

IN THE MATTER OF  
REQUEST FOR REMOVAL  
OF LOCAL BOARD  
MEMBERS

TARA BATTAGLIA AND  
DONNA SIVIGNY

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION

Opinion No. 22-26

## OPINION

### INTRODUCTION

The State Board received a request from two Carroll County residents<sup>1</sup> to remove Tara Battaglia (Board Vice President), and Donna Sivigny as members of the Carroll County Board of Education (“local board”) for misconduct, willful neglect of duty, and incompetency. The board members and the local board filed responses opposing the removal request.

In addressing a request for removal, the State Board of Education must first consider whether the allegations are factually and legally sufficient to support charges. COMAR 13A.01.05.12E(5). If the request is factually and legally sufficient, the State Board issues notice of the charges and the board member proposed for removal may request a hearing before an Administrative Law Judge (“ALJ”) at the Office of Administrative Hearings. *Id.* After the ALJ issues a proposed decision, the board member may file exceptions to that decision and present oral argument before the State Board. *Id.* Upon completion of the process, the State Board issues a final decision on removal.

### FACTUAL BACKGROUND

Complainants seek removal of two of the five elected members of the local board.<sup>2</sup> The State Board received a request for removal with affidavits. The Complainants maintain that Ms. Battaglia and Ms. Sivigny have “engaged in misconduct, willful neglect of duty, and incompetence in their roles as members of the local board. We set forth the specific allegations below:

#### *MISCONDUCT*

##### *Family Life Advisory Committee Membership*

The first allegation concerns the composition of the school system’s Family Life

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<sup>1</sup> Although Complainants’ affidavits do not state that they are residents of Carroll County, the Maryland State Department of Assessment and Taxation real property records identify both Complainants as currently owning principal residences in Carroll County.

<sup>2</sup> Appellants also seek removal of board member Kenneth Kiler (President). Because Mr. Kiler is no longer a member of the local board, we have found the request to be moot in a separate order issued this month. *See In the Matter of Local Board Member Kenneth Kiler*, MSBE Order No. OR22-14 (2022).

Advisory Committee (“FLAC”). FLAC consists of 25 members who were selected by the local board. Each of the five local board members selected one “at-large” member (5), two elementary parent members (10), one middle school parent member (5), and one high school parent member (5). (Removal Request at 1).

Complainants allege that Ms. Battaglia and Ms. Sivigny committed misconduct in office because 17 out of the 25 total spots on the FLAC were allegedly filled by members of either the Moms for Liberty Facebook group and/or Concerned Parents of Carroll County Maryland (“Concerned Parents”) Facebook group, to which Appellants allege Battaglia, Battaglia’s spouse, and Sivigny’s spouse belong. *Id.* at 1-2. Complainants state that a Public Information Act (“PIA”) request revealed that 248 parents applied for 25 spots on FLAC, and that 19 of those applicants were members of the Facebook groups. *Id.* Complainants also state that when the school system sent out the FLAC online application to the public to solicit FLAC membership candidates, Bryan Thompson, chair of Carroll County Citizens United and the Concerned Parents Facebook group, who has political connections to Ms. Battaglia, urged people to apply to FLAC in a post to the Concerned Parents Facebook page. (*Id.*, Attach 1). Complainants allege that there have been questions about how the membership for FLAC was selected and that the issue was raised at the May 10, 2022, joint meeting between the local board and the Carroll County Board of Commissioners. (*Id.* at 1-2). Complainants disagree with the viewpoints and advocacy of the two Facebook groups, and do not agree with the inclusion as FLAC membership of so many individuals connected to the two groups. *Id.* Complainants maintain that the inclusion of these members on FLAC is not representative of those who applied to be members of FLAC or of the County’s ideology. *Id.*

#### Pride Flag Statements

The second contention alleges that Ms. Battaglia committed misconduct in office when she made various statements about the Pride flag as follows:

- At the local board’s April 13, 2022, meeting – “compared the Pride flag to the confederate flag”;
- At a Republican Women’s debate on April 21, 2022, – “when asked to sum up the problem with Pride Flags, Battaglia said, ‘A piece of cloth shouldn’t make you feel safe, my gun makes me feel safe’”; and
- At the local board’s May 11, 2022, meeting -- “in her argument against allowing Pride flags in schools, Battaglia stated, ‘Or do we go back to segregated schools like seriously? Is that what we need to do in order for everyone to stop their bullying harassment of other people?’”

#### Hostile Environment

The third contention alleges that Ms. Battaglia created a hostile environment by not correcting negative comments made by speakers during the public participation portion of the local board meetings regarding the LGBTQ community and its allies. Complainants do not

identify the comments, the speakers, or the meetings to which they are referring. The section of the removal request alleging incompetence contains a general statement that “members of both Concerned Parents and Moms for Liberty accused families of LGBTQ students of being groomers, pedophiles, and child abusers,” but no further information is provided.

### *WILLFUL NEGLECT OF DUTY*

#### *Family Life Advisory Committee Work and Proposal*

The first allegation of willful neglect of duty concerns the role and work of the FLAC and the Maryland State Framework Standards for the Family Life Unit of Study (“State Framework”). Complainants take issue with the FLAC’s proposed revised framework, released at the May 11, 2022, local board meeting, maintaining that the FLAC exceeded its authority and that its proposal improperly altered State health standards. The removal request appears to have been written prior to the local board’s vote on FLAC’s proposal at its June 8, 2022, meeting. At that meeting, the local board approved the FLAC proposal as an “alternative” for those students whose parents or guardians exercise their right under COMAR 13A.04.18.01D(2)(e)(i) to “opt-out regarding instruction related to family life and human sexuality objectives” set forth in the Maryland State Framework.<sup>3</sup> The adoption of the FLAC proposal has no impact on the default Maryland State Framework applicable to students whose parents/guardians do not exercise their right to opt out.

The second allegation is similar to the first in that Complainants contend that the FLAC has exceeded its authority and has violated the requirements of COMAR 13A.04.18.01, *et seq.* Complainants allege as follows:

FLAC has been tasked by the CCPS BOE with modifying the State Health Framework for Family Life and Human Sexuality. This is outside the scope of the responsibilities of this committee. COMAR 13A.04.18.01(D)(2)(c) states, “The local school system shall establish a joint committee of educators and representatives of the community for the purpose of reviewing and commenting on instructional materials. If approval of instructional materials is necessary, it shall occur pursuant to local policy.” This does not include modifying framework and requirements.

*Id.* at 4. The Complainants then list the various COMAR provisions they believe were violated by the FLAC.

#### *Procedures Followed by Family Life Advisory Committee and Open Meetings Compliance Board Findings*

The third allegation asserts that, under the leadership of Vice President Battaglia, proper procedures were not followed in that FLAC meeting dates and agendas were not posted online and that the meeting for the selection of FLAC members was not open to the public.

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<sup>3</sup> COMAR 13A.04.18.01D(2)(e)(ii) requires each local board to “establish ... appropriate alternative learning activities and/or assessments in health education” for students who exercise their right to “opt-out.”

Complainants also maintain that there were two occasions where the Open Meetings Compliance Board (“OMCB”) found the local board to be in violation of the Open Meetings Act,<sup>4</sup> and that Ms. Sivigny made a comment that one of the OMCB’s findings “sounds kind of ridiculous,” which Complainants contend “does not show due respect for both local and state procedures.” *Id.* at 5.

### Board Policies

The fourth allegation concerns alleged violations of the local board’s own educational equity policy by virtue of the work of the FLAC previously discussed herein and the alleged involvement of Ms. Battaglia and Ms. Sivigny as “instrumental in developing a Flag Policy specifically to remove Pride Flags from classrooms.” *Id.*

### Initiation of Legal Action Against State Board

The fifth allegation maintains that Ms. Battaglia committed willful neglect of duty when, instead of “focusing on providing a quality education to all students,” the local board initiated legal action seeking declaratory and injunctive relief against the State Board in February of 2022 concerning the emergency regulation previously set forth in COMAR 13A.01.07.05 entitled “Lifting Face Covering Requirements.” *Id.*

### Flag Policy Enactment

The sixth allegation again concerns the flag policy approved by the local board at its June 8, 2022, meeting. Complainants assert that under the leadership of Ms. Battaglia, the local board approved the flag policy without allowing 30 days for public comment before bringing the matter to a vote. *Id.* at 6.

## *INCOMPETENCE*

Complainants allege that the entirety of the local board, “under the leadership of . . . Vice President Battaglia, displays a fundamental misunderstanding of LGBTQ issues” based on the failure to correct individuals during the public comment portion of the local board’s meetings. *Id.*

Complainants also allege that Battaglia’s April 21, 2022, comment at a Republican Women’s debate that a “piece of cloth shouldn’t make you feel safe, my gun makes me feel safe” demonstrates incompetence.

Complainants raise Ms. Sivigny’s discussions at the June 8, 2022, local board meeting regarding the FLAC’s proposal concerning the State Framework as demonstrating incompetency. They maintain that during that discussion, Ms. Sivigny expressed her disagreement with the

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<sup>4</sup> These decisions are: 16 OMCB Ops. 123 (2022) (with regard to closed sessions on January 12, 2022, failure to include sufficient details in closing statement, in closed session summary, and in summary of an administrative function meeting) and 15 OMCB Ops. 136 (2021) (failure to provide reasonable advance notice of meeting on August 26, 2021, failure to allow the public to object to the closure of the meeting and engaging in a closed session discussion that exceeded the scope of the legal advice exception).

State's interpretation of COMAR and made comments about a "loss of local control." The discussions ultimately lead to the local board's adoption of the State Framework as the default for students whose parents/guardians do not exercise their right to opt out and the standards proposed by FLAC as an alternative option for students whose parents/guardians exercise their right to opt out.

## STANDARD OF REVIEW

The State Board may remove a member of the Carroll County Board of Education for immorality, misconduct in office, incompetency, and willful neglect of duty. Md. Code Ann., Educ. §3-401(e). The State Board exercises its independent judgment to determine whether to issue charges to remove a local board member from office. *See In the Matter of Request for Removal of Local Board Member Annette DiMaggio*, MSBE Op. No. 16-24 (2016); *see also Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

The State Board has cautioned that its "removal authority is not meant to be a citizen recall, but a limited means of removing board members whose conduct rises to the level of misconduct, immorality, incompetence, or willful neglect of duty" and that although some members of the public "may disagree with the wisdom of the decisions[s] made by the local board, the local board members' refusal to be swayed by the requesters' opinions and the rightness or wrongness of the decisions[s] ... [however such disagreement] does not support a reasonable belief that misconduct in office may have occurred." *See DiMaggio*, MSBE Op. No. 16-24 at 17 (2016); *In the Matter of Request for Removal of Local Board Member George*, MSBE Op. No. 16-25 at 11 (2016); *In the Matter of Request for Removal of Local Board Member Taylor*, MSBE Op. No. 16-26 at 11 (2016). Further, the removal process is not a vehicle to challenge the decisions made by a local board. The Education Article already provides an existing avenue of redress for such matters through the §2-205 and §4-205 appeals processes.

## LEGAL ANALYSIS

### *Standard for Initiation of Removal Process*

Before the State Board exercises its discretion to issue charges to begin a removal proceeding, it assesses whether the request is factually and legally sufficient. COMAR 13A.01.05.12E. Factually sufficient allegations must be legally sufficient to support issuing a charge. A factually sufficient request shall (1) be made by a person who has personal knowledge of the facts supporting the request and reason to believe in its truth, and (2) state the act or acts complained of in concise language, with a detailed description of the date, location, and nature of each act. COMAR 13A.01.05.12E(3). The factual basis must be set forth by a detailed affidavit. COMAR 13A.01.05.12B(1). A legally sufficient request shall create a reasonable belief that the actions alleged could constitute grounds for removal from office. COMAR 13A.01.05.12E(4). In other words, in order to issue charges and allow the matter to proceed to a hearing, assuming that all of the facts alleged are true, the facts would have to create a "reasonable belief" that those actions could constitute misconduct in office, willful neglect of duty, incompetency or immorality. *See DiMaggio*, MSBE Op. No. 16-24. The State Board must dismiss a request that is not factually or legally sufficient to remove a member, or otherwise fails to meet the regulatory requirements. COMAR 13A.01.05.12(E)(5).

Preliminary Matter – Affidavits

As stated above, the factual basis for the removal request must be set forth in a detailed affidavit made by an individual with personal knowledge of the facts and reason to believe in the truth of those facts. COMAR 13A.01.05.12E(3)(a). The affidavit must also describe concisely and with specificity the acts complained of and include the date, location, and nature of each act. COMAR 13A.01.05.12E(3)(b).

The affidavits provided by Complainants state the following:

I am over eighteen (18) years of age, I am competent to testify, and I have personal knowledge of the facts stated in this Affidavit. The foregoing Affidavit, consisting of:

- Evidence regarding misconduct, willful neglect of duty, and incompetence for the Carroll County, Maryland, Board of Education (8 pages)
- Figures 1-8 (7 pages)
- Board Agenda Item: Approval of FLAC (5 pages)

is true and correct and is made upon personal knowledge.

(*Id.*, Affidavits).

The affidavits do not provide any factual statements despite the fact that COMAR requires them to be “detailed.” COMAR 13A.01.05.12E(3)(b). However, Complainants have appended to their affidavits an eight-page memorandum. Although the memorandum is not specifically incorporated by reference into the affidavits, the affidavits state that they consist of several sections and list the corresponding page numbers of the memorandum. We believe this is sufficient here to find the memorandum incorporated into the affidavits.

However, we note that the memorandum is not a concise statement of the factual basis for the request as it is mixed with argument. Further, some of the statements appear to be based on conjecture, supposition, or hearsay information provided by others whose identities are not disclosed. In this instance, we will accept the filing and parse out the issues below in our assessment of the factual and legal sufficiency of the request.

Misconduct in Office – Factual and Legal Sufficiency

In previous removal cases, the State Board defined misconduct as including “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.” See *Dyer v. Howard County Bd. of Educ.*, MSBE Op. No. 13-30 at 12 (2013) (citing *Resetar v. State Bd. of Educ.*, 284 Md. 537, 560-61 (1979)). Misconduct includes malfeasance, doing an act that is legally wrongful in itself, and misfeasance, doing an otherwise lawful act in a wrongful manner. *Id.* Such conduct need not be criminal. *Id.* “[S]erious

misconduct that falls short of the commission of a crime but that relates to an official's duties may be grounds for removal under a civil removal statute." *Id.* (quoting 82 Op. Atty. Gen 117, 120 (1997)). A board member is unfit to continue service when the member's conduct "involves substantial violations that are harmful to the local board's functioning." *Id.*

#### Family Life Advisory Committee Membership

Complainants allege that Ms. Battaglia and Ms. Sivigny committed misconduct in office because out of the 25 members selected by the local board to be in FLAC, 17 of the individuals are members of either the Moms for Liberty and/or the Concerned Parents Facebook groups to which Ms. Battaglia and Ms. Sivigny allegedly have connections. Except for an individual named Bryan Thompson, Complainants fail to identify any of the other selected FLAC members who are allegedly members of the two identified Facebook groups. Complainants fail to explain, how they have personal knowledge of such affiliations, which local board members appointed which parents to the FLAC, or how inclusion of members of these groups supports a charge of misconduct. Furthermore, the composition of the FLAC was not determined solely by Ms. Battaglia and Ms. Sivigny. It was determined by the selections of all of the members of the local board. While Appellants clearly do not agree with the viewpoints of the FLAC members selected, and presumably the viewpoints of Ms. Battaglia and Ms. Sivigny, such disagreement is not a basis for removal. There is no prohibition on board members or their family members personally joining or following social media groups. Complainants have simply not alleged any malfeasance or misfeasance engaged in by Ms. Battaglia and Ms. Sivigny. We do not find this allegation to be factually or legally sufficient to support removal.

#### Pride Flag Statements

In their removal request, Complainants do not provide any context around the three alleged statements made by Ms. Battaglia regarding Pride Flags. Thus, we have viewed the video footage of the local board meetings during which two of the statements were made. We find that Complainants have misconstrued the intent of the statements. With regard to the reference to the Confederate flag at the April 13, 2022, Ms. Sivigny was referencing the local board's prior ban of the Confederate flag as part of a bigger discussion of development of a generic flag policy and was not comparing the Pride flag to the Confederate flag. (4/13/22 Recording at 24:09). The reference at the May 11, 2022, meeting was a sarcastic comment intended to emphasize the need for individuals to stop their bullying and harassment of other people. (5/11/22 Recording at 7:06). Moreover, regardless of how the Complainants interpreted these comments, local board members are entitled to express their viewpoints at board meetings. As to the alleged comment at a Republican Woman's debate, Ms. Battaglia has a right to express her personal viewpoints outside of the school setting. None of these comments rise to the level of misconduct. We do not find these allegations to be factually or legally sufficient to support removal charges.

#### Hostile Environment

There is specificity lacking to the allegation that Ms. Battaglia committed misconduct in office by not correcting negative comments made by speakers during the public participation portion of the local board meetings regarding the LGBTQ community and its allies. A general

allegation like this is insufficient to support a removal charge. Regardless, local boards, much like the State Board, do not generally engage public speakers during the public comments portion of the meeting even if they disagree with the comments or find them offensive. There is no legal requirement that they do so. We do not find this allegation to be factually or legally sufficient to support removal charges.

*Willful Neglect of Duty – Factual and Legal Sufficiency*

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 . . . responsibilities.” *Baylor v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 13-11 (2013). It is an intentional failure to perform some act or function that the person knows is part of his or her job. *See Lasson v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 15-21 (2015).

*Family Life Advisory Committee Work and Proposal*

As to the first allegation, with regard to FLAC’s proposal on the State Framework, Complainants seek removal of the board members based on willful neglect of duty for work of an advisory committee that was later presented to the local board for its consideration. Complainants provide no explanation how this amounts to willful neglect of duty. We do not find this allegation to be factually or legally sufficient to support removal charges.

As to the second allegation, Complainants’ claim that the FLAC exceeded its authority and that its proposal violated COMAR standards does not set forth any factual assertions against the two individual board members. Rather, it consists only of legal arguments about whether the FLAC’s proposal violated COMAR. This allegation is devoid of any facts to support a removal action, thus we find it factually and legally insufficient. If the Complainants were dissatisfied with the local board’s June 8, 2022, vote on FLAC’s proposal, they had the opportunity to file an appeal of the local board’s decision. A removal action against two local board members is not the appropriate forum to redress such issues.

*Procedures Followed by Family Life Advisory Committee and Open Meetings Compliance Board Findings*

The third allegation that proper procedures for the FLAC meetings were not followed under the leadership Vice President Battaglia fails to contain the specificity required for a removal request. Moreover, there were news releases that publicized the FLAC meetings on March 3, April 14, and June 2, 2022. (Local Bd. Resp. Ex. 2). With regard to the Open Meetings Act claim, the collective failure of the local board to follow the Open Meetings Act cannot be attributed solely to Ms. Battaglia and does not support a removal charge. *See In the Matter of Request for Removal of Local Board Member George*, MSBE Op. No. 16-25 (2016). None of the allegations regarding the procedures followed by FLAC, or about the OMCB findings of two Open Meetings Act violations, or Ms. Sivigny’s comments about the OMCB findings amount to willful neglect of duty. We find the allegations factually and legally insufficient to issue charges.



### Board Policies

Complainants fourth set of allegations that Ms. Battaglia and Ms. Sivigny committed willful neglect of duty based on claims that the FLAC's work violated the local board's education equity policy and on the board members' involvement in development of the flag policy are not appropriate bases for seeking removal. The FLAC ultimately provided a recommendation to the local board, which the board then deliberated and voted upon at a public meeting. The local board also deliberated and voted on the flag policy at a public meeting. The enactment of a local policy in a public session meeting is a core legislative function within the prerogative of any local board and does not constitute a factually or legally sufficient reason for the removal of a board member. Again, if the Complainants disagreed with the decisions of the local board on these matters, they were free to appeal them on a timely basis and raise these arguments opposing those decisions.

### Initiation of Legal Action Against the State Board

Complainants' fifth allegation that Ms. Battaglia committed willful neglect of duty when the local board initiated legal action seeking declaratory and injunctive relief against the State Board regarding the emergency regulation on face coverings likewise fails to raise an issue appropriate for a removal request. First, Complainants do not explain how a unanimous decision of the local board made during a public session can serve as a factually or legally sufficient basis for removal of two board members. Second, the approval of litigation is a core legislative act of a local board which, pursuant to Education Article §3-104 "[m]ay sue and be sued."

### Flag Policy Enactment

Complainants' sixth allegation is that, under the leadership of Ms. Battaglia, the local board approved a flag policy at its June 8, 2022, meeting without allowing 30 days for public comment before bringing the matter to a vote. (Removal Request at 6). Enactment of a policy is a core legislative action within the local policy making prerogative of the local board. As already stated, Complainants had the opportunity to timely appeal the local board's decision and to raise just this type of argument. A procedural challenge to a local board's decision, however, is not a proper basis for a removal action. We find the allegation to be factually and legally insufficient to bring removal charges.

### Incompetency – Factual and Legal Sufficiency

This Board has stated that incompetency means that a person "is lacking in knowledge, skills, and ability or failing to adequately perform the duties of an assigned position." *DiMaggio*, MSBE Op. No. 16-24 (2016), citing *Mua v. Prince George's County Bd. of Educ.*, MSBE Op. No. 13-34 (2013).

Complainants allege that failure to correct individuals during the public comment portion of public meetings supports a charge of incompetency against Ms. Battaglia because it demonstrates a fundamental misunderstanding of LGBTQ issues. As already stated above, there is no requirement for local board to engage citizens who participate in the public comment portion of their meetings. The decision not to correct speakers during this portion of the agenda

does not amount to incompetence. We do not find this allegation to be factually or legally sufficient to support removal charges.

Complainants allege that Ms. Battaglia’s April 21, 2022, comment at a Republican Women’s debate that a “piece of cloth shouldn’t make you feel safe, my gun makes me feel safe” demonstrates incompetence. They provide no explanation, however, how Ms. Battaglia’s comment about personal firearm ownership supports such a charge. We do not find this allegation to be factually or legally sufficient.

Complainants allege incompetency by Ms. Sivigny based on her discussions about the FLAC’s proposal at the June 8, 2022, local board meeting. Her comments were part of a discussion of a matter before the local board for consideration and a vote. Again, such discussions are part of public discourse on matters of public concern at school board meetings. It is the appropriate place for such discussions where differing views are exchanged. Board members may have views that are legally flawed, or that the public and other board members may not agree with. The presentation of items for discussion at a board meeting is when board members opinions and perspectives are discussed, debated, and considered. The comments by Ms. Sivigny during debate of a matter before the board for a vote does not provide a factual or legal basis to issue removal charges.

## CONCLUSION

For all of these reasons, we find that the request for removal is not factually or legally sufficient to support removal charges. Accordingly, we decline to issue charges for the removal from office of local board members Tara Battaglia and Donna Sivigny and dismiss the removal request.

Signatures on File:

\_\_\_\_\_  
Clarence C. Crawford  
President

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Shawn D. Bartley

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Gail H. Bates

\_\_\_\_\_  
Charles R. Dashiell, Jr.

\_\_\_\_\_  
Vermelle D. Greene

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Joan Mele-McCarthy

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Lori Morrow

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Warner I. Sumpter

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Merin Thomas

Absent:

Chuen-Chin Bianca Chang

Jean Halle

Rachel McCusker

Holly Wilcox

Abstained:

Susan J. Getty, Vice-President

December 6, 2022