

IN THE MATTER OF
REQUEST FOR REMOVAL
OF LOCAL BOARD MEMBER
CORINE FRANK

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 22-06

OPINION

INTRODUCTION

The State Board received a request from a group of Anne Arundel County residents to remove Corine Frank as a member of the Anne Arundel County Board of Education (“local board”). Ms. Frank 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

Ms. Frank has served as a member of the local board since December 2020. The State Board received a request for her removal, supported by affidavit. The Complainants maintain that Ms. Frank has engaged in conduct that “establish a pattern of immorality, misconduct in office, incompetence, and willful neglect of duty to the Anne Arundel County Public School System.”¹ They state that:

A pattern of disregard for public safety by this member has created an environment that impairs the AACPS system’s ability to function efficiently and with public health, safety, and general well-being, as the focus of operations. Instead of AACPS system operations being focused on our students and educators’ health and well-being, this board member has distracted our board and created outrage over common sense COVID-19 mitigation strategies. Furthermore, this outrage was willfully manufactured in order to create support around a hyper-partisan fundraising appeal, associating dollar signs with putting our children’s health and well-being in danger.

¹ Although Complainants generally allege that Ms. Frank’s conduct constitutes immorality, misconduct in office, incompetence, and willful neglect of duty, the request focuses only on misconduct in office under the “charges sought” section of their submission. We therefore focus on this basis for removal.

Complainants maintain that Ms. Frank’s behavior is intended for her “political and financial gain” and that it has put their community “at increased risk for injury and/or death.” They further maintain that Ms. Frank “has shown her incompetence to make decisions that are in the best interest of the children’s education, community public health, educator mental health and well-being, children’s mental health and well-being, and general community unity and well-being.”

We set forth the specific allegations below:

Statements at December 16, 2020 Board Meeting

On August 26, 2020, the local board passed a resolution entitled “Resolution Supporting Social Justice By Stating That Black Lives Matter.”² At its public session on December 16, 2020, the local board reviewed its 2021 legislative program document. The board engaged in discussion regarding a proposed amendment to include language stating that Black lives matter, consistent with the August 2020 resolution.³ During the discussion, Ms. Frank mentioned that the “Black Lives Matter” movement “is concerning to me personally and to some of the groups I represent.”⁴ Complainants allege that this statement suggests that Ms. Frank is on the local board to represent groups that may have conflicting interests with the board and its constituents.

Statements at May 19, 2021 Board Meeting

At the local board’s May 19, 2021 public session, Ms. Frank asked to take “a moment of silence for the children who have died since last March 13th of 2020 due to the mental health burden that was placed on them.” She then stated “I would take a moment of silence at this point for all who have died of COVID-19 who are members of our school system, but there hasn’t been any.”⁵ The Complainants allege that this “sarcastic and mocking statement, regarding a real public safety threat to our community, ignores the hundreds of parents, grandparents and caregivers in our community who we lost to community spread of COVID-19 and the real and traumatic consequences it has had on our students.”

Social Media Posts

August 8, 2021 Post

Complainants allege that after Dr. Arlotto, Superintendent of Anne Arundel County Public Schools (“AACPS”), announced that AACPS would require face masks for in-person learning, Ms. Frank immediately generated opposition to the directive through social media in contradiction of AACPS policy and encouraged others to go against the mask mandate. They state that she even created a fake petition against the mandate, “which was then leveraged to advertise a hyper-partisan fundraising event.” Complainants maintain that commenters on Ms. Frank’s social media were confused if the petition was an actionable public policy petition given

² <https://www.aacps.org/cms/lib/MD02215556/Centricity/Domain/157/NEWBoardResolutionSocialJustice8-26-20.pdf>

³ There was clarification at the meeting that this was a reference to the concept and not a particular entity or organization.

⁴ <https://www.youtube.com/watch?v=cIA5kYwDxRI&list=PL63heelfetOvmiLEGOorVLGnirscK9H2Dy&index=40>

⁵ <https://www.youtube.com/watch?v=XyiFBW0GJTA&list=PL63heelfetOvmiLEGOorVLGnirscK9H2Dy&index=24>

that it was coming from an elected official, and that Ms. Frank responded that it was not a petition and that the post was only to generate support for herself and to have people join her mailing list. They also maintain that the purpose of the post was to “to generate outrage towards Dr. Arlotto’s mask mandate in order to generate political support for herself.”

The original August 8, 2021 Facebook post on the “Corine Frank for Anne Arundel County” Facebook page states the following:

I support your right to medical autonomy and to make decisions for your own child and I do not support mandatory masks. The CDC gives guidelines which, in a free country, are NOT mandates.

If you support this effort, please sign!

#stopmaskbullying
#stopmaskshaming
#stopmandates

The post is signed “Friends of Corine Frank” and says “Join me in supporting Friends of Corine Frank.”

The post contains a link directing users to a “Friends of Corine Frank” website that states as follows:

Say No to masking Kids in School!

While other states and school districts support the family’s choice regarding the masking of students, AACPS lags behind. Families should make medical decisions based on their own needs.

If kids don’t have to wear masks at restaurants, stores, or to play youth sports, they shouldn’t have to wear them all day in the classroom!

Let kids be kids!

The link then requests the users contact information.

Several people left comments on Ms. Frank’s post and she responded to some of the comments. The comments by Ms. Frank that Complainants cite are as follows:

- “... the CDC creates guidelines, there is no medical authority to enforce those guidelines because it is left to individuals to make those decisions.”
- “... I 100% support parents to make medical decisions for their own children.”

Complainants allege that Ms. Frank’s responses to the comments push her “partisan view contrary to the advice of multiple health authorities and that of the AACPS and Dr. Arlotto.”

August 11, 2021 Post

Complainants allege that on August 11, 2021, Ms. Frank posted a fundraiser invitation on her campaign Facebook page directing supporters to buy tickets and sponsorships for a “Back to School” fundraiser with sponsorship levels named with the intent to increase opposition to official AAPS policies. The sponsorships included one for \$500 named “Stop Masking Kids” and one for \$1000 named “Stop CRT”, which presumably stands for Critical Race Theory.

August 17, 2021 Post

Complainants allege that Ms. Frank posted two articles on her Facebook page regarding masking. One article, from the Wall Street Journal’s opinion section, was written by two doctors who argued against masking kids in school. The second article, from the New England Journal of Medicine, entitled “Universal Masking in Hospitals in the Coivd-19 Era” is preceded by quotes selected by Ms. Frank to make it appear that the article is a piece on anti-masking.

Failure to Wear Mask at August 18, 2021 and September 1, 2021 Board Meetings

Complainants allege that at the August 18, 2021 local board public session, Dr. Arlotto and local board President, Melissa Ellis, announced that masks would be mandatory for everyone inside the local board building on Riva Road.⁶ Complainants maintain that despite this requirement, Ms. Frank attended the meeting without wearing a mask.⁷ Further, they maintain that when parents in the room asked why they had to wear a mask and she did not, she responded that “[t]hose rules are different for different people by design.” The meeting had to recess due to crowd disruptions.

Ms. Frank did not wear a mask at the September 1, 2021 local board public session. Although the session was virtual for the public, board members met in person at the AACPS building. Complainants allege that this violated school system policy.

STANDARD OF REVIEW

The State Board may remove a member of the Anne Arundel County Board of Education for immorality, misconduct in office, incompetency, willful neglect of duty; or failure to attend, without good cause, at least 75% of the scheduled meetings of the county board in any one calendar year. Md. Code Ann., Educ. §3-2A-08(a). 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).

⁶ <https://www.youtube.com/watch?v=O-ttxaNMVJM&list=PL63heelfctOvmiLEGOVLGnirscK9H2Dy&index=22>

⁷ In her response to the removal request, Ms. Frank maintains that counsel for the local board advised that she did not have to wear a mask during the meeting. During the August 18 meeting, a motion to require board members to wear masks during all open and closed sessions failed.

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). 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 13A.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. 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).

Basis for Removal- Misconduct in Office

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)).

Factual and Legal Sufficiency of request

Comments at Board Meetings

We find the allegations regarding Ms. Frank’s statements at the December 16, 2020 board meeting during the discussion about adding language that Black lives matter to the legislative program document are not legally sufficient to support removal charges. Ms. Frank was merely expressing a viewpoint on the issue for herself and other groups of people. That is part of public discourse on matters of public concern at school board meetings. It is the appropriate place for such discussions to occur. People have differing views. Simply because some do not agree with Ms. Frank’s views does not mean that she is not working for what she believes is in the best interest of the school system.

The same holds true for the allegations about Ms. Frank's statements at the May 19, 2021 board meeting regarding a moment of silence. They are not legally sufficient to support a removal charge. Although the Complainants and others may find the statement "sarcastic and mocking" and otherwise disrespectful or in bad taste, this is the manner in which Ms. Frank chose to note her disagreement over a policy issue. Board members are entitled to express their viewpoints at board meetings. None of these comments rise to the level of misconduct.

Social Media Posts

Social media is a platform of discourse for public officials on matters of public concern. Ms. Frank used this platform to publicly share her viewpoints on an issue of great importance and debate throughout the country, which she is entitled to do. Although the Complainants allege in a conclusory fashion that the result of Ms. Frank's posts is interference and harm to school system and board operations and contradiction of a position taken by the Superintendent and the local board, they do not allege any specific facts to demonstrate that this is anything more than the expression of a board member's perspective on a hotly debated topic of great concern. We see no facts demonstrating that the post harmed the interests of the school system or enticed individuals to violate school system policies. The exchange of political views, even if those views are undesirable to some, is part of the democratic process. Although it is not without limits, board members are free to engage in the exchange of competing views. We do not find that the allegations concerning the social media posts are legally sufficient for a misconduct charge.

We encourage local boards to establish clear policies on social media use for their board members. We caution Ms. Frank and other board members who post on social media to think carefully before they post and to be cognizant of possible implications of content that is inconsistent with board positions. We further caution local board members who use social media to express their personal views to make clear that the views expressed are their own opinions and are not those of the board.

Failure to Wear Mask at Meetings

It is imperative for local board members to follow all health and safety requirements while in school system buildings. This includes any school system or other masking requirements. Failure to do so is not consistent with proper board member behavior and board members must be held to a high standard of professionalism. As we stated in *Dyer*, 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." See *Dyer v. Howard County Bd. of Educ.*, MSBE Op. No. 13-30 at 8 (2013).

Assuming the Complainants are correct that board members attending the board meetings on August 18, 2021 and September 1, 2021 were required to wear masks pursuant to school system policy and that Ms. Frank failed to wear a mask without permission to do so, that would constitute a violation of school system policy. In our view, however, in this case the failure to wear a mask on two occasions is insufficient to rise to the level of misconduct for purposes of removal, even if there was crowd disruption at the August 18, 2021 board meeting. Nevertheless, such action could merit some type of disciplinary or other action from the local

board. Further, we note that if a board member repeatedly engages in behavior that violates school system rules and policies, especially if such violations result in disruption to the functioning of the board, the behavior could ultimately reach a threshold that constitutes misconduct sufficient to support a removal.⁸ We find, however, in this case, that the allegations regarding the failure to wear a mask are not legally sufficient to meet the threshold for misconduct in office for purposes of removal.

Totality of Allegations

The Complainants also maintain that all of these incidents taken together constitute misconduct. As we stated in *Di Maggio*, a pattern of incidents could support a reasonable belief that misconduct occurred even where individual incidents, standing alone, might not support such a belief. *DiMaggio*, MSBE Op. No. 16-24 (2016) at 17. We do not find that to be the case here.

Alleged Violations of Local Board's Policy on Board Member Ethics and Professional Standards.

The Complainants allege that Ms. Frank's conduct violated various provisions of the local board's policy entitled "Board Member Ethics and Professional Standards" (Policy BK) and thus constitute misconduct. The local board's policy states that a board member who violates the policy is subject to disciplinary action by the local board, up to and including a recommendation to the State Board for removal. (Policy BK at D.4). As we stated in *DiMaggio*, the finding of violations of local ethics rules rests in the jurisdiction of the local board. MSBE Op. No. 16-24 (2016) at 8, 11. We are not aware of any findings by the local board that Ms. Frank violated the local board's ethics rules, nor has the local board sought Ms. Frank's removal.

CONCLUSION

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

Signatures on File:

Clarence C. Crawford
President

Charles R. Dashiell, Jr.
Vice-President

⁸ We are not suggesting here that a single instance of failure to follow school system rules or policies could never be sufficient to constitute misconduct for purposes of removal.

Gail H. Bates

Chuen-Chin Bianca Chang

Susan J. Getty

Jean C. Halle

Rachel McCusker

Joan Mele-McCarthy

Lori Morrow

Warner I. Sumpter

Holly C. Wilcox

Absent:
Shawn D. Bartley
Vermelle Greene

February 22, 2022