

IN THE MATTER OF  
MARYLAND PUBLIC  
ETHICS LAW (II)

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION

Order No. OR 19-05

ORDER

On April 18, 2019, Nayano Taylor-Neumann, Ph.D., on behalf of 29 other individuals and one organization, requested that the State Board issue a declaratory ruling concerning certain actions of members of the Allegany County Board of Education. Specifically:

- (1) Whether someone with an active lawsuit against the Superintendent and the Board which he serves as President [Mr. Farrell] has a general conflict of interest and cannot be impartial?
- (2) Whether Mr. Farrell has a specific conflict of interest in selecting Board counsel?
- (3) Whether Mr. Foote has a specific conflict of interest in selecting Board Counsel?

We point out initially that the Allegany County Board of Education Ethics Panel opined on March 7, 2019, on the specific conflicts of interest of Mr. Farrell and Mr. Foote. The Ethics Panel wrote:

...

Pending the resolution of Mr. Farrell's lawsuit against David Cox and the Board of Education, it is the Panel's opinion that there is the potential for Mr. Farrell to personally benefit from being able to express his opinion, vote, or in any way help select, the Board's legal counsel. Any involvement in the selection process of the Board's legal counsel allows Mr. Farrell to assist in choosing the individual who will advise the Board in Mr. Farrell's ongoing litigation against Superintendent Cox and the Allegany County Board of Education. It is therefore the opinion of the Ethics Panel that Mr. Farrell has a 'conflict of interest' regarding the selection of the Board's legal counsel and, as a result, should recuse himself from the selection process. This is the Panel's opinion independent of an indication that Mr. Llewellyn, interim attorney for the Board and applicant for the position of legal counsel to the Board, supported Mr. Farrell in his bid for election to the Allegany County Board of Education.

[2.] Given that the Maryland State Board of Education has officially filed charges against Mr. Foote, should he recuse himself from voting on choice of Board counsel due to a conflict of interest in one of the two proposals? Mr. Hanna served as Board counsel when the Board made the decision to send a resolution to the State Board of Education asking that Mr. Foote be removed from office, and it was specifically noted that the removal of Mr. Hanna was due to the actions surrounding Mr. Foote.

The reason given by President Farrell during the Board's public meeting January 08, 2019, for replacing Mr. Gary Hanna as the Board's legal counsel is as follows:

We have decided, as a Board, based on some of the things that have occurred lately with Mr. Foote and the resolution that was at the last Board meeting to retain new counsel in an interim position until we can do a RFP (request for proposal).

Given the primary reason offered for replacing Mr. Hanna pertains to a resolution submitted to the State Department of Education requesting Mr. Foote's removal from the Board, it is the Panel's opinion that Mr. Foote has a personal interest in the selection of legal counsel. It is therefore the Ethic Panel's opinion that Mr. Foote should recuse himself from the legal counsel selection process.

...

The Panel wishes to remind the Board of its opinion rendered January 25, 2019, in which it expressed concern that a Board member having a direct and significant personal stake in any matter coming before the Board would make it difficult, if not impossible, to guarantee the public of his or her, "impartiality and independent judgment."

Sincerely,  
The Ethics Panel

Thus, for all intents and purposes, the conflicts of interest on the part of Mr. Foote and Mr. Farrell have been declared by the proper body. Mr. Foote and Mr. Farrell apparently have ignored the opinion of the Ethics Panel. Yet, even that action does not create jurisdiction in this Board to provide ethics advice through a declaratory ruling.

COMAR 13A.01.05.05 allows a party to file a petition for declaratory ruling "on the interpretation of a public school law or regulation of the State Board that is material to an existing case or controversy." The declaration that Ms. Taylor-Neumann seeks does not involve

“public school law[s] or regulation[s] of the State Board.” Instead, the conflict of interest issues fall under the Maryland Public Ethics Law. The State Ethics Commission has jurisdiction over the ethics laws. *See* Md. Code, General Provisions §§5-104, 5-815, *et seq.* Because the request for a declaration does not involve State education law and concerns matters entrusted to another State agency and the local ethics panel, we must dismiss this request for lack of jurisdiction. In so doing, we do not opine on the merits of the request. We point out that Md. Code General Provisions §5-820 may be a more appropriate avenue for relief in this matter.

Therefore, it is this 21<sup>st</sup> day of May 2019 by the Maryland State Board of Education, ORDERED, that the request for declaratory ruling is hereby dismissed for lack of jurisdiction.

MARYLAND STATE BOARD OF EDUCATION

Signature on File:

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Justin M. Hartings  
President