision*

Appellant maintains that the board’s censure was arbitrary and unreasonable because it failed to specify what actions by Appellant led to the censure and it “was designed to be punitive

and a device to coerce Captain Kelley into resigning in retaliation” for a prior political feud. In *Burroughs*, we opined that we had seldom been asked to overturn a local board’s private censure of one of its members and could “think of few instances in which we would do so.” *Burroughs*, MSBE Op. No. 11-23. We held that overturning a censure decision should only occur if the censure were an “egregious abuse of discretion” or “blatantly illegal and discriminatory.” *Id.*

An abuse of discretion constitutes a “very high standard.” *Robin H. v. Montgomery County Bd. of Educ.*, MSBE Op. No. 16-44 (2016). An abuse of discretion occurs “where no reasonable person would take the view adopted” or when a body acts “without reference to any guiding rules or principles.” *Id.* (quoting *King v. State*, 407 Md. 682, 697 (2009)). It also exists when a ruling is “clearly against the logic and effect of facts and inferences” available to the reviewing body, “violative of fact and logic” or an “untenable judicial act that defies reason and works an injustice.” *Id.*

We conclude that the resolution is vague about what Appellant did to warrant censure and the record contains few facts upon which the board could base its decision. The resolution refers generally to communications Appellant had with school administrators “and possibly parents”; “undermining” the functioning of the local board “and/or” the local superintendent; and failing to inform others about her recusal. Her purported misconduct is far from clear based on the resolution alone and there are no other specific facts in the record.

In our view, a censure resolution must have a factual underpinning that informs the public about what type of specific conduct the local board wishes to censure. In *Payne*, the local board based its censure resolution on a report compiled by a two-member special committee that investigated allegations of improper conduct by a board member. *See Payne*, MSBE Op. No. 15-32. Not every censure resolution must be backed up by an investigative report, but some kind of factual basis must be available that specifies a board member’s wrongdoing. For example, in *Burroughs*, the Prince George’s County Board member conducted a unilateral investigation of a truancy case contrary to the direction of the superintendent and in violation of confidentiality rules. *See Burroughs*, MSBE Op. No. 11-23. Because there is no factual underpinning to support this censure, we overturn the local board’s resolution.

## CONCLUSION

For all of these reasons, we overturn the local board’s censure decision.

Signatures on File:

---

Justin M. Hartings  
President

---

Stephanie R. Iszard  
Vice-President

---

Chester E. Finn, Jr.

---

Vermelle D. Greene

---

Michele Jenkins Guyton

---

Jean C. Halle

---

Rose Maria Li

---

Joan Mele-McCarthy

---

Michael Phillips

---

David Steiner

---

Warner I. Sumpter

July 24, 2018