

IN THE MATTER OF
REQUEST FOR REMOVAL
OF LOCAL BOARD MEMBER
DAVID MURRAY

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 22-02

OPINION

INTRODUCTION

The State Board received a request from Juanita Miller, board member and chair of the Prince George’s County Board of Education (“local board”), to remove David Murray as a member of the local board for misconduct in office, immorality, and incompetency. Mr. Murray submitted a response to 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. *See* COMAR 13A.01.05.12. 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

Mr. Murray has served as a member of the local board since 2016. The State Board received a request for his removal, supported by affidavit, based on the allegations set forth below.

Social Media Post

Dr. Miller alleges that Mr. Murray committed misconduct in office and immorality as a result of his actions related to a social media post. On or about July 1, 2021, Mr. Murray posted on his personal social media account an altered photograph from the local board’s June 25, 2021 swearing-in ceremony for the local board student member. The original photograph pictures the board’s outgoing and incoming student members and four board members, including Dr. Miller and Pamela Boozer-Strother. The posted photograph shows the same image altered so that a meme of the basketball star Michael Jordan crying (“Crying Jordan Meme”) appears over the faces of Dr. Miller and Ms. Boozer-Strother. Within 24 hours of posting the image, Mr. Murray deleted the post. He subsequently issued an apology to Dr. Miller and Ms. Boozer-Strother, the local board and the public, which he posted on his social media page on July 2, 2021. The apology stated that the post “was poorly conceived, sophomoric and inappropriate, and that he “did not intend [it] the way it was perceived.”

Language Used in Email

Dr. Miller alleges that Mr. Murray engaged in misconduct based on language he used in an email communication with Dr. Miller. On June 23, 2021, Mr. Murray responded to an email thread involving Dr. Miller, former board member Edward Burroughs,¹ and possibly others about the date of the swearing-in ceremony for the local board's student member. In the thread, Dr. Miller responded "duly noted" to an email from Mr. Burroughs in which he raised issues concerning a prior email from Dr. Miller and her attempt to change the date of the ceremony after the board had already set a date. Mr. Murray replied to Dr. Miller's email stating: "Does duly noted mean you understand? It is frustrating for members to have to counsel you by reading from policies that you should have read before you send these *mindless* emails." (Request, Ex. 2)(Emphasis added).

Conducting Business of Behalf of Board

Dr. Miller alleges that Mr. Murray "[i]nappropriately conducted business on behalf of the Board" that amounts to misconduct in office. The allegation references an email from Dr. Miller to Rosalyn E. Pugh, Esq. that states "this is to document that the contract signed by you and Board member, Edward Burroughs and executed on May 4, 2021 for legal services for [the local board] is void. . . . Board member Burroughs is not an authorized signatory to obligate the Board for any services." (Request, Ex. 3).

Legal Services Contract

Dr. Miller alleges incompetency claiming that Mr. Murray, along with another board member, pressured Dr. Miller to push the acceptance of a contract for the Pugh Law Group that was not vetted through the procurement process. The request alleges that Mr. Murray took the contract directly to legal counsel for the administration for review of legal sufficiency without consulting board leadership, and that the contract was eventually voided because it was signed by another board member who lacked authority to sign. The request states that "based on board Policy 9270, this demonstrates [Mr. Murray's] failure to learn and apply the proper State law, policies and Roberts Rules of Order relating to procurement."²

Mr. Murray responded that he and several board members believed that there was an immediate need for board legal counsel and the board chair had not taken steps to rectify the issue. Thus, he sent the Pugh Law Group contract to the school system Associate General Counsel and the Director of Procurement requesting that they review the contract in order to make sure that it complied with all procurement and contracting requirements.

¹ Mr. Burroughs was a board member at the time of the email.

² Board Policy 9270 states: "Board members shall have no authority to compel action in the name of the Board of Education unless the action has been previously approved by formal Board Resolution. Individual Board members do not have any administrative control or rights of command supervision over employees of the Board of Education. The Board shall not be bound in any way by any statement or action on the part of any individual Board member, except when such statement or action is in pursuance of specific instruction by the Board."

Meeting Attendance

Dr. Miller alleges incompetency stating that “Mr. Murray has either not voted to have or has been absent for at least three executive session meetings where it was shared with the public that [the] board did not meet because of lack of quorum. Each time, Mr. Murray was on the opposing side of having the meeting.” The three executive session meetings identified are those that were scheduled for May 6, June 16, and June 28, 2021. The May 6 meeting took place but there was no quorum present due to the absence of nine board members. Based on a poll of the local board members in advance of the June 16 and June 28 meetings, the meetings were cancelled because it was determined that a quorum would not be present. (*See Request, Ex. 4*). Mr. Murray maintains that these three executive session meetings were not regularly scheduled meetings, but rather were special meetings called by Dr. Miller on short notice.

STANDARD OF REVIEW

With the approval of the Governor, the State Board may remove a member of the Prince George’s County Board of Education for immorality, misconduct in office, incompetency, or willful neglect of duty. Md. Code Ann., Educ. §3-1002(i). 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).

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.01.05.12(E).³ 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.01.05.12(E)(3). The factual basis must be set forth by a detailed affidavit. COMAR 12A.01.05.12(B)(1). A legally sufficient request shall create a reasonable belief that the actions alleged could constitute grounds for removal from office. COMAR 13A.01.05.12(E)(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.

Misconduct in Office – Sufficiency of Request

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

³ COMAR 13A.01.05.12(E)(5) provides that the State Board shall dismiss a request that is not factually or legally sufficient, or otherwise fails to meet the regulatory requirements.

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 (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)).

Social Media Post

Dr. Miller alleges that Mr. Murray’s social media post was “demeaning, misogynistic, unprofessional, cyberbullying, harassing, and arguably racist,” and constitutes misconduct in office.

The State Board has considered the social media postings of local board members in prior removal cases. In *DiMaggio*, MSBE Op. No. 16-24 (2016), a local board member posted inappropriate comments on social media, including referring to certain school principals as unscrupulous and naming another individual as a bully. The State Board determined that the nature of the posts at issue did not meet the threshold for issuing removal charges. Compare this to *In the Matter of Request for Removal of Local Board Member Harshman*, MSBE Op. No. 17-17 (2017), in which the local board member posted serious allegations of sexual misconduct by school system employees on Facebook without evidentiary support, thereby inciting fear and panic in the community and disrupting school system operations. The State Board concluded that the severe nature of the comments posted to social media warranted the removal from office of the local board member. *Id.*

There is no doubt that Mr. Murray’s social media post was inappropriate and unprofessional and he has acknowledged such with his apology to the local board and the public. It is not the sort of respectful behavior that we expect from local board members who serve as leaders in the community and role models to our youth whose very interests they seek to represent. Yet that categorization does not mean that the behavior constitutes grounds for removal based on misconduct in office. Not every unprofessional act or instance of improper behavior is serious enough to rise to that level. In *Dyer v. Howard County Bd. of Educ.*, MSBE Op. No. 13-30, the State Board found that while Mr. Dyer made offensive or intimidating comments to school system staff, board staff, and board members, such comments did not constitute misconduct in office despite their inappropriate or offensive nature. *Dyer* at 7. As stated by the ALJ in that case, “not every transgression such as offensive comments or an intimidating style establish evidence of misconduct in office because there must be some room to acknowledge the rough and tumble of politics.” (*Id.* ALJ Proposed Decision at 75). We find that to be the case here. The request for removal based on Mr. Murray’s social media post, while factually sufficient, is not legally sufficient to issue charges because the facts fail to create a reasonable belief that the actions alleged could constitute misconduct in office.

Language Used in Email

Dr. Miller alleges that Mr. Murray's use of the term "mindless" in his email was "unprofessional and a form of cyber bullying and harassment," and constitutes misconduct in office. Similar to the discussion *infra* with regard to the social media post, we find the language used by Mr. Murray does not rise to the level of misconduct in office. We urge local board members to communicate with each other in a respectful manner, but we also recognize that board members at times will exchange pointed language during times of debate and heated discussions. The terminology used here was very mild and, although unkind and discourteous, is hardly the type of offensive language that one would equate with removal from office. The request for removal based on Mr. Murray's use of the term "mindless" in his email to Dr. Miller, while factually sufficient, is not legally sufficient to issue charges because the facts fail to create a reasonable belief that the actions alleged could constitute misconduct in office.⁴

Conducting Business on Behalf of the Board

The allegation that Mr. Murray committed misconduct in office because he "[i]nappropriately conducted business on behalf of the Board" is factually insufficient to support the charge. It is devoid of any facts explaining what actions were taken by Mr. Murray to support a charge. The citation to the email noting the voided contract for the Pugh Law Group does not add any specifics or detail to salvage the general allegation.

Incompetency - Sufficiency of Request

The request sets forth several allegations seeking removal of Mr. Murray based on incompetency. 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).

Legal Services Contract

Dr. Miller alleges that Mr. Murray should be charged with incompetency for pressuring Dr. Miller to accept a contract for the Pugh Law Group. The request for removal based on this allegation is factually insufficient to support a charge as it lacks any specificity whatsoever.

Dr. Miller also alleges incompetency claiming that Mr. Murray unilaterally submitted the Pugh Law Group contract to legal counsel for the school administration before it was vetted through the procurement process. The request states that "[b]ased on board Policy 9270, this demonstrates [Mr. Murray's] failure to learn and apply the proper State law, policies and Roberts Rules of Order relating to procurement." We are hard-pressed to understand how the single act of submitting the contract to legal counsel supports an incompetency charge. We find the allegation requesting removal on this ground to be legally insufficient.

⁴ The removal process is not a mechanism to be used to have the State Board referee the petty interactions and personality conflicts of local board members.

Meeting Attendance

Dr. Miller alleges that Mr. Murray has either not voted or has been absent for at least three executive session meetings, specifically May 6, June 16, and June 28, where the meetings had to be cancelled due to a lack of quorum, and that he was “on the opposing side of having the meeting.” This allegation does not explain how the action of not attending meetings supports a charge of incompetency, and thus is legally insufficient.

If the implication here is that Mr. Murray was required to attend these meetings and he purposely failed to do so, this would be more akin to a willful neglect of duty charge. 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). The local board’s Code of Ethics states that board members are committed to “attend[ing] all regularly scheduled Board meetings insofar as possible. . . .” (Policy 0108 - *Code of Conduct* at 2). The allegation is simply not legally sufficient to support issuing a charge because the facts, as stated, do not support a reasonable belief that a basis for removal has occurred.

Immorality – Sufficiency of Request

Social Media Post

Dr. Miller alleges that Mr. Murray’s actions with regard to the social media post amount to immorality. In *DiMaggio*, MSBE Op. No. 16-24 (2016), the State Board addressed immorality stating that “[i]mmoral acts alone cannot support termination unless the actions are “related to conduct which would render a [person] unfit for the performance of his duties.” Citing *Rollins v. Board of Educ. of Worcester County*, 2 Ops. MSBE 331, 331-332 (1981). The Board looked to past cases affirming terminations of administrators and teachers to glean insight regarding what types of behaviors rise to the level of immorality. *See Wright v. Bd. of Educ. of Charles County*, MSBE Op. No. 13-24 (2013)(sexual encounters with staff member on school property); *Johnston v. Howard County Bd. of Educ.*, MSBE Op. No. 10-30 (2019)(sexual abuse of a minor); *Hayhurst v. Garrett County Bd. of Educ.*, 7 Ops. MSBE 441 (1996)(buying and using marijuana); *Gaither v. Baltimore City Bd. of Sch. Comm’rs*, 6 Ops. MSBE 777 (1994)(using and selling illegal drugs); *Vogel v. Montgomery County Bd. of Educ.*, 5 ops. MSBE 298 (1989)(child abuse).

The types of behaviors this Board has found to constitute immorality are very serious, involving matters such as child abuse, sexual crimes, and illegal drugs. Dr. Murray’s actions here do not rise to that level. We reiterate what we stated above that Mr. Murray’s social media post was inappropriate and unprofessional, and is not the sort of respectful behavior that we expect from local board members. Nevertheless, that does not mean that it constitutes grounds for removal. We find that the request to remove based on this allegation is not legally sufficient because the facts fail to create a reasonable belief that the actions alleged could constitute immorality.

CONCLUSION

For all of these reasons, we find that the request for removal is not factually and legally sufficient. Accordingly, we decline to issue charges for the removal from office of local board member David Murray.

Although we decline to issue charges, we take this opportunity to express our dismay regarding the lack of professionalism exhibited here. While the actions do not rise to the level warranting issuance of charges, they are inappropriate and not in keeping with the respectful behavior we expect from local board members. We urge local board members to focus on their board responsibilities and the education of students.

We also take this opportunity to express our dismay that a local board member invoked the removal process over matters that seem driven by the ongoing political disputes among various members of the local board. The removal process is a serious procedure to be utilized sparingly in only the most serious circumstances. It is not a process to be used as a political tool or tactic when board members disagree over position or philosophy. We recently expressed our concerns over the divisive actions occurring within the local board in *Wingfield, et al. v. Prince George's County Bd. of Educ.*, MSBE Op. No. 21-46(2021), cautioning that “[S]uch actions lead to a dysfunctional board, an outcome that the Prince George’s County School System can ill afford.” We again caution all board members to keep foremost their fiduciary duty to serve the school system faithfully and well. Infighting and power plays are contrary to that duty.

Signatures on File:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

Shawn D. Bartley

Gail H. Bates

Chuen-Chin Bianca Chang

Susan J. Getty

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Holly C. Wilcox

Absent:

Vermelle Greene

Warner I. Sumpter

Abstain:

Lori Morrow

January 25, 2022