

IN RE: WAYNE FOOTE

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 19- 37

OPINION

INTRODUCTION

Wayne Foote, a member of the Allegany County Board of Education, filed Exceptions to the Proposed Decision issued by Administrative Law Judge (“ALJ”), Michael Wallace, recommending that the Maryland State Board of Education (“State Board”) remove Mr. Foote from office. Assistant Attorneys General, Karen Anderson-Scott and Christle Sheppard Southall, responded to the Exceptions. Oral argument was heard on October 22, 2019.

PROCEDURAL HISTORY

On December 26, 2018, the State Board received a Removal Resolution from the Allegany County Board of Education (“local board”) requesting that this Board remove from office one of its members, Wayne Foote, for reasons of misconduct in office and willful neglect of duty. The local board adopted the Removal Resolution by a vote of 4 to 1, with Mr. Foote casting the lone vote against removal. The Resolution states that Mr. Foote breached the confidentiality of closed meetings, committed sexual harassment against staff members, and used his position as a board member to silence those who complained about him. Following the Resolution, two of the board members who voted in favor of removal wrote letters to the State Board providing additional details about Mr. Foote’s conduct.

On January 21, 2019, with a newly elected board in place, counsel to the local board advised that the State Board was likely to conclude that the allegations underlying the Resolution would not be sufficient to go forward with a removal proceeding. The newly elected board, however, did not rescind the Removal Resolution. The State Board concluded that, even if the local board no longer supported the Removal Resolution, the State Board could proceed under its own inherent power to issue charges. On January 22, 2019, the State Board issued charges and advised Mr. Foote of his right to a hearing.

In other removal actions, the local board prosecutes the removal case. Here the State Board determined that the local board was not in a position to prosecute the case vigorously. Therefore, the State Board appointed counsel from the Attorney General’s Office, independent of

and unrelated to the State Board, to prosecute the case on its behalf.<sup>1</sup> It delegated hearing authority to the Office of Administrative Hearings (“OAH”).

The case was heard at OAH on July 23 and 24, 2019. The ALJ issued a Proposed Decision on September 9, 2019 to which Mr. Foote filed Exceptions.

### FACTUAL BACKGROUND

The ALJ sets forth the facts of this case on pp. 4-10 of the Proposed Decision. On pp. 20-39, he placed those facts in context of the charges issued. He concluded that Mr. Foote’s disclosure of confidential information amounted to willful neglect of duty and misconduct in office. Proposed Decision at 26. He also concluded that facts concerning sexual misconduct and intimidation on the part of Mr. Foote were sufficient to find that Mr. Foote committed misconduct in office. *Id.* at 27-32. We adopt the ALJ’s factual background. The ALJ recommended that Mr. Foote be removed from office.

### STANDARD OF REVIEW

The State Board transferred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ’s proposed decision. The State Board’s final decision, however, must identify and state reasons for any changes, modifications or amendments to the proposed decision. *See* Md. Code Ann., State Gov’t §10-216. In reviewing the ALJ’s proposed decision, the State Board exercises its own independent judgment, but must give deference to the ALJ’s demeanor-based credibility findings unless there are strong reasons to reject such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

### LEGAL ANALYSIS

Mr. Foote takes exception to the ALJ’s Proposed Decision on the grounds that:

- (1) There was no probable cause to initiate the removal proceedings because the allegations that the local board submitted to the State Board were not legally sufficient.
- (2) The case is moot because all factual allegations relate to Mr. Foote’s first term in office which ended December 31, 2018 and removal would undermine the will of the electorate in Allegany County.
- (3) The ALJ’s decision is flawed because it “misplaced emphasis and misunderstood testimony.”
- (4) Mr. Foote was not given sufficient time to address the local board’s concerns. A postponement of the hearing was not granted.

Each argument will be addressed herein.

---

<sup>1</sup> To the extent that the ALJ’s decision refers to County Board’s “positions” or “contentions” presented at the hearings, we correct those references to make clear that the case was not prosecuted by the County Board but rather by counsel from the Attorney General’s Office.

## 1. Probable Cause

Before the State Board issues charges to begin a removal proceeding, it assesses whether the information before it is factually and legally sufficient to come to a reasonable belief that the actions alleged could constitute grounds for removal from office. *In the Matter of Annette DiMaggio*, MSBE Op. No. 16-24 (2016); COMAR 13A.01.05.12. Mr. Foote argues that there was no probable cause to initiate the proceeding. That is not the case.

On February 26, 2019, the State Board found that it had before it factually and legally sufficient allegations to support charges of misconduct in office and willful neglect of duty. Pursuant to Maryland Education Article §3-201(g), the State Board voted that there was probable cause to remove Mr. Foote from office. It informed Mr. Foote that:

The allegations fall into two categories: (1) breaching the confidentiality of board discussions in executive session; (2) sexual misconduct and intimidation. The allegations supporting the charges are as follows:

(1) Breaching the confidentiality of confidential board discussions (Willful neglect of duty and misconduct in office)

- In April 2015, you publicly discussed a case involving a teacher’s alleged inappropriate sexual behavior. Your comments were made to local media and in a public meeting, despite being instructed not to publicly comment on the case, which the local board discussed in executive session.
- In June 2018, you told Sarah-Beth Bittinger, a fellow board member, that your daughter was assisting you in completing a confidential evaluation of the local superintendent and requested that Ms. Bittinger speak with your daughter about it.
- On September 24, 2018, you told other board members that you did not maintain the confidentiality of executive session discussions when you stated, “Come on, don’t you all talk outside of here?” This statement was made after you received a letter in July 2018 reminding you of the need to maintain the confidentiality of executive session discussions.
- On October 1, 2018, during a candidate forum, you disclosed the content of an executive session discussion when you stated that you were “asked to leave a meeting because you had a business relationship with Bob Farrell.” The local board issued a letter of censure against you for this incident and for your September 24, 2018 statement, expressing its concern that your continued breaches of confidentiality were having a negative effect on the local board.
- On November 13, 2018, you shared a copy of your confidential executive session agenda and your personal written notes with newly elected board members David Bohn and Robert Farrell, who then shared the materials with fellow new board member

Deb Frank. The new board members were not yet serving on the board and were only permitted to attend a portion of the closed meeting. The local board issued another private censure for this incident.

(2) Sexual misconduct and intimidation (Misconduct in office)

- In November and December 2016, you referred to female board members as your “harem” in a public meeting and on the radio.
- In the winter of 2016, after Ms. Bittinger coughed during a board meeting, you suggested to her that you could rub Vicks on her chest.
- During the 2017 school year, you asked a school system employee to “rub a cramp out” of your leg after being asked if you needed anything.
- On October 13, 2017, you grabbed board member Laurie Marchini’s right breast from behind while she was holding a door open. You first touched her elbow, then dropped your hand to her waist and ran your hand up her side and groped her. Ms. Marchini reported these incidents in executive session and to the local ethics panel.
- Also on October 13, 2017, Dr. Kim Green Kalbaugh, chief academic officer for Allegany County Public Schools, commented to you that you looked patriotic because you were wearing an American flag tie. You replied, “You like that? Want to see how far it goes?” while making a gesture of unzipping your pants.
- The local board, local superintendent, and legal counsel raised concerns about your inappropriate comments and conduct on several occasions, including during November 2016 and November 2017, executive session discussions. On July 17, 2018, the local board president and vice president sent you a letter (read in executive session) in which they reminded you that “comments of a sexual nature or with sexual innuendo or other sexual conduct made to school employees or others in the school setting or at school system functions is not only inappropriate, but could subject the school system to a loss of public trust and, also, to financial liability.” You have been warned not to touch, hug, kiss, or comment on the clothing of school staff.
- During an unannounced and uninvited visit to a local high school, you told a teacher who had completed reconstructive breast surgery that she could expose her breasts if she wanted an artist’s perspective on whether the surgeon did a good job. You made the comment in front of the teacher’s class and she complained to the principal. In November 2018, during a visit to the same school, you told a male staff member to tell the teacher that you were displeased by her complaints about him. The local board privately censured you for this incident in a letter on

December 11, 2018, stating: “Your comments could be construed as threatening or intimidating to the [affected] staff member.”

Letter of February 26, 2019 from State Board to Mr. Foote.

Mr. Foote makes two arguments related to probable cause. First, he asserts that the State Board should have refused to act because the local board’s counsel did not believe the evidence warranted its intervention. The State Board, however, is not required to follow the advice of local board counsel. It has the sole authority to decide whether or not to initiate removal proceedings, even if the local board and its counsel do not agree that a removal action is warranted. Md. Educ. Code Ann. §3-201(g).

Second, Mr. Foote asserts that the State Board considered evidence in addition to that which the local board had provided with its Removal Resolution. We reiterate that the State Board’s power to initiate removal proceedings is not bounded by the evidence a local board provides. It can consider all other evidence it receives. *See* COMAR 13A.01.05.12.

Next, Mr. Foote argues that his alleged breaches of confidentiality do not support a finding of probable cause because the local board knew all about those breaches over several years, cautioned Mr. Foote, but did not seek to sanction him until he won re-election. He questions the motives of the “lame-duck” local board. Here again, the State Board exercised its independent authority to assess probable cause. The motives of the local board were not relevant in that analysis.

## **2. Mootness**

Mr. Foote argues that, because all of the facts and allegations against him occurred in his prior term as a board member (2014-2018), he cannot be removed from his current term of office. In his view, the electorate’s vote to give him a new term eradicates past misconduct and makes the case against him moot.

While that argument is a novel one, it is not a convincing one. There is no legal support for the proposition that an election wipes away prior misconduct in office. *See, e.g., Dyer v. Howard County Bd. of Educ.*, MSBE Op. No. 13-30 (2013). Public officials are and remain accountable for their actions in office, whenever they occur.

## **3. Flaws in the ALJ’s Proposed Opinion**

Mr. Foote argues that his breaches of confidentiality did not arise to misconduct in office or willful neglect of duty because there was no evidence that such breaches impaired the ability of the local board to function. We do not agree.

Several witnesses testified regarding the importance of keeping the information discussed in executive sessions confidential. (Tr. 73, 118). Laurie Marchini testified that it is important to maintain confidentiality of executive sessions in matters of personnel, negotiations of the acquisition of property, and legal matters and that the board would not want to interfere in an ongoing investigation. (Tr. 118). Ms. Marchini testified that it is important to maintain confidentiality so that local board members can have a feeling of trust so that members can talk

freely. (Tr. 118-119). Ms. Marchini elaborated and explained that if local board members can't speak freely, they are not able to work out issues and offer opinions on things. Further, Ms. Marchini testified that disclosure of confidential information could expose the local board to liability. (Tr. 119).

The ALJ found, and there is no dispute, that Mr. Foote repeatedly breached the confidentiality of Executive Session discussions. The ALJ was guided by an Opinion of the Attorney General in finding that repeated violations of confidentiality could constitute grounds for removal. The Opinion stated that:

Finally, although a single instance of a breach of confidentiality by a Board member would not furnish sufficient grounds for his or her removal...we do think that repeated violations of confidentiality that demonstrably impair the Board's ability to function (e.g., by inhibiting free and open discussion at properly-closed executive sessions) might well constitute grounds for removal...

65 Op. Att'y Gen. Md. 347, at p.3.

The ALJ found evidence of repeated violations and there was sufficient evidence in the record that those breaches of confidentiality impaired the Board's ability to speak freely and function effectively.

Mr. Foote also excepts to the ALJ's Proposed Decision because the evidence does not support a finding of misconduct in office. The record is replete with evidence of sexually inappropriate remarks and behavior exhibited by Mr. Foote in his role as a board member. We need not repeat that litany here.

Yet, Mr. Foote argues that there is insufficient evidence to support a finding of misconduct in office because two of the witnesses (Ms. Sandra Arnold and Mr. Braden Shober) to one incident were not intimidated by Mr. Foote's comments or conduct and Ms. Arnold believed Mr. Foote's comments were a joke.

Even assuming that is the case, there is plenty of other testimony about inappropriate sexual comments and behavior to support removal from office. It is important to point out, however, that Ms. Arnold, an art teacher at Fort Hill High School, testified that in the fall of 2015, Mr. Foote came into her classroom while she was teaching a class. Ms. Arnold had recently returned to work after having reconstructive breast surgery, and Mr. Foote told her that if she wanted an artist's perspective on whether her surgeon had done a good job, she should just whip them [her breasts] out. (Tr. 26-27). Ms. Arnold testified that several students overheard the remark and told her that if she did not report Mr. Foote's remarks, they would. Ms. Arnold eventually told the principal, Joseph Carter, about Mr. Foote entering her classroom and making this remark. (Tr. 28). She also confided this to a fellow teacher at Fort Hill, Mr. Shober. (Tr. 27).

Ms. Arnold also testified that after the election in November 2018, Mr. Foote went to Fort Hill and relayed a message to her through Mr. Shober. Ms. Arnold, Mr. Shober, and Mr. Carter all testified that Mr. Foote went to Fort Hill and spoke to Mr. Shober in the teachers' lounge, telling him to inform Ms. Arnold that he did not appreciate her complaining about his

conduct. (Tr. 30, 42, 56). Dr. Sara Beth Bittinger, a former board member, also testified that she spoke to Ms. Arnold and Ms. Arnold relayed to her the incident involving Mr. Foote at Fort Hill, including his message to Ms. Arnold after the election. (Tr. 234-235). Ms. Marchini testified that Ms. Arnold spoke to her about the matter and that Ms. Arnold expressed to her that she felt threatened by the message Mr. Foote relayed through Mr. Shober. (Tr. 151). Mr. Carter testified that he spoke with Ms. Arnold and Mr. Shober and confirmed that Mr. Shober had delivered Mr. Foote's threat to Ms. Arnold. (Tr. 56).

Suffice it to say that that evidence, along with all other evidence of sexually inappropriate comments and conduct, supports the ALJ recommendations to remove Mr. Foote from office.

#### **4. Fair Opportunity to Respond**

Mr. Foote argues that the local board denied him the opportunity to respond to a December 11, 2018 letter that informed Mr. Foote that "further transgressions would result in discipline up to and including removal." He considers that a denial of due process. Even if it were a due process violation, that violation can be corrected by subsequent proceedings. The State Board has consistently held that the opportunity for a full evidentiary hearing serves to cure any deficiencies that occurred in prior administrative proceedings. *See Williamson v. Bd. of Educ. of Anne Arundel County*, 7 Op. MSBE 649 (1997); *Harrison v. Somerset County Bd. of Educ.*, 7 Op. MSBE 391 (1996); *see also Mayberry v. Bd. of Educ. of Anne Arundel County*, 131 Md. App. 686, 690-691 (2000) (any defects in procedure were cured by *de novo* evidentiary hearing). Here, Mr. Foote had the opportunity to participate fully in an evidentiary hearing before the ALJ. That had a curative effect on any prior due process violation that may have occurred.

Mr. Foote also excepts because the ALJ denied his last-minute request for a postponement of the hearing. We note that on March 4, 2019, Mr. Foote requested a hearing. He retained counsel. On April 24, 2019, his counsel participated in a pre-hearing conference in which the hearing was scheduled for July 23-24, 2019. Sometime thereafter Mr. Foote dismissed his counsel. On July 8, Mr. Foote requested a postponement in order for his new counsel to prepare for the hearing. Mr. Foote also asserted that his wife was scheduled for surgery the Friday before the start of the hearing. The postponement was denied. *See Proposed Decision* at 1-2. In denying that request, the ALJ noted that Mr. Foote had sufficient notice of the hearing date having agreed to it several months before. Moreover, the postponement request was not supported by medical documentation as required by COMAR 28.02.01.16. (Letter, July 9, 2019 from ALJ Wallace). We find no due process violation here.

#### **CONCLUSION**

For all these reasons, we adopt the ALJ's decision as final and hereby remove Mr. Wayne Foote from office.

Signatures on File:

\_\_\_\_\_  
Warner I. Sumpter  
President

---

Jean C. Halle  
Vice-President

---

Gail H. Bates

---

Clarence C. Crawford

---

Charles R. Dashiell, Jr.

---

Vermelle D. Greene

---

Justin M. Hartings

---

Rose Maria Li

---

Joan Mele-McCarthy

---

Michael Phillips

---

David Steiner

October 22, 2019

# **ALJ's Proposed Decision**

BOARD OF EDUCATION OF  
ALLEGANY COUNTY

v.

WAYNE FOOTE,  
RESPONDENT

\* BEFORE MICHAEL J. WALLACE,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
\* OAH No.: MSDE-BE-17-19-08824

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUE  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
PROPOSED ORDER

**STATEMENT OF THE CASE**

On December 21, 2018, the Board of Education of Allegany County (County Board or Board) passed a resolution directing the County Board's counsel and Chairman to request that the Maryland State Board of Education (State Board) remove the Respondent from his position as a member of the County Board on the ground of misconduct in office and willful neglect of duty (Resolution). By letter to the State Board dated December 26, 2018, the Chairman requested the Respondent's removal from office by the State Board for misconduct in office under the provisions of section 3-201(g) of the Education Article (Request). Md. Code Ann., Educ. § 3-201(g) (2018). By letter dated February 26, 2019, the State Board notified the Respondent of the Resolution and Request (collectively, Charges) and advised him of his right to a hearing under section 3-201(g)(2). On March 4, 2019, the Respondent requested a hearing on the Charges. The State Board delegated its hearing authority in this matter to the Office of

Administrative Hearings (OAH), and directed that an Administrative Law Judge issue a proposed decision.

Pursuant to the Code of Maryland Regulations (COMAR) 28.02.01.17E, I conducted a telephonic pre-hearing conference on April 24, 2019, from the OAH in Hunt Valley, Maryland. Participating by telephone was Karen Anderson-Scott, Assistant Attorney General, representing the State Board. The Respondent was represented by George V. McKinley, Esquire.

On July 8, 2019, Thomas E. Lynch, Esquire, requested a postponement stating that the Respondent had dismissed Mr. McKinley as counsel and had retained Mr. Lynch. Mr. Lynch requested the postponement in order to prepare for the hearing. This postponement was denied, and the matter proceeded to a hearing.

I held a hearing in this matter at the OAH in Hunt Valley, Maryland, on July 23 and 24, 2019 at the OAH in Cumberland, Maryland. Ms. Anderson-Scott along with Christle Sheppard Southall, Assistant Attorney General, represented the State Board at the hearing and the Respondent was represented by Mr. Lynch and Kelly Lynch, Esquire.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act and the Rules of Procedure of the OAH. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2018); COMAR 28.02.01.

### ISSUE

The issue is whether the State Board has established that the Respondent is responsible for misconduct in office and willful neglect of duty and whether this warrants his removal as a member of the County Board pursuant to section 3-201(g)(1)(ii) of the Education Article. Md. Code Ann., Educ. § 3-201(g)(1)(ii) (2018).

## SUMMARY OF THE EVIDENCE

### Evidence

A list of exhibits admitted into evidence is attached to this decision.

### Testimony

The following witnesses testified on behalf of the County Board:

Sandra Arnold, Art Teacher, Fort Hill High School

Bradent Shober, Technology Education Teacher, Fort Hill High School

Joseph Carter, Former Principal, Fort Hill High School

Kim Kalbaugh, Chief Academic Officer, Allegany County Public Schools (ACPS)

Tammy Fraley, former County Board member

Laurie Marchini, former County Board member

Evan West, Business Agent and Uniserve Director, Allegany County Education Association

Nicholas T. Hadley, former County Board President

Sara Beth Bittinger, former County Board President

Debra Frank, member of County Board

David A. Cox, Superintendent, ACPS

Edward L. Root, former County Board President

The following witnesses testified on behalf of the Respondent:

Joshua A. Cook, Teacher at Fort Hill High School

Pamela Lepley, Respondent's daughter

David Bohn, member of County Board

Robert Farrell, member of County Board

Judy Snyder, former ACPS teacher; friend of Respondent

Candy Canan, Principal at the Career and Technical Center, ACPS

## FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

### County Board and Superintendent

1. The County Board consists of five elected members and one student member.
2. All members of the County Board must be residents of Allegany County for at least a year prior to an election. Elected members must be registered to vote in the County, and the student member must be a regularly-enrolled senior-year student at a high school in the ACPS.
3. The elected members are elected from the county-at-large for staggered four-year terms, with some members being elected every two years.
4. Terms for newly-elected members begin on the first Monday in January following the general election in November.
5. The student member is elected by ACPS students in the sixth through eleventh grades and is subject to confirmation by the County Board.
6. The student member of the County Board serves a one-year term beginning on July 1 following his or her election and has limited voting rights.
7. The County Superintendent is appointed and employed by the County Board, but the appointment is not valid until approved by the Maryland State Superintendent of Schools (State Superintendent).
8. The County Superintendent or designee attends all meetings of the County Board and its committees, unless the tenure, salary, and/or administration of the County Superintendent are being considered.
9. The Respondent was elected to the County Board in November of 2014 and took the oath of office for a four-year term during the first week of January 2015.

Board Composition, Handbook and Policy on Board Governance

10. The County Board utilizes a Handbook, which explains how the Board behaves as a body, how members treat other Board members, and what is expected of each Board member. The County Board has the right, obligation, and authority to determine how it will govern itself. The Handbook is a guide adopted by the County Board to provide structure to the organization and Board operations.

11. The provisions of the Handbook apply to members of the County Board. The Respondent was given a copy of the handbook and was familiarized with it in 2014 after he became a Board member as part of a formal orientation process.

12. In November 2018, at the time of the most recent election, the Board consisted of President, Sara Beth Bittinger, Vice President, Tammy Fraley, and Board members Laurie Marchini, Nicholas Hadley and the Respondent. Mr. Hadley was appointed prior to the 2018 election on an interim basis after County Board member Laura Lee Farrell died during her term.

13. After the November 2018 election, the Respondent and Nicholas Hadley were retained as board members and Deborah Frank, Robert Farrell, and David Bohn were elected.

14. There are four types of sessions conducted by the County Board with all but the Executive sessions being open to the public. Executive sessions are confidential in nature and matters discussed therein are considered confidential and not to be discussed with anyone outside of the executive session.

15. Board members who have a conflict of interest concerning items on the closed session agenda should not be present when those items are discussed.

16. ACPS employees have a responsibility to maintain exemplary standards of professional conduct. Employees are required to maintain the confidentiality of privileged information and comply with Board policies and procedures.

17. All board members are aware of this confidentiality policy as well as other pertinent Board policies through their orientation training and their handbooks.

18. The Respondent was aware of all board policies during his tenure.

#### Allegations

19. In March 2015, a teacher at an Allegany County high school was criminally charged with inappropriate sexual contact with two female students.

20. An executive session was held where this matter was discussed with Board members being told that civil charges were possibly pending as well as an ongoing criminal investigation regarding the possibility of this teacher's sexual contact with other students.

21. The Board members, including the Respondent were aware that these matters were confidential in nature and were instructed to not discuss anything pertaining to the discussions outside of the session.

22. On April 15, 2015, the Respondent, while on the air on WCBC radio, discussed the situation despite express instructions to keep any discussions during the executive session confidential.

23. On the air, the Respondent stated that he would be surprised if other teachers or staff at the high school where the incidents took place were not aware of the ongoing behavior of the arrested teacher.

24. This statement created an outcry in the community and other teachers at that high school felt impugned by this statement feeling it was a baseless accusation by the Respondent that they were all derelict in their duty to contact Child Protective Services of the Allegany County Department of Social Services (local department) when child abuse was suspected.

25. Mr. Hadley, the president of the County Board at that time, spoke with the Respondent after his statements on the radio and directed him to maintain the confidentiality of matters discussed in executive sessions of the Board.

26. In June 2018, the County Board had the responsibility of completing the job evaluation of the School Superintendent. This task was to remain confidential and individual board members were instructed to write their own analysis and submit it electronically for discussion at an executive session.

27. These individual evaluations were to be uploaded electronically to the Board.

28. The Respondent had difficulty uploading the document that he had completed and enlisted the help of his daughter in uploading the document.

29. The Respondent's daughter did not see the contents of the evaluation and only helped upload the file.

30. On July 7, 2018, prior to the beginning of the school year, the Respondent was sent a letter by the County Board reminding him of the duty of Board members to respect the confidentiality of closed executive sessions.

31. During a September 24, 2018 executive session, while addressing the importance of maintaining confidentiality, the Respondent stated, "Come on, don't you all talk outside of here?"

32. On October 1, 2018, prior to the November election, there was a public candidate forum held in Frostburg by the Allegany County Chamber of Commerce which was streamed via social media on Facebook.

33. During this public forum, the Respondent disclosed that he was asked to leave the September 24, 2018 executive session because he had a business relationship with Robert

Farrell, who at that time was running for a seat on the County Board and had a pending lawsuit against the County Board.

34. Subsequently, on October 9, 2018, the County Board sent a letter to the Respondent referencing his remarks during the forum.

35. During a November 13, 2018 executive session, newly elected Board members, Robert Farrell, David Bohn and Debra Frank, who had not yet been sworn in, were invited to attend the executive session for some of the business but were asked to leave when certain confidential matters came up for discussion.

36. When they were invited back into the room after the discussion, the Respondent provided his copy of the agenda on which he wrote notes of the matters discussed while the new members were sequestered to Mr. Farrell and to Mr. Bohn.

37. When Mr. Bohn passed the notes to Ms. Frank, the Respondent immediately motioned to Mr. Bohn to get the notes back to him.

38. In the fall of 2015, an art teacher at Fort Hill High had just come back to work after being off for reconstructive breast surgery.

39. One day shortly after she came back to work, the Respondent came into the back of her classroom, asked how she was doing then asked within earshot of several students if she wanted an artist's perspective on whether or not her surgeon did a good job, and to "to just whip them out and he'd take a look."

40. The teacher reported this incident to the principal and assistant principal and also told another teacher of the incident.

41. This incident prompted a new county policy in late 2016 that dictated that persons only enter through the front door of Fort Hill and sign in before proceeding further into the school.

42. Subsequent to this incident, in December 2018, after the most recent election when the Respondent was elected to another term, he went to Fort Hill High, entered the teacher's lounge, spoke to a Fort Hill teacher and stated "tell your friend that [the Respondent] didn't appreciate her (the art teacher) comments to the Fort Hill Principal regarding the Respondent's fall 2015 comments.

43. The Art teacher learned of the comment and told staff that she felt threatened by the comment and that the Respondent was using his Board influence to silence her.

44. In November 2016, after an election and during a meeting with incoming board members, the Respondent referred to female board members as his "harem."

45. In the Winter 2016/2017, a female Board member had a cold and was coughing during a Board meeting. The Respondent asked her, in front of everyone else, if she wanted him to rub Vicks Vapo-rub on her chest.

46. On October 13, 2017, Governor Larry Hogan visited the Allegany County Career and Technical Educational Center. During the visit, there was a reception line.

47. The Respondent was going through the reception line and was wearing a red, white and blue American flag tie.

48. The Chief Academic Officer for ACPS commented on the tie being patriotic and the Respondent replied "you like that? You want to see how far it goes?" He then made a gesture like he was unzipping the fly on his trousers.

49. On the same date, still during Governor Hogan's visit, The Appellant grabbed a Board member's breast as he passed her while she was holding a door open.

50. During a 2017 Board retreat, a female school system employee, who was checking on participants, asked if anyone needed anything. The Respondent asked the employee if she would rub a cramp out of his leg.

## Charges

51. On July 17, 2018 the Board sent a letter to the Respondent (Bd. Ex. 6) in which it reminded the Respondent of his obligation as a Board member to act responsibly and professionally and to maintain confidentiality over matters discussed during closed executive sessions. In addition, the Board further reminded the Respondent to refrain from making any inappropriate sexual remarks or gestures to other individuals in the school setting.

52. On December 11, 2018, the Board sent another letter to the Respondent (Bd. Ex. 9) after his November 2018 disclosure of executive session notes to the newly elected Board members and his December 2018 remarks to another teacher regarding the complaints of the art teacher about the Respondent's sexually laced comments to her. This letter referenced the two earlier warnings in the July 2018 and October 2018 letters referenced above.

53. The County Board in its December 11, 2018 letter further stated that any further transgressions would result in discipline up to and including removal from the Board. The letter advised that the Respondent had until December 31, 2018 to respond to this letter.

54. By Resolution, dated December 21, 2018, and a follow-up letter, dated December 26, 2018, the County Board requested that the State Board remove the Respondent from his position as a member of the County Board for misconduct in office and willful neglect of duty.

55. In January 2019, the State Board received two additional letters in support of the Respondent's removal from former Board members.

56. The Respondent responded to the allegations on February 7, 2019.

57. On February 26, 2019, Justin M. Hartings, Ph.D., President of the State Board sent the Respondent a letter formally notifying him of the charges against him and the statutory basis of the State Board's authority to remove a member of the County Board for misconduct in office. The letter also notified the Respondent of his right to request a hearing on the charges with the OAH,

which had been delegated authority to conduct a hearing and issue a proposed decision on the County Board's request to the State Board for the Respondent's removal from office.

### DISCUSSION

#### Applicable Law

By the Resolution dated December 21, 2018, and a follow-up letter dated December 26, 2018, the County Board requested that the State Board remove the Respondent from his position as a member of the County Board for misconduct in office and willful neglect of duty. The County Board relied on the statutory authority contained in the Education Article for this removal action.

The relevant statute provides, in pertinent part, as follows:

(g) Removal.

(1) The State Board may remove a member of the county board for:

- (i) Immorality;
- (ii) Misconduct in office;
- (iii) Incompetency; or
- (iv) Willful neglect of duty.

(2) Before removing a member, the State Board shall send the member a copy of the charges and give the member an opportunity within 10 days to request a hearing.

(3) If the member requests a hearing within the 10-day period:

(i) The State Board shall promptly hold a hearing, but a hearing may not be set within 10 days after the State Board sends the member a notice of the hearing; and

(ii) The member shall have an opportunity to be heard publicly before the State Board in the member's own defense, in person or by counsel.

(4) A member removed under this subsection has the right to a de novo review of the removal by the Circuit Court for Allegany County.

Md. Code Ann., Educ. § 3-201(g) (2018).

The Education Article addresses the powers and duties of the State Board at section 2-205. Under section 2-205(e) of the Education Article, the State Board has the authority to

explain the true intent and meaning of the Education Article and to decide all controversies and disputes that arise under its provisions. The statute provides, in pertinent part, as follows:

**§ 2-205. Powers and duties.**

...

(e) (1) Without charge and with the advice of the Attorney General, the State Board shall explain the true intent and meaning of the provisions of:

(i) This article that are within its jurisdiction;

(2) Except as provided in paragraph (4) of this subsection and in Title 6, Subtitles 4 and 5 of this article, the Board shall decide all controversies and disputes under these provisions.

Md. Code Ann., Educ. § 2-205(e) (2018).

On March 22, 2019, the State Board delegated its hearing authority to the OAH to conduct a contested case hearing and issue a proposed decision regarding the County Board's request for removal of the Respondent in accordance with the Maryland Administrative Procedure Act (APA).

Md. Code Ann., State Gov't § 10-205 (2014);

State Board regulations provide for the OAH to conduct contested case hearings on behalf of the State Board in accordance with the APA and the OAH Rules of Procedure. COMAR 13A.01.05.07A, D. The regulations also provide that the Administrative Law Judge shall submit a proposed decision to the State Board, with copies to the parties, that contains findings of fact, conclusions of law, and recommendations. COMAR 13A.01.05.07E.

The County Board contends that it has properly requested that the State Board remove the Respondent from his position as a member of the County Board due to misconduct in office and willful neglect of duty based on a number of incidents of misconduct and neglect, which it asserts has demonstrated a pattern. The December 21, 2018 Resolution passed by the County Board provided the following bases for removal:

- 1) Breaching the confidentiality of confidential board discussions (willful neglect of duty) lawfully closed under the State's Open Meetings Act.
- 2) Sexual misconduct and intimidation (misconduct in office).

The Resolution authorized the County Board to make a request to the State Board to remove the Respondent for misconduct in office.

In the December 26, 2018 letter from the County Board requesting the Respondent's removal, the County Board restated the reasons for removal and provided further examples of the Respondent's alleged misconduct that the County Board contended warrant his removal from office. Thereafter, State Board President Justin M. Hartings, Ph.D. sent the Respondent a letter, dated February 26, 2019, which complied with the notice requirements of the APA. Md. Code Ann., State Gov't § 10-207 (2014). The letter set forth the reasons for the request for the Respondent's removal for misconduct in office, advised that the December 21, 2018 Resolution and the December 26, 2018 letter constituted the charges for the Respondent's removal, asserted the statutory authority for the request for removal and the Respondent's right to request a hearing on the charges, and that the matter has been delegated to the OAH for a contested case hearing and the issuance of a proposed decision. .

In its closing argument, the County Board identified numerous instances of alleged misconduct/intimidation and neglect of duty in support of the Respondent's removal.

I shall address the issues that formed the basis for the County Board's request for removal in the manner in which they were characterized by the County Board after addressing the issue of misconduct in office and willful neglect of duty.

#### Misconduct in Office

The County Board contends that the Respondent's actions constitute misconduct in office and warrant his removal by the State Board as a member of the Board of Education of Allegany County. The County Board relies primarily on the Court of Appeals' decision in *Resetar v. State Bd. of Educ.*, 284 Md. 537 (1979), and the decision of the State Superintendent of Schools of the Maryland State Department of Education in *In the Matter of Maryann Judy*, Superintendent's Case

No. 1-07, MSDE (July 30, 2007), to interpret the concept of misconduct in office under the Education Article of the Maryland Annotated Code. As noted above, the State Board has the authority under section 2-205(e) of the Education Article to interpret the meaning of all provisions in the Education Article and to decide all controversies and disputes under the Education law.

Although the term misconduct in office is undefined in the Education Article, it has been interpreted in court opinions and decisions of the Maryland State Department of Education (MSDE) and the Maryland State Superintendent of Schools. The charging documents in this case include specific reference to the *Resetar* decision that interpreted the terms misconduct and misconduct in office under the Education Article. In *Resetar*, the Court upheld the termination of a teacher for misconduct in office under the Education Article when the teacher referred to students as “jungle bunnies” in front of several coworkers. The Court reasoned that the teacher’s comments would undermine his future classroom performance and would have a negative impact on his students. The Court in *Resetar* looked to other sources to define “misconduct” and “misconduct in office” and stated the following:

The word is sufficiently comprehensive to include misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though they are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences. [58 C.J.S. Misconduct at 818.]

...

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. [Black’s Law Dictionary at 1150 (4<sup>th</sup> ed. 1968).]

The same authority refers at 1150 to “misconduct in office” as being “[a]ny unlawful behavior by a public officer in relation to his duties in his office, willful in character.”

*Resetar*, 284 Md. at 560-561. Although the *Resetar* case involved the termination of a teacher, the Court’s interpretation of the terms misconduct and misconduct in office under the Education Article

is directly relevant to the removal action here, which also is based on misconduct in office by the Respondent under the Education Article. The Court of Appeals has approved similar definitions of misconduct in other contexts. *Public Serv. Comm'n v. Wilson*, 389 Md. 27, 77 (2005).

The State Superintendent of Schools (Superintendent) has issued a decision involving the removal from office of an appointed member of a local board of education (Talbot County) based on charges of misconduct in office under the Education Article. *In the Matter of Maryann Judy*, Superintendent Case No. 1-07, MSDE (July 30, 2007). In *Judy*, in upholding the board member's removal, the Superintendent relied on similar definitions for misconduct and misconduct in office as addressed above. Although the *Judy* case involved a member of a local board of education who was appointed by the Governor, the Superintendent exercised her authority to interpret the meaning of misconduct and misconduct in office under the Education Article. The statute relied upon to support Judy's removal as an appointed local board member, section 3-108(d) of the Education Article, is nearly identical to section 3-201(g) of the Education Article relied upon by the County Board to support its request for Respondent's removal as an elected local board member. Both statutes provide for the removal of a member of a local board of education for misconduct in office.

The Superintendent noted in *Judy* that misconduct in office includes "wrongful conduct done under color of office" and includes the act of "doing something which the officer ought not do, or the failure to do something which he ought to do, in the conduct of his office." *Judy*, Sup't Case No. 1-07, at pp. 4-5. The Superintendent found that when misconduct in office is defined as unlawful conduct, it includes the violation of a statute, rule, or policy, and need not rise to the level of criminal conduct. *Judy, Id* at pp. 5-6. Relying on case law from other jurisdictions, the Superintendent noted that "misconduct in office can be found to exist even in the absence of evil motives, moral turpitude, corrupt or criminal conduct, or intentional wrong doing." *Judy, Id.* at p.

6, citing *Bunte v. Mayor of Boston*, 278 N.E.2d 709, 711 (Mass. 1972). The Superintendent noted that public employees must be “held to a higher standard of stewardship than merely that of refraining from criminal actions while in office.” *Judy*, at p. 6, citing *Bunte*, 278 N.E.2d at 712. The Superintendent also found that the duties violated must be important in the administration of the public office. The Superintendent also stated that “the rule or duty must be important enough so that its breach renders the officer unfit to continue to hold office.” *Judy*, at p. 6, citing *Miller v. Town of Hull*, 878 F.2d 523, 531 (1<sup>st</sup> Cir. 1989), *cert denied*, 493 U.S. 976 (1989).

The Superintendent determined that the relevant questions in deciding whether a local board member should be removed for misconduct in office include: 1) whether the board member violated a rule or duty of her office about which she knew or should have known; 2) whether her conduct was willful; and 3) whether her conduct demonstrated that she was unfit to be a board member. *Judy*, at pp. 6-7, 13.

The *Judy* decision demonstrates that the term misconduct in office under the Education Article has reasonably been interpreted to include wrongdoing that does not rise to the level of criminal activity. The County Board has not attempted to create a new definition of misconduct in office, as various decisions of the courts, the MSDE, and the State Superintendent of Schools have already interpreted this term under the Education Article. Furthermore, the Education Article authorizes the State Board to explain the true intent and meaning of the provisions of the Education Article and to decide all controversies and disputes under that Article. Md. Code Ann., Educ. § 2-205(e) (2018). The Court of Appeals in *Resetar* noted and approved this authority of the State Board to interpret the intent and meaning of the Education law. *Resetar*, 284 at 555-556. Accordingly, it is appropriate to consider other cases that interpret the terms misconduct in office under the Education Article concerning removal of an appointed member of a local board

of education or termination of a teacher, even though those cases do not involve removal of an elected member of a local board of education.

In the *Judy* case, the Superintendent upheld the removal of the local county board member for misconduct in office based essentially on three incidents. The central incident involved Judy's attempt to submit an untimely evaluation of the local superintendent after missing the deadline for submission; the attempt to direct the local board's executive assistant to place the untimely evaluation in the local superintendent's personnel file without discussing the evaluation with the local superintendent; and the threat to report the executive assistant to the State Board if she failed to comply. In the second incident, Judy directed the local superintendent to terminate the assistant superintendent because of comments she found offensive, although she did not have authority to order such discipline. The third incident was based on Judy's improper involvement in a student disciplinary incident after being instructed to avoid becoming involved and jeopardizing her neutrality because the matter could potentially come before the local board in a student appeal.

The Superintendent found that Judy violated several rules and duties set forth in the local board of education handbook. She concluded that Judy violated local board rules prohibiting unilateral action, requiring participation in the local superintendent's evaluation, and sharing the findings of her evaluation with the local superintendent. The Superintendent also found that Judy violated rules requiring local board members to recognize and accept the difference between the role and duties of the local superintendent and that of a local board member. *Judy*, at pp. 18-19. The Superintendent found that Judy's conduct in violating local board rules was willful because her misconduct was repeated and continued after she was counseled. The Superintendent noted that willfulness does not require the showing of an evil motive. *Judy*, at p. 19.

The Superintendent concluded that Judy's misconduct rendered her unfit to be a board member because it was substantial and harmed the local board and school system. The

Superintendent found such harm because the local board had to devote substantial staff time to handling Judy's misconduct, and her actions were contrary to the best interests of the students. The Superintendent also found the rule violations were important and substantial because she concluded that the rule prohibiting board members from acting unilaterally on school matters is "the linchpin of school board functioning"; a board must function collectively to make decisions; and Judy attempted to circumvent the collective process. Furthermore, Judy's failure to understand and maintain the separation of functions between the local superintendent and a board member undermined the efficient operation of the school system, impeded the work of the local superintendent, and impaired Judy's ability to remain neutral on disputed issues that might come before the local board. *Judy*, at pp. 19-21. For all these reasons, the Superintendent concluded that Judy's misconduct warranted her removal from the local board of education. The removal was based on her violation of rules in the local board of education handbook and did not involve the violation of statutory, constitutional, or criminal law.

#### Willful Neglect of Duty

Title 3 of the Education Article, Md. Code Ann. Educ. §§ 3-101 through 3-1405 (2018), establishes all county boards of education in Maryland. Subtitles 2 through 14 govern specific counties, and every subtitle includes a provision authorizing the removal of board members for, among other things, "willful neglect of duty."

In *In re Harshman*, MSBE Op. No. 17-17 (April 25, 2017), a member of a county board posted highly inflammatory statements on her personal Facebook page regarding sexual abuse of students by teachers in the county schools. She later refused to provide any supporting evidence to the Superintendent and withheld from a Sheriff's deputy certain information that she later supplied to the press.

The State Board began its discussion of willful neglect of duty in *Harshman* by quoting the following definition from an earlier decision: “In the education context, the State Board has defined willful neglect of duty as occurring ‘when the employee has willfully failed to discharge duties which are regarded as general teaching responsibilities.’” MSBE Op. No. 17-17 at 17 (quoting *Baylor v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 13-11 (2013)). It then immediately restated the *Baylor* definition more broadly: willful neglect of duty, the State Board said, “is an intentional failure to perform some act or function that the person knows is part of his or her job.” *Id.* (quoting *Lasson v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 15-21 (2015)). Ms. Harshman ultimately was found to have met the broader definition by failing to make mandatory reports of suspected child abuse both during her previous tenure as a teacher and while serving as a member of the school board.

In *Lasson*, the State Board concurred with an administrative law judge’s proposed decision that a school psychologist in the Baltimore City Public Schools should be terminated based on misconduct and willful neglect of duty. Regarding the latter ground for termination, the ALJ wrote: “[W]illful neglect of duty” is not defined in the statute. The plain meaning of the phrase, however, is apparent. I take ‘willful neglect of duty’ to mean an employee’s intentional failure to perform some act or function that the employee knows is part of his or her job responsibilities.” *Lasson v. Baltimore City Bd. of Sch. Comm’rs*, MSDE-BE-01-14-41290 at 27 (May 7, 2015) (Friedman, A.L.J.) (citing *Crawford v. Bd. of Educ.*, No.76-7,1 Op. MSDE Rep. 503, 519 (July 28, 1976)). Dr. Lasson, a school psychologist, was found to have willfully neglected his professional responsibilities by failing to either appear for work or report his absences as required: “As a long

time professional with BCPS, the Appellant knew or should have known that he must adhere to each school's attendance policies. . . ." MSDE-BE-01-14-41290 at 31.<sup>1</sup>

In *Singer Co. v. Baltimore Gas & Electric Co.*, 79 Md. App. 461, 480 (1989), the court addressed a "tariff immunity" under which the utility was not liable for failure to supply electricity due to "any cause except willful default or neglect on its part." 79 Md. App. at 477. The court turned to Black's Law Dictionary, which defines "willful" as meaning, among other things, "intentional[,], not accidental or involuntary," *id.* at 480, before concluding "[w]e . . . believe that the phrase 'willful neglect' suggests intentional, conscious, or known negligence—a knowing disregard of a plain or manifest duty." *Id.* Due to subsequent actions by the Public Service Commission, *Singer* no longer states the scope of BGE's immunity. *Maryland Jockey Club Baltimore City, Inc. v. Baltimore Gas & Electric Co.*, 2002 WL 32123994, at \*5 (Md. App. Dec. 17, 2002) (unreported). Its analysis on this point is still valid, however.

## Charges

### Disclosure of Confidential Information

The County Board contends that the Respondent disclosed confidential information in several instances after executive board meetings were held and that these breaches constitute willful neglect of duty as well as misconduct in office. The County Board maintained that County policy dictates that executive board meetings are confidential in nature and that any matters disclosed or discussed therein were confidential and not to be discussed with anyone other than authorized persons in the executive meeting.

The Regulations of the County Board apply to all members of the County Board, the Superintendent, and the Board attorney. The Regulations provide that confidential information is information which, as a matter of law, regulation, or policy, cannot be disclosed to unauthorized

---

<sup>1</sup> The ALJ also found that not appearing at BCPS schools "for weeks on end" while continuing to teach part-time as an adjunct professor at a local college "violated common sense rules of conduct for a school professional." *Id.* at 41.

persons. Such information includes but is not limited to, materials, discussions, activities, presentations, and actions which occur during any closed session, hearing, or any other information identified as "confidential. Policy BECA, Confidentiality. The policy of the County Board is as follows:

Confidential information as defined herein is the property of the [County] Board. Persons who have possession of or access to confidential information shall not divulge such confidential information to any person other than those specifically authorized to receive such confidential information.

Policy BECA Policy Statement.

The County Board, through Policy BECA, reserves the right to sanction individuals who are in violation of this policy. There is a range of options for sanction after considering the frequency of violations, seriousness of violations and potential consequences of the violations.

Board Policy BE, provides that all business will be conducted in meetings open to the public except for matters that may be conducted in closed (executive) sessions in accordance with Maryland law. Policy BE further provides that members of the County Board, counsel and officers of the County Board may conduct a closed session in order to discuss items as permitted by Maryland law. Board members who have a conflict of interest concerning items on the closed session agenda should not be present when those items are discussed.

Board Policy GBEA provides that ACPS employees have a responsibility to maintain exemplary standards of professional conduct. Employees are to, among other things, not use their position for inappropriate treatment of others, maintain the confidentiality of privileged information and comply with Board policies and procedures.

Several Board witnesses including Tammy Fraley, Laurie Marchini, Nicholas Hadley, Sarah Beth Bittinger, and Superintendent, David A. Cox, all confirmed in their respective testimonies that there were four types of sessions conducted by the County Board with all but the

executive sessions being open to the public. All consistently stated that the executive sessions were confidential in nature and matters discussed therein were considered confidential and not to be discussed with anyone outside of the executive session. In addition, all board members were aware of this confidentiality policy as well as other pertinent Board policies through their orientation training and their handbooks. These witnesses testified that the Respondent was aware of this during his tenure. The Respondent did not refute this.

The County Board cited several instances where it alleged that the Respondent violated confidentiality.

In March 2015, a teacher at an Allegany County high school was criminally charged with inappropriate sexual contact with two female students. An executive session was held where the matter was discussed along with the fact that civil charges were possibly pending as well as an ongoing criminal investigation regarding the possibility of this teacher's sexual contact with other students. The Board members were aware that these matters were confidential in nature and were instructed to not discuss anything pertaining to the discussions outside of the session.

On April 15, 2015, the Respondent, while on the air on a local WCBC radio program, discussed the situation despite express instructions to keep any discussions during the executive session regarding the incident confidential; not to be discussed outside of the executive session. On the air, the Respondent, while discussing the incident, stated that he would be surprised if other teachers or staff at the high school where the incidents took place were not aware of the ongoing behavior of the arrested teacher there. This statement created an outcry in the community. Many of the other teachers at that high school felt impugned by this statement feeling it was a baseless accusation by the Respondent that they were all derelict in their duty to contact Child Protective Services of the Allegany County Department of Social Services (local department) as they are mandated to do to advise the local department of ongoing child sexual

abuse. Evan West, Business Agent with the Allegany County Education Association (the local teachers union) testified that he was highly upset by the comment, provided a scathing comment at a subsequent Board meeting and on April 14, 2015, sent a letter to the Respondent chastising him for the comment that he considered offensive and uninformed. Dr. Sara Bittinger testified that she was a board member at the time and learned of the Respondent's radio comments and was upset. She stated that Mr. Hadley, then President of the Board, subsequently spoke with the Respondent and directed him to maintain the confidentiality of matters discussed in executive sessions of the Board. School Superintendent, David Cox, also testified that the matter involving the teacher's sexual misconduct was indeed confidential and that all members were instructed to refrain from discussing the matter at any degree outside of the executive session. Mr. Cox further stated that the comments exposed the Board to enormous liability issues and stated that ongoing investigations could have easily been compromised. Mr. Cox testified that he initiated an investigation to see if any staff or faculty at the high school knew of the arrested teacher's actions. Former Board President, Edward Root confirmed that the discussions in the executive session concerning this matter were confidential and were not to be discussed. The Respondent did not refute any of this testimony

On July 7, 2018, prior to the beginning of the school year, the Respondent was sent a letter by the County Board reminding him of the duty of Board members to respect the confidentiality of closed executive sessions because the failure to do so inhibits closed session discussion and impairs the functioning of the Board. On October 1, 2018, prior to the November election, there was a public candidate forum held in Frostburg by the Allegany County Chamber of Commerce which was streamed via Facebook. Tammy Fraley testified that the Respondent disclosed the content of a board executive session discussion when he stated to the other candidates and audience that he was asked to leave a September 24, 2018 executive session

because he had a business relationship with Robert Farrell, who at that time was running for a seat on the County Board and had a pending lawsuit against the County Board. Laurie Marchini and Dr. Bittinger also testified that they heard the Respondent make this comment during the forum and in fact, the video recording of the forum (Bd. Ex. 7) clearly confirms that the Respondent indeed made this statement. Subsequently, on October 9, 2018, the County Board sent a letter to the Respondent referencing his remarks during the forum and in addition, referenced a comment that he made during the September 24, 2018 executive session. (Bd. Ex. 8). When addressing the importance of maintaining confidentiality, he stated “Come on, don’t you all talk outside of here?”

In another instance, the County Board presented evidence in support of another alleged incidence of a breach of confidentiality by the Respondent. Ms. Fraley, Ms. Marchini, Dr. Bittinger, Ms. Frank and Mr. Cox all testified that during a November 13, 2018 executive session newly elected Board members, Robert Farrell, David Bohn and Debra Frank, who had not yet been sworn in, were invited to attend the executive session for some of the business but were asked to leave when certain matters came up for discussion. When they were invited back into the room after the discussion, the Respondent provided, to Mr. Farrell and to Mr. Bohn, his copy of the agenda on which he wrote notes of the matters discussed while the newly elected board members were excused from the discussion. When Mr. Bohn passed the notes to Ms. Frank, the Respondent motioned to Mr. Bohn to get the notes back to him. While Mr. Bohn and Mr. Farrell denied that they saw nothing more than scribbles and doodles on the Respondent’s agenda, Ms. Frank testified that the notes were passed to her, but it quickly became obvious to her that she was not supposed to see the notes as they were taken from her quickly. She testified that she advised Dr. Bittinger of this incident. The Respondent did not offer any evidence to refute his actions.

Another incident cited by the Board occurred in June 2018. The Board alleged that the Respondent disclosed the confidential contents of the Superintendent's job performance evaluation. Dr. Bittinger testified that the Board has the responsibility of completing the job evaluation of the School Superintendent. She stated, as a personnel matter, it was discussed in a closed executive session and was to remain confidential. She stated that individual Board members were instructed to write their own analysis and submit it electronically for discussion at a later executive session. The individual evaluations were then uploaded electronically to the Board. Dr. Bittinger testified that the Respondent called her one evening prior to his submission and stated that he was having difficulty uploading the document and had his daughter help him. The County Board alleged that this constituted a breach of confidentiality in that the contents of the Superintendent's evaluation were shared with an unauthorized person, the Respondent's daughter, outside of the executive session. The Respondent's daughter, Pamela Lepley, testified, however, that she did not see the contents of the evaluation and only helped upload the file. In fact, Dr. Bittinger testified that she was not sure if the Respondent's daughter saw the contents of the evaluation and conceded that the Respondent likely only sought help in uploading the evaluation, not in drafting it. While the unrefuted evidence presented in support of the first three allegations certainly establish a willful breach of confidentiality, there was, insufficient evidence to establish that the Respondent willfully failed to maintain confidentiality over the Superintendent's evaluation.

There is no doubt that the Respondent was made aware on several occasions that matters discussed in executive sessions were confidential and were not to be discussed or otherwise disclosed outside of the session. It is equally clear that on several occasions, he ignored policy and protocol and publically disclosed matters that were discussed during the closed executive sessions. The evidence clearly established that confidential matters discussed in executive

sessions and the comments made during these sessions must be kept confidential. Otherwise, the function of the Board will be compromised as discussions may be inhibited and board members would not be able to speak candidly and offer opinions essential to the decision-making phases of the closed sessions out of fear that their comments will become public knowledge. With these considerations, the Respondent's has committed continuous breaches of confidentiality.

As stated above, the State Board has defined willful neglect of duty as occurring "when the employee has willfully failed to discharge duties which are regarded as general teaching responsibilities." *Baylor, Id.* It was also defined as an intentional failure to perform some act or function that the person knows is part of his or her job. *Lasson, Id.* There is no dispute, based on the evidence presented, that maintaining confidentiality of matters discussed in executive session was a function of each board member and that the Respondent was aware of this function and duty but disregarded this duty on several occasions despite numerous reminders and warnings not to do so. This amounts to a willful neglect of duty.

Similarly, it is clear that his breaches of confidentiality amounted to misconduct in office as these transgressions were clearly violations of established policy. *Judy*, at pp. 5-6.

The decision of *Resetar v. State Bd. of Educ.*, 284 Md. 537 (1979), interpreted the meaning of the term misconduct in office under the Education Article, applying it to the termination of a teacher for misconduct in office. *Judy* is also applicable here because the statute relied upon for the removal of Ms. Judy, section 3-108(d) of the Education Article, is nearly identical to the language in the statute that controls this proceeding, section 3-201(g) of the Education Article. The Maryland Legislature has determined that an elected member of a local board of education may be removed from office for misconduct in office. In 65 Op. Att'y Gen. Md. 347, (1980), the Opinion noted that:

Finally, although a single instance of a breach of confidentiality by a Board member would not furnish sufficient grounds for his or her removal by the

County Council, we do think that repeated violations of confidentiality that demonstrably impair the Board's ability to function (e.g., by inhibiting free and open discussion at properly-closed executive sessions) might well constitute grounds for removal by the County Council.

65 Op. Att'y Gen. Md. 347, at p. 3.

For all the foregoing reasons, I conclude that the Respondent violated the confidentiality policies of the County Board on several occasions when he discussed matters addressed during executive Board session that were closed to the public. In two instances, he discussed these matters at public forums or on radio stations and in another, he disclosed information to new Board members who were not yet sworn in. While the Respondent argues that his breaches were insignificant and do not amount to a breach of confidentiality, he failed to offer any support for his argument to refute the evidence provided by the County Board. The Respondent's disclosures included violations of County Board policy and of his known duties which were important in the administration of the Board's functions. His continued violations despite warnings were also established to be important enough so that these breaches rendered him unfit to continue to hold office.

Based on these considerations, I conclude that the Respondent's breaches arising from his radio and public forum comments as well as his disclosure of executive board business to unauthorized board members amounted to a willful neglect of duty as well as misconduct in office.

#### Sexually inappropriate conduct and intimidation

The State Board also based its charges of misconduct in office on alleged incidents of sexual misconduct and intimidation.

Sandra Arnold, an art teacher at Fort Hill High School testified that in the fall of 2015, she had just come back to work after being off for reconstructive breast surgery. One day, the Respondent, a former art teacher, came into the back of her classroom, asked how she was doing then asked within earshot of several students if she wanted an artist's perspective on whether or

not her surgeon did a good job, and to “to just whip them out and he’d take a look.” Laurie Marchini confirmed this. Ms. Arnold testified that she was deeply embarrassed and that her students wanted her to immediately report the incident to Mr. Carter, the principal, or to other authorities. Ms. Arnold testified that she did, in fact, report this matter to the principal and assistant principal and also told another teacher. Ms. Arnold stated that she did not file any charges but spoke to the Principal, Joseph Carter, about it. She stated that she did not want to get the State Board involved. Mr. Carter testified that the incident prompted a new county policy in late 2016 that dictated that persons only enter through the front door of Fort Hill High and sign in before proceeding further into the school. The Respondent did not refute Ms. Arnold’s testimony that he made these statements to her.

Subsequent and related to this incident, in December 2018, after the most recent election when the Respondent was elected to another term, he went to Fort Hill High and entered the teacher’s lounge and spoke to Bradent Schoeber. Mr. Schoeber testified that the Respondent told Mr. Schoeber to “tell your friend that [the Respondent] didn’t appreciate her (Ms. Arnold’s) comments to Mr. Carter regarding the Respondent’s fall 2015 comments. Mr. Schoeber testified that he did not tell Ms. Arnold about the Respondent’s comment and further testified that he is a friend of both Ms. Arnold and the Respondent. I noted during his testimony that he appeared to have a strong allegiance to the Respondent and was somewhat hesitant to testify against him. Ms. Arnold, on the other hand, knew of the comment and told Ms. Marchini that she felt threatened by the comment and that the Respondent was using his Board influence to silence Ms. Arnold. Ms. Arnold further testified that she told Mr. Carter about the perceived threat as well.

Mr. Cox testified that other Board members told him of the sexual comment to Ms. Arnold as well as the Respondent’s comments to Mr. Schoeber. Again, the Respondent did not

refute these allegations and the wealth of evidence strongly established that the Respondent indeed made the comments to Ms. Arnold and to Mr. Schoeber.

Regarding another incident, the Board alleged that in November 2016, after the election and during a meeting with incoming board members, the Respondent referred to female board members as his "harem." Dr. Bittinger testified that she heard it and was offended. Mr. Root also testified that he heard it and stated that many Board members were angered by the comment and stated that he felt it belittled the female members in attendance. He testified that the Board needs cohesiveness to function and that this comment undermined it. Tammy Fraley also testified that she heard the comment and felt that it was offensive to women. The comment was captured on a video recording (Bd. Ex. 4). There was no dispute that the Respondent made this comment at the November 2016 Board meeting.

Dr. Bittinger testified that in winter 2016/2017, she had a cold and was coughing during a Board meeting. She stated that the Respondent asked her, in front of everyone else, if she wanted him to rub Vicks Vapo-rub on her chest. She testified she told him she didn't appreciate the comment and felt it to be extremely inappropriate. Mr. Cox confirmed Dr. Bittinger's statement in his testimony. He stated that he was present at the meeting and heard the comment too. He stated that the Respondent "laughed it off." The Respondent did not deny the allegation other than to suggest that it was just a joke.

In another incident on October 13, 2017, Governor Larry Hogan visited the Allegany County Career and Technical Educational Center. During the visit, there was a reception line. The Respondent was wearing a red, white and blue American flag tie. Dr. Kim Kalbaugh, Chief Academic Officer, ACPS, testified that she commented on the tie being patriotic and the Respondent replied "you like that? You want to see how far it goes?" He then made a gesture like he was unzipping his fly. Dr. Kalbaugh testified that this was overheard by Ms. Marchini

and Mr. Cox. Mr. Cox testified that he was several feet away and observed the exchange. He confirmed Dr. Kalbaugh's account of the incident and observed the look of shock on her face. Ms. Fraley testified that she heard the comment as well and stated that Dr. Kalbaugh was shocked by the comment. Ms. Fraley stated that she was disgusted and did not feel that it was a joke. Ms. Marchini testified as well and said that she heard the Respondent's comment and saw look of shock on face of Dr. Kelbaugh.

On the same date, during Governor Hogan's visit, The Appellant grabbed Ms. Marchini's breast. Ms. Marchini testified that while she was holding a door open, the Respondent walked by her and as he did so, he placed his hand on her right elbow from behind, then dropped his hand to her waist then slid his hand up her right side and grabbed her breast. Ms. Marchini testified that she asked Mr. Cox, who was nearby, if he saw what the Respondent just did. Mr. Cox stated that he did not see what happened and Ms. Marchini demonstrated to him what the Respondent had done. Mr. Cox testified that Ms. Marchini was immediately distraught and shaking. Mr. Bohn testified that when he heard of the incident, he spoke with Candy Canen, the Principal at the Career Center who said that she did not see anything. Ms. Canen testified that even though she did not see the incident, it was possible that it happened but that she just did not see it. Ms. Marchini stated that during the November 2017 Board meeting, she demanded that a sexual harassment policy be developed and put into place.

Dr. Bittinger testified about another incident that took place at a 2017 Board retreat. She stated that while at the retreat, a female school system employee, who was checking on participants, asked if anyone needed anything. Dr. Bittinger stated that the Respondent asked the employee if she would rub a cramp out of his leg. The Respondent did not deny that he made this remark.

It is clear that the above instances of sexually inappropriate conduct were established by the County Board through the unrefuted testimony. The Court in *Resetar* determined that misconduct includes misfeasance as well as malfeasance, and as applied to professional people it includes unprofessional acts even though they are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences. See, 58 C.J.S. Misconduct at 818. The Court further noted that misconduct encompasses a dereliction from duty, willful in character and, improper or wrong behavior. Certainly, the proven sexually inappropriate comments toward female Board members as well as inappropriate sexual actions, clearly amount to misconduct in office.

On July 17, 2018 the Board sent a letter to the Respondent (Bd. Ex. 6) in which it reminded the Respondent of his obligation as a Board member to act responsibly and professionally and to maintain confidentiality over matters discussed during closed executive sessions. The Board further reminded the Respondent to refrain from making any inappropriate sexual remarks or gestures to other individuals in the school setting.

On December 11, 2018, the Board sent another letter to the Respondent (Bd. Ex. 9) after his November 2018 disclosure of executive session notes to the newly elected Board members, and his December 2018 remarks to Mr. Schoeber regarding Ms. Arnold's complaints of the Respondent's sexually laced comments to her. The letter referenced the two earlier warnings in the July 2018 and October 2018 letters referenced and provided further warning that if the Respondent did not cease his transgressions, further action would be taken, including the possibility of removal from the Board.

The Respondent did not refute any of the above allegations and evidence. He argued that the Board's actions against him were politically motivated by Ms. Marchini and others because they did not like the direction that the newly elected Board was taking since the most recent

election placed the Respondent, Mr. Bohn and Mr. Farrell in the majority of the Board. Because all three of these men held the same philosophy on how the Board was to be run, as well as a shared common vision as to the direction of the Board, Ms. Marchini wanted the Respondent removed.

Even if I find that the Respondent's argument is valid, the fact remains that the Respondent blatantly and disregarded all policies and regulations throughout his tenure, despite at least five censures and warning letters. The Respondent's ongoing pattern of sexual harassment and disclosure of confidential matters compromised the Board and exposed it and its members to lawsuits. The Respondent presented some evidence to suggest that he made some significant contributions to ACPS. As Mr. Cox testified, the Respondent stated to him that his highest priorities were teachers, custodians, cooks and last but not least students. I find, however, that the Respondent's ongoing and seemingly perpetual disregard for policy and decorum put the Board and ACPS at risk. As Dr. Root and others testified, Board members are held to a higher standard in the community and must conduct themselves accordingly. Based on the evidence presented, it is abundantly clear that the Respondent failed to do that despite numerous warnings.

The Respondent further contends that his removal is improper because the County Board in its December 11, 2018 letter stated that any further transgressions would result in discipline up to and including removal from the Board. The letter further stated that he had until December 31, 2018 to respond. However, the Board passed a resolution on December 21, 2018 for submission to the State Board for the Respondent's removal from the Board. The Respondent argued that this action is premature since there have been no other incidents on his part since the December 11, 2018 letter.

This argument is also without merit. The wealth of the evidence clearly established an unrefuted pattern of sexual harassment and breaches of confidentiality. The Respondent had several warnings throughout his tenure, but the pattern of harassment and confidentiality breaches continued. The Respondent was on notice that his conduct was unacceptable as a Board member, but the pattern continued. While he was advised of the possibility of removal on December 11, 2018 and was given the opportunity to respond by December 31, 2018, the Board's December 21, 2018 resolution for the Respondent's removal was certainly bolstered by evidence of the Respondent's ongoing conduct and was supported by law. The Respondent still had an opportunity to respond to the December 11, 2018 letter as the State Board did not act on the resolution until February 24, 2019. The Respondent was authorized, as a Board member, to express his viewpoint when he disagreed with the Board's position and, no doubt, he regularly did so.

The Board Handbook clearly recognizes the right of a Board member to express personal views that differ from positions adopted by the Board. Members are encouraged to explain the basis for their disagreement. The County Board did not prevent the Respondent from expressing his disagreement with Board positions. However, he was not permitted to take actions that undermined Board actions and policies such as disclosing confidential matters discussed during executive sessions. Similarly, the Respondent's continuous inappropriate comments and actions toward female Board members and other ACPS employees only served to undermine the Board's functions and possibly expose it to legal liability. Despite numerous warnings, the Respondent failed to cease his inappropriate conduct.

### Conclusion

The Board argued that the Respondent should be removed from office due to the pattern of misconduct in office and willful neglect of duty that he has demonstrated throughout his term as a

member of the County Board. *In the Matter of Maryann Judy*, Superintendent's Case No. 1-07, MSDE (July 30, 2007), is a decision in Maryland that involves the removal of a member of a county board of education for misconduct in office. In *Judy*, the Superintendent conducted a thoughtful review of the term misconduct in office and how that standard is applied in this context. As the State Board is statutorily mandated to "explain the true intent and meaning of the provisions of" the Education Article and to "decide all controversies and disputes" under its provisions, Md. Code Ann., Educ. § 2-205(e) (2018), it is appropriate for the State Board and, through this delegation to the OAH, for me to consider analogous interpretations of the term misconduct in office as well as willful neglect of duty under the Education Article as it applies to the duties of a member of a county board of education. The decision of *Resetar v. State Bd. of Educ.*, 284 Md. 537 (1979), is similarly relevant because the Court of Appeals has also interpreted the meaning of the term misconduct in office under the Education Article, applying it to the termination of a teacher for misconduct in office. *Judy* is also applicable here because the statute relied upon for the removal of Ms. Judy, section 3-108(d) of the Education Article, is nearly identical to the language in the statute that controls this proceeding, section 3-201(g) of the Education Article. The Maryland Legislature has determined that an elected member of a local board of education may be removed from office for misconduct in office.

Misconduct in office under the Education Article does not require a showing of criminal misconduct. In *Resetar*, the Court of Appeals found that misconduct in office includes malfeasance, which is doing an act that is wrongful in itself; and misfeasance, which involves doing an otherwise lawful act in a wrongful manner. The Court also found misconduct in office to include unprofessional acts, even though they are not inherently wrongful, as well as transgression of established rules, forbidden acts, dereliction from duty, and improper behavior, among other definitions. *Resetar*, 284 Md. at 560-561. In *Judy*, the Superintendent found that

“misconduct in office can be found to exist even in the absence of evil motives, moral turpitude, corrupt or criminal conduct, or intentional wrongdoing.” *Judy*, at p. 6, citing *Bunte v. Mayor of Boston*, 278 N.E.2d 709, 711 (Mass. 1972). The Superintendent also determined in *Judy* that public employees must be “held to a higher standard of stewardship than merely that of refraining from criminal actions while in office.” *Judy*, at p. 6, citing *Bunte*, 278 N.E.2d at 712.

The State Board in *Harshman* discussed willful neglect of duty. It stated, the willful neglect of duty, “is an intentional failure to perform some act or function that the person knows is part of his or her job.”

The Respondent did not refute any of the allegations other than to state that in most of these incidents he was merely joking. The Respondent suggested that his transgressions were not sufficient to cause his removal from the Board.

As addressed above, in the *Judy* decision, the Superintendent considered three fundamental questions to determine if the local board member’s misconduct warranted her removal from office.

1. Did the Board member violate a rule or duty of his office about which he knew or should have known?;
2. Was the conduct willful?; and
3. As a result, is the Respondent unfit to be a Board member?

*Judy*, at p. 13. I will address these questions to determine whether the Respondent’s misconduct already found warrants his removal from office.

#### A. Violation of Rules or Duties.

I have already determined that the Respondent violated County Board rules, regulations, and policies, as well as some statutes. The Board thoroughly established that the Respondent repeatedly made inappropriate and offensive sexual comments to female Board members and other female ACPS employees. By doing so the Respondent at the least failed to act in a professional manner and at worst, opened ACPS to legal liability because of his comments and actions. In addition, he violated the confidentiality provisions of County Board Policy on numerous occasions, including

disclosing confidential information to unauthorized persons during a Board meeting, commenting on a radio program about the alleged sexual misconduct of a County high school teacher, and comments made during a public forum regarding remarks and actions taken at a closed executive session.

The Respondent did not refute any of these transgressions or provide any evidence in support of his position that he did not engage in misconduct. The Board's position and instructions on confidentiality, as well as appropriate professional conduct, were clearly communicated to the Respondent. The Superintendent in the *Judy* decision considered acting unilaterally on school matters without the authority of the Board a serious violation because she determined that a board member's responsibility to not act unilaterally on school matters is the "linchpin of effective Board functioning." *Judy*, at 21.

The Respondent had knowledge of the County Board Handbook as the Board used the Handbook as an orientation tool for all new Board members, including for the Respondent after he became a member of the Board in 2014.

#### B. Willful.

In the *Judy* decision, the Superintendent found that the local board member's misconduct was willful because she repeatedly violated rules of the local board of education and her conduct continued after she was counseled. The Superintendent also found that willfulness does not require the showing of an evil motive. *Judy*, at p. 19. In *Kim v. State Bd. of Physicians*, 423 Md. 523 (2011), the Court of Appeals determined that the term "willful," as it is applied in a physician's administrative disciplinary proceeding, "requires proof that the conduct at issue was done intentionally, not that it was committed with the intent to deceive or with malice." *Kim*, 423 Md. at 546. The Court also noted that willful is defined as "intentional, or knowing, or voluntary, as distinguished from accidental." *Kim*, 423 Md. at 545.

In the instant matter, the Respondent's actions were intentional. He repeatedly violated Board policies, rules in the Board Handbook, or clear instructions from the Board. He did not refute any of the allegations against him. For these reasons, I conclude that the Respondent's actions were willful.

C. Fitness to be a Board Member.

The final inquiry as reflected in the *Judy* decision is whether the Respondent's misconduct demonstrated that he is unfit to be a member of the County Board. In the *Judy* decision, the Superintendent concluded that Ms. Judy was unfit to be a member of the local board because her conduct involved substantial violations that were harmful to the local board and the school system. The local board had to devote substantial time to handling Ms. Judy's misconduct and her actions were not in the best interests of the students. The Superintendent determined that the rule prohibiting Board members from acting unilaterally on school or board matters was important because a board must function collectively to make decisions. The Superintendent determined that Ms. Judy had attempted to circumvent the collective process of the local board. Her attempt to improperly take actions that were the function of the local superintendent impeded the efficient operations of the school system, impeded the work of the local superintendent, and impaired her ability to remain neutral in her quasi-judicial role.

I conclude that the Respondent's misconduct was substantial and harmful to the operations of the County Board and the school system. The Respondent's blatant disregard of the confidentiality requirements of the executive process, as well as proper professional decorum, demonstrated that the Respondent failed to accept that the County Board's Regulations and Policies applied equally to him as to everyone else. He demonstrated disdain for socially acceptable conduct, with the executive session process, and put his own interests above those of other members of the Board, ACPS employees and the general public. The Respondent

jeopardized ongoing criminal and civil investigations and undermined the willingness of individuals to use the executive process to conduct future Board business by obliterating the confidentiality provisions. The Board's Regulations, which were adopted by the County Board, provide that violations of those Regulations shall constitute grounds for discipline or personnel action or removal from office.

The Respondent's repeated transgressions described above made it difficult for the Board to conduct its operations in a fair and orderly manner. A public official must be held to a high standard of professionalism and must carry out his or her duties with integrity and a high degree of trust. The Respondent's failure to respect rules and laws protecting confidentiality and his refusal to comply with positions adopted by the Board with which he disagrees have undermined the ability of the County Board members to work with him and to rely on his ability to comply with the rules and duties of his position. The Respondent's violation of Board rules, policies, and regulations, his disregard for confidentiality requirements, refusal to comply with positions adopted by the Board, and his acting without authority from the Board cannot continue without consequences.

I conclude that the Respondent's refusal to comply with Board rules and policies, his refusal to comply with positions adopted by the Board, and his insistence on acting without authority of the Board, including his disregard of confidentiality requirements, constitute a willful neglect of duty and have rendered the Respondent unfit to serve as a member of the County Board.

I conclude that the Respondent's inappropriate and unprofessional conduct and his repeated violations of the rules and duties of his position constitute misconduct in office.

The County Board has also established that the Respondent's misconduct also warrants upholding its request to remove the Respondent from his position as a member of the Allegany

County Board of Education in accordance with section 3-201(g) of the Education Article.

Although the Respondent was elected to his position, the statute relied upon by the County Board authorizes removal from office for misconduct in office even for elected Board members.

Therefore, I recommend that the County Board's request that the Respondent be removed as a member of the Allegany County Board of Education be upheld. Md. Code Ann., Educ. § 3-201(g) (2018).

### CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, I conclude, as a matter of law, that the County Board has established that the Respondent is responsible for repeated substantial incidents of misconduct in office and willful neglect of duty.

I propose that the request by the County Board that the Respondent be removed as a member of the Allegany County Board of Education be upheld due to misconduct in office and willful neglect of duty. Md. Code Ann., Educ. §3-201(g) (2018).

### PROPOSED ORDER

It is proposed that the request by the Allegany County Board of Education that the Respondent be removed as a member of the Allegany County Board of Education for misconduct in office and willful neglect of duty be **UPHELD**.

September 9, 2019  
Date Proposed Decision Mailed

  
Michael J. Wallace  
Administrative Law Judge

MJW/da  
# 181262

## NOTICE OF RIGHT TO FILE EXCEPTIONS

Any party adversely affected by this Proposed Decision has the right to file written exceptions within fifteen days of receipt of this decision; parties may file written responses to the exceptions within fifteen days of receipt of the exceptions. Both the exceptions and responses shall be filed with the Maryland State Department of Education, c/o Sheila Cox, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties under COMAR 13A.01.05.07F. The Office of Administrative Hearings is not a party to any review process.

### Copies Mailed To:

Wayne Foote  
c/o Thomas E. Lynch, III, Esquire  
Miles & Stockbridge, P.C.  
30 West Patrick Street, Suite 600  
Frederick, MD 21701-5665

Thomas E. Lynch, III, Esquire  
Kelly Lynch, Esquire  
Miles & Stockbridge, P.C.  
30 West Patrick Street, Suite 600  
Frederick, MD 21701-5665

Karen Anderson Scott, Assistant Attorney General  
Christle Sheppard Southall, Assistant Attorney General  
Office of the Attorney General  
Maryland State Department of Education  
200 West Baltimore Street, 10<sup>th</sup> Floor  
Baltimore, MD 21201

David Cox, Superintendent  
Allegany County Board of Education  
108 Washington Street  
Cumberland, MD 21502