

IN THE MATTER OF
REQUEST FOR REMOVAL OF
LOCAL BOARD MEMBER
STEPHEN WHISLER

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION
Opinion No. 25-09

OPINION

INTRODUCTION

The State Board of Education received a request from an independent bookstore owner and Carroll County resident (the “Petitioner”) to remove Stephen Whisler as a member of the Carroll County Board of Education (“local board”) for his various social media posts regarding book bans and comments he made about her and her bookstore. Board Member McCusker recused herself from deliberations of this matter, did not participate in discussion, and did not vote.

In addressing a request for removal, the State Board 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

Mr. Whisler is a member of the local board. On September 22, 2024, the Petitioner posted on her bookstore social media accounts on Facebook and Instagram. The posts contain the American Library Association (“ALA”) banned books week logo and include a definition of book bans in public schools and libraries. (Petition, Ex. A). Mr. Whisler shared the post on his personal Facebook page and stated:

Very sad that a company ...and some public school educators want to promote books to children that have explicit and graphic content of sex acts. You can demagogue the issue to your heart’s content....but stop sexualizing kids and asserting that you know better than parents just because you have a librarian certification. If you want to promote materials like this to children, you should get out of the classroom.

(Petition, Ex. B). The Petitioner then responded to his social media post and stated “we are not a company” but rather a “small business in this community” and “[w]e have been parents longer

than you have been an elected official” and “[w]e’ve never met a Carroll County parent who is not capable of deciding what is appropriate for their own children, but we have met a lot of folks who are tired of all this divisiveness.” (Petition, Ex. C). Mr. Whisler then responded that “it is unfortunate that you want to encourage kids to read books with graphic sexual content.” (Petition, Ex. D). He also responded with another post stating, “I will call out persons and businesses alike for aggressive attempts to introduce graphic sexual content to kids.” (Petition, Ex. E). The Petitioner asks for the removal of Mr. Whisler because Mr. Whisler “took our stance against book bans and equated it with providing sexual content to children, to sexualizing children” and that his statements have damaged her business because people are leaving terrible reviews based on Mr. Whisler’s statements.

In response to the Petition, Mr. Whisler stated that his comments made on social media to the Petitioner were not made in any official capacity related to his local board activities and that his personal social media page clearly indicates that any and all content is not associated with his work on the local board. He also responds that he will continue to express his opinions and to exercise his First Amendment rights.

STANDARD OF REVIEW

The State Board may remove a member of the Carroll County Board of Education for immorality, misconduct in office, incompetency, or 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).

LEGAL ANALYSIS

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, to issue charges and allow the matter to proceed to a hearing, if 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).

Although the Petition does not state the legal grounds for the removal, we find that the allegations are most like allegations of 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 Cnty. 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.*

The State Board has applied this misconduct in office standard involving social media postings of local board members in prior removal cases. In the absence of local board policies regulating social media posts of its board members, we have generally been reluctant to find grounds for removal and have recognized that board members may express differing political views on social media platforms. *In the Matter of Request for Removal of Local Board member Corine Frank (Corine Frank)*, MSBE Op. No. 22-06 (2022), we acknowledged that social media is a platform for discourse for public officials on matters of public concern. We stated:

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.

Id. at 6. *See also In the Matter of Request for Removal of Local Board Member David Murray*, MSBE Op. No. 22-02 (2022)(State Board determined that request for removal based on social

media post of an altered photograph showing a meme of the basketball star Michael Jordan crying over the faces of two other board members although factually sufficient was not legally sufficient to issue charges because the facts failed to create a reasonable belief that the actions alleged could constitute misconduct); *In the Matter of Request for Removal of Local Board Member Annette DiMaggio*, MSBE Op. No. 16-24 (2016)(State Board concluded inappropriate comments on social media, including referring to certain school principals as unscrupulous and naming another individual as a bully did not meet the legally sufficient misconduct threshold for issuing removal charges).

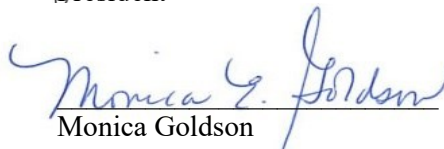
We find that the allegations brought by the Petitioner are factually insufficient to support grounds for Mr. Whisler’s removal from office. However, we take this opportunity to guide Mr. Whisler to exercise caution in his online posts related to his public office, including his online election and campaign social media. It is our view that his social media posts complained of here, and other posts we have reviewed, are not the sort of respectful behavior 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.

In the record before us, there are no allegations about how his posts have impacted the school system or the local board functioning. The main issue raised by the Petitioner pertains to the impact Mr. Whisler’s statements have had on her business. Any impact on the Petitioner’s business is a private matter between the parties, unrelated to the local board’s operations, and the use of the removal process before the State Board is an inappropriate venue to resolve any such disputes. However, we reinforce the State Board’s previous statements that while not all offensive social media activity may lead to removal, posts that significantly disrupt school operations or undermine public trust can result in serious consequences. Consistent with our prior decisions, we caution Mr. Whisler and other board members who post on social media to think carefully before they post and to be cognizant of possible implications of content. *See, In the Matter of Request for Removal of Local Board Member Renee Dixon*, MSBE Op. No. 24-01 (2024).

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 member Stephen Whisler and dismiss the removal request.


Joshua L. Michael
President

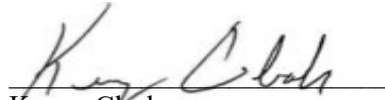

Monica Goldson
Vice-President



Chuen-Chin Bianca Chang



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Kenny Clash



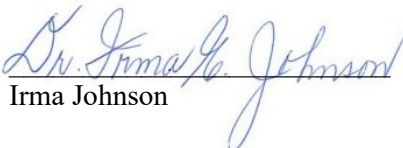
Clarence C. Crawford



Abriham Gaddam



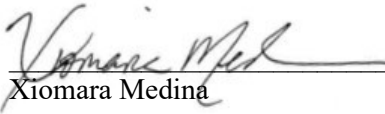
Nick Greer



Irma Johnson



Kim Lewis



Xiomara Medina

Recused:
Rachel McCusker

Absent:
Joan Mele-McCarthy
Samir Paul

February 25, 2025