

IN THE MATTER OF
REQUEST FOR REMOVAL OF
LOCAL BOARD MEMBER
ANNETTE DIMAGGIO

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 16-24

OPINION

INTRODUCTION

Approximately 32 citizens have requested the removal of Annette DiMaggio from the Board of Education of Queen Anne's County (local board) for immorality, misconduct in office, incompetence, and willful neglect of duty.¹

FACTUAL BACKGROUND

The dispute here involves the local board's decision not to renew the superintendent's contract. Under Maryland law, local boards of education have responsibility for appointing the superintendent. A superintendent's term lasts four years, beginning on July 1 of the year in which the local board hires him or her. By February 1 of the year in which a term ends, the superintendent must inform the board whether he or she wishes to be reappointed. The local board must decide whether to reappoint the superintendent by March 1. If the local board chooses not to reappoint the superintendent, it must choose a new superintendent by July 1. If a new superintendent is not appointed, the local board must appoint an interim superintendent to a one-year term. Md. Code, Educ. §4-201.

Following this process, the local superintendent timely notified the Board of Education of Queen Anne's County that she wished to renew her contract for four years. On February 9, 2016, during a closed session, the members of the local board considered the request and voted 3-2 not to renew the local superintendent's contract.

On March 2, 2016, the local board discussed the superintendent's contract in open session. It was listed on the meeting agenda as "Superintendent's Contract/Superintendent Search" and the meeting agenda stated that the board would "discuss and make a decision regarding the Superintendent's contract/Superintendent search." During the meeting, the Board President stated that the board had voted in February against renewing the superintendent's contract. After listening to public comment for about an hour, the local board voted 3 to 2 against reappointing the local superintendent to a new four-year term or for allowing a one-year contract extension. Board President Jennifer George, Board Vice President Arlene Taylor, and

¹ Similar removal requests were also filed against board members Arlene Taylor and Jennifer George. Those requests are addressed in separate opinions.

board member Annette DiMaggio voted against the reappointment while board members Tammy Harper and Beverly Kelly voted in favor.

On March 17, 2016, Dr. Angela Holocker, principal of Matapeake Middle School in Stevensville, wrote to the State Board requesting that three of the current local board members be removed: Ms. George, Ms. Taylor, and Ms. DiMaggio. The State Board has received 31 additional requests for removal, including another request from a school principal and two from school system administrators. Many of the requests are nearly identical to Dr. Holocker's removal request. Other citizens, including a former member of the local board of education and a former county commissioner, have written to the State Board to express support for the superintendent or to request an investigation, but they do not specifically request that board members be removed from office.

The request for removal states, in pertinent part:

There are several sections of the Open Meetings Act as well as the Queen Anne's County Board of Education Handbook that have been violated. On February 9, 2016, the BOE members met in closed session for the purpose of discussing the renewal of the Superintendent's contract. This meeting was not announced nor are the minutes from the meeting published. In addition, in the last open session on March 2, 2016, meeting minutes from this meeting were not accepted by the members. The results of this closed session were also known by members of the teachers' union and commented on publicly shortly after the meeting even though there was no public announcement. Honestly, this is the least of the violations that occurred.

During the March Board meeting, after an hour and half of public comment from the community sharing their outrage that Dr. [Carol] Williamson's contract had not been renewed without public input, three board members demonstrated multiple examples of misconduct and willful neglect. I have attached examples from the meeting transcript. These examples include racist comments made by one board member as well as inappropriate dialog between the members and the audience during the meeting.

Throughout this process, board members have posted inappropriate comments on social media, calling principals "unscrupulous" for demonstrating and gathering teacher and community support for Dr. Williamson. Board members have made comments publically that principals would lose their positions when they appoint the new superintendent. The principals were individually identified in public as well. Other staff members were also contacted and "warned" not to get involved with the rallying of support for our Superintendent. This has created a fear of retaliation and in the process has created a stressed work environment.

Other removal requests state that board members were indifferent to the views of the public concerning the superintendent's contract renewal, did not provide a sufficient rationale for their decision, conspired to remove the superintendent, and generally abused their power. The board members were also accused of not having a proper transition plan to replace the superintendent.

In addition, other citizens filed complaints with the Queen Anne's County Board of Education Ethics Panel and the State Open Meetings Compliance Board related to the decision not to renew the superintendent's contract. On May 9, 2016, the Open Meetings Compliance Board issued an opinion in which it found that the local board violated five provisions of the Open Meetings Act. *See* 10 Official Opinions of the Compliance Board 35 (2016). The compliance board found that the local board did not give proper notice of its February 9, 2016 special meeting; did not close the meeting by a publicly-held vote; did not provide the requisite information required before closing the meeting; and did not make all of the required disclosures about three of its closed sessions in the minutes of subsequent meetings. *Id.*

On April 28, the State Board sent a letter to Ms. DiMaggio requesting her response to the removal requests. The State Board attached nearly 400 pages of letters, emails, and other documents sent by citizens asking for the removal of Ms. DiMaggio. Ms. DiMaggio responded in writing.

LEGAL ANALYSIS

Additional Materials

After sending its request for a response to Ms. DiMaggio, the State Board has continued to receive new requests for her removal. On April 29, 2016, approximately 18 individuals (many of whom had already filed removal requests on their own and offered public comment before the State Board) jointly filed a new request for the removal of Ms. George, Ms. Taylor, and Ms. DiMaggio. Additionally, another citizen started an online petition through the website Change.org requesting removal of the board members. More than 1,200 people signed the online petition as of early June.

The State Board has also received letters and emails that criticize the removal requests and are supportive of Ms. George, Ms. Taylor, and Ms. DiMaggio.

The essential requirements of due process are "notice and an opportunity to respond." *See Mobley v. Baltimore City Bd. of Sch. Comm'rs*, MSBE Op. No. 15-09 (2015) (citing *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985)). For this reason, the State Board closes the record in cases brought before it once both parties have been given an opportunity to make their arguments. In this case, the State Board accepted documents from the public for more than a month, accumulating nearly 400 pages of material as of April 28, 2016. Ms. DiMaggio then had 30 days to respond to the materials and she filed her response in a timely fashion. In our view, this process provided Ms. DiMaggio with adequate notice of the allegations against her and sufficient time to respond to those allegations.

Due process requires that the State Board not consider additional documents once the record in a case is closed. To proceed otherwise would create an indefinite process in which no case would ever reach a resolution. For these reasons, we shall decline to consider the additional materials filed in this case.

The Removal Statute

The State Board has sole authority to decide whether to remove most elected local board members from office.² *See, e.g.*, Md. Code, Educ. §3-10-A-01. Although the removal statutes are set forth in the laws that govern each specific board, the process and grounds for removal are essentially the same in each statute. Removal of a local board member in Queen Anne’s County is described at Md. Code. Ann., Educ. §3-10A-01:

(a) *Reasons.* — The State Board may remove a member of the county board for any of the following reasons:

- (1) Immorality;
- (2) Misconduct in office;
- (3) Incompetency;
- (4) Willful neglect of duty;
- (5) Failure to attend, without good cause, at least 75 % of the scheduled meetings of the board in any 1 calendar year.

(b) *Notice of Charges.* — Before removing a member, the State Board shall send the member a copy of the charges against the member and give the member an opportunity within 10 days to request a hearing.

(c) *Hearing.* — If the member requests a hearing within the 10 day period:

- (1) The State Board shall promptly hold a hearing, but a hearing may not be set within 10 days after the State Board sends the member a notice of the hearing; and
- (2) The member shall have an opportunity to be heard publicly before the State Board in the member’s own defense, in person, or by counsel.

(d) *Right to appeal.* — A member removed under this section has the right to a *de novo* review of the removal by the Circuit Court for Queen Anne’s County.

Who May Request Removal?

The law does not specify who may request removal of a local board member or how they should go about making the request. The statute merely states that the State Board “may”

² Removal of an elected board member in Charles County and Prince George’s County also requires the consent of the governor. Md. Code, Educ. §3-501; §3-1002. The State Superintendent, with the approval of the Governor, may remove an appointed local board member. *See* Md. Code, Educ. § 3-108(d). Dr. Grasmick did so in 2007. *In the Matter of Maryann Judy*, Supt. Case. No. 1-07 (2007). The Montgomery County Council is the only body with authority to remove a member of the Montgomery County Board of Education. Md. Code, Educ. §3-901.

remove a member of a local board. On three occasions since 2011, local boards have passed resolutions or otherwise requested that the State Board remove one of their members. In response to those requests, the State Board removed one member and declined to issue charges against another. In the third case, the local board withdrew the request.

This is the first time that members of the school community, rather than a local board itself, have requested removal of a board member. While it is our view that the statute does not limit who may request removal, the process that evolved in this case deserves comment.

In past cases, the State Board has received a single request for removal containing all of the allegations against a local board member. The local board member in question has generally responded to the allegations. Based on these materials, the State Board decides whether to issue charges and initiate the removal process. In this case, however, the State Board received multiple requests from the public for the removal of three local board members. Some of the requests were identical to one another, while others offered different arguments or information in support of removal. As discussed previously, due process required that we close the record after a certain point in time in order to ensure that the local board members had sufficient opportunity to respond.

This was a novel situation for the State Board. Although the statute establishes the removal power, we have not adopted regulations to further govern the process. In the absence of regulations, we have applied our appeal procedures, past precedents, and existing case law to guide the removal process. Going forward, we believe that regulations explaining our removal procedures would be beneficial for local board members and the public to establish a more formal order in the process, provide clarity to the public about what information should be contained in a removal request, avoid duplicative requests, and reduce the potential for abuse of the process.

Whether to Initiate the Removal Process?

The State Board, by statute, “may” remove a local board member. The use of the word “may” in the removal statute indicates that the State Board has discretion in deciding whether to remove a local board member from office. This discretion naturally would extend to the initial decision on whether to issue charges against a local board member in the first place. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985) (decision whether to prosecute or enforce an action is committed to an agency’s “absolute discretion”); *District of Columbia v. Sierra Club*, 670 A.2d 354, 360 (D.C. 1996) (“The determination whether and when to institute enforcement proceedings against a specific individual is a core executive responsibility which may reasonably be viewed as having been committed to agency discretion so as to preclude substantive judicial review.”). In order to initiate the removal process, we must determine whether there is probable cause to issue charges.

Is there probable cause to issue charges?

In a previous case, the State Board applied the civil standard for probable cause to determine if it should exercise its discretion to issue charges against a local board member. The

Court of Appeals has described probable cause in a civil context as “a reasonable ground for belief in the existence of such state of facts as would warrant institution of the suit or proceeding.” *One Thousand Fleet Ltd. Partnership v. Guerriero*, 346 Md. 29 (1997). Therefore, to issue charges and allow the matter to proceed to a hearing, the State Board should have a “reasonable ground for belief” that misconduct in office, immorality, incompetence, or willful neglect of duty may have occurred.

In determining whether there are grounds for a “reasonable belief” that misconduct, immorality, incompetence, or willful neglect of duty may have occurred, the State Board considers whether the allegations are factually and legally sufficient to support a charge. This analysis is similar to that used by states where citizens may file recall petitions in order to remove elected officials.³ In Washington State, for example, courts review the charges supporting a recall petition to determine if they are factually and legally sufficient to bring to the voters. *See In Re Recall of Young*, 100 P.3d 307 (Wash. 2004); *Matter of Recall of Beasley*, 908 P.2d 878, 880-882 (Wash. 1996). Most recently, this Board declined to issue charges against a local board member in Dorchester County because the allegations were not factually and legally sufficient to support a reasonable belief that misconduct in office may have occurred.

Factually sufficient

A factually sufficient complaint must “state the act or acts complained of in concise language, [and] give a detailed description including the approximate date, location, and nature of each act complained of.” *Beasley*, 908 P.2d at 881. There must also be an indication that the person making the charge has knowledge of the facts supporting it and a reason to believe in its truth. *Id.*

Legally sufficient

Factually sufficient allegations must be legally sufficient to support issuing a charge. In other words, if the State Board were to assume that all of the facts alleged are true, would they create a “reasonable belief” that those actions could constitute misconduct in office, immorality, incompetence, or willful neglect of duty? The elements of each of the grounds for removal are different.

Misconduct in office

In a previous removal case, the State Board defined misconduct in office as encompassing malfeasance, doing an act that is legally wrongful in itself, and misfeasance, doing an otherwise lawful act in a wrongful manner. *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)). It includes “a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, [and] improper or wrong behavior.” *Id.*

³ There are no provisions in Maryland law allowing for recall of elected officials.

Immorality

Immoral acts alone cannot support termination unless the actions are “related to conduct which would render a [person] unfit for the performance of his duties.” *Rollins v. Bd. of Educ. of Worcester County*, 2 Op. MSBE 331, 331-32 (1981). Although the State Board has never offered a formal definition of “immorality,” past cases provide insight into what types of behavior are immoral. Recently, the State Board affirmed the termination of an assistant principal who had multiple consensual sexual encounters with a married instructional assistant in a classroom and school office outside of work hours. See *Wright v. Bd. of Educ. of Charles County*, MSBE Op. No. 13-24 (2013). See also *Johnston v. Howard County Bd. of Educ.*, MSBE Op. No. 10-30 (2010) (sexual abuse of a minor); *Hayhurst v. Garrett County Bd. of Educ.*, 7 Op. MSBE 441 (1996) (buying and using marijuana); *Gaither v. Baltimore City Bd. of Sch. Comm’rs*, 6 Op. MSBE 777 (1994) (using and selling illegal drugs); *Vogel v. Montgomery County Bd. of Educ.*, 5 Op. MSBE 398 (1989) (child abuse).

Incompetence

Incompetence means that a person “is lacking in knowledge, skills, and ability or failing to adequately perform the duties of an assigned position.” *Mua v. Prince George’s County Bd. of Educ.*, MSBE Op. No. 13-34 (2013).

Willful Neglect of Duty

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 teaching 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).

Allegations Against Board Member DiMaggio

The allegations against Ms. DiMaggio can be generally summarized as follows:

- 1 – Violations of the Open Meetings Act, including voting on the superintendent’s contract in a closed session without informing the public and failing to disclose minutes of the meeting
- 2 – Violations of local ethics rules, including making inappropriate statements on social media, accusing principals of being “unscrupulous,” calling an audience member a bully, being in a local school without permission, not explaining her decision regarding the superintendent’s contract, operating a catering business that serves the school system, and making threats against employees who spoke in favor of the superintendent
- 3 – Behaving improperly during the March 2, 2016 meeting, including naming an audience member as a bully and engaging in an inappropriate back-and-forth dialogue with the audience concerning the reasons for not renewing the superintendent’s contract

- 4 – Disregarding public comment and input regarding reasons for renewing the superintendent’s contract during the March 2, 2016 meeting
- 5 – Failing to have significant reasons for not renewing the superintendent’s contract and instead offering only general statements about her belief that change was needed
- 6 – Making threats against employees who spoke in favor of the local superintendent and suggesting principals and others who spoke in favor of the superintendent will lose their jobs in the school system
- 7 – Posting inappropriate comments on social media, including referring to certain school principals as unscrupulous and naming another individual as a bully
- 8 – Improperly conducting business with the local board through a catering company owned by her
- 9 – Conducting unauthorized visits to local schools and interfering with school operations through her role as a PTA officer

Is the complaint factually sufficient?

To be factually sufficient, the complaint must tell us the date, location, and nature of each act complained of and provide a factual basis to support each allegation. The first allegation concerns the Open Meetings Act. The Open Meetings Compliance Board did find violations of the Open Meetings Act. They were that the local board did not give proper notice of its February 9, 2016 special meeting; did not close the meeting by a publicly-held vote; did not provide the requisite information required before closing the meeting; and did not make all of the required disclosures about three of its closed sessions in the minutes of subsequent meetings. These findings provide a factual basis to support that allegation.

The second allegation involves violations of local ethics rules. Separate complaints have been filed with the Queen Anne’s County Board of Education Ethics Panel. The finding of ethics violations rests in the jurisdiction of the Ethics Panel. To date, we are aware of no findings that Ms. DiMaggio violated ethics rules. Accordingly, there are not sufficient facts to support that allegation.

The third, fourth, and fifth allegations concern Ms. DiMaggio’s behavior during the March and April 2016 local board meetings. There is a video of the two meetings, during which she allegedly behaved improperly by naming an audience member as a bully, engaged in a back-and-forth discussion with the audience, disregarded public comment, and failed to have significant reasons for not renewing the superintendent’s contract. The videos provide a sufficient factual basis to support the allegations.

The sixth allegation is that Ms. DiMaggio made threats against employees who spoke in favor of the local superintendent. The request to remove states:

Board members have made comments publically that principals would lose their positions when they appoint the new superintendent. The principals were individually identified in public as well. Other staff members were also contacted and “warned” not to get involved with the rallying of support for our

Superintendent. This has created a fear of retaliation and in the process has created a stressed work environment.

Dr. Holocker also filed an ethics complaint against Ms. DiMaggio which provides more specific information concerning this allegation. The sworn complaint from Dr. Holocker provides the following details:

February 10, 2016 – The principal of Sudlersville Middle School [John Lischner] called me and told me that [Ms. DiMaggio] told him to give me her cell phone number because she wanted to talk to me. I refused to take it. She sent a warning through him that I needed to “back off” and “stop getting people to send letters.” If I did not adhere to the warning, “I would be sorry.” Mr. Lischner, the principal, said that he would deny the phone call if it were reported because he feared he would be let go since he did not have tenure in QACPS.

March 8, 2016 – During an after school meeting, one of my colleagues, Kevin Kintop⁴ (principal of Stevensville Middle School) received a phone call while we were together from the nurse at [Stevensville Middle], Lisa Schrader. She was calling because Ms. DiMaggio had come into the [Stevensville Middle] office that day and announced that, “Mark my word, by 6/30 Holocker and [another staff member] will be gone. I will see to it.” Ms. Schrader called to make sure I knew and begged not to be involved. I contacted [her] the next day and she said she could not get involved because she knew that Ms. DiMaggio would have her transferred and did not want that to happen. She stated that the only way she would come forward is if she decided to retire.

March 9, 2016 – During our monthly A & S meeting,⁵ another administrator, Carrie Mitten, pulled me aside to tell me that her friend, [Sudlersville Middle] receptionist Julie Connaire called her at 6:45 a.m. that morning to tell her that she was present during the conversation and to please not get her involved. She was fearful of retaliation from Ms. DiMaggio.

Ms. DiMaggio denies making any threats towards employees. She explains that she does not have the power to fire any school system employee. In addition, Ms. DiMaggio has submitted affidavits from several of the individuals who allegedly heard her make threats. The pertinent parts of those affidavits are as follows:

John Lischner, principal of Sudlersville Middle School: “With regard to the conversation that allegedly occurred on February 10, 2016, Ms. Holocker has completely fabricated those statements. To be clear, Ms. DiMaggio never asked me for Ms. Holocker’s cell number and she never asked me to send a warning to Ms. Holocker. I never called Ms. Holocker to tell her that Ms. DiMaggio or anyone else said to ‘back off,’ ‘stop getting people to send letters,’ or ‘[if she] did not adhere to the warning, [she] would be sorry.’ Further, I am not now, nor

⁴ Mr. Kintop is among the individuals who have requested Ms. DiMaggio’s removal.

⁵ This abbreviation is not defined within the complaint.

have I ever been concerned that I would be let go by QACPS, and I never stated anything of that sort to Ms. Holocker. Rather, she has completely fabricated these lies and attributed them to me.” (Response, Ex. 4).

Julie Connaire, receptionist at Sudlersville Middle School: “Please be advised that I was never at such meeting, I never heard any such statement. You should also further note that unlike certain QACPS administrators, I would never fear retaliation from Annette DiMaggio.” (Response, Ex. 8).

Carrie Mitten, program director at Anchor Points Academy: “Please be advised that I never conveyed to [Ms.] Holocker that Julie Connaire told me that she was a witness to any such conversation, nor did I ever tell Ms. Holocker that Julie Connaire was fearful of retaliation from Ms. DiMaggio. I am not sure why [Ms.] Holocker would make these representations, but they are not true.” (Response, Ex. 9).

In order for a charge to be factually sufficient, there “must be an indication that the person making the charge has knowledge of the facts supporting it and a reason to believe in its truth.” *Beasley*, 908 P.2d at 881. Although the complaint contains specific information about threats reportedly made by Ms. DiMaggio, the subsequent affidavits completely undermine the complaint’s reliability. Two administrators and a receptionist denied under oath by affidavit making the statements that Dr. Holocker attributes to them. The sole remaining source of information is another principal who did not directly hear any threats, but instead relayed another employee’s account of an overheard conversation to Dr. Holocker. Given the unreliability of the other allegations, we have serious doubts about whether the complainants have actual “knowledge of the facts” surrounding this remaining allegation and “a reason to believe in its truth.” In our view, these allegations are not factually sufficient to support a charge of misconduct, immorality, willful neglect of duty or incompetence.

The seventh allegation concerns posting inappropriate comments on social media, including referring to certain school principals as unscrupulous and naming another individual as a bully. The requests for removal contain these social media posts and Ms. DiMaggio does not deny their authenticity. Therefore, there is a sufficient factual basis for this allegation.

The eighth allegation involves improperly conducting business with the local board through a catering company owned by Ms. DiMaggio. Board member Tamera Harper has shared a complaint she filed with the board’s ethics panel accusing Ms. DiMaggio of improperly conducting business with the local board through her catering company, All Occasion Catering. Ms. DiMaggio is owner of the business.

According to Ms. DiMaggio, she raised the issue of her catering business with the superintendent and board counsel shortly after her election to the local board. Ms. DiMaggio was told that so long as she included the information on her yearly financial disclosure form that she could continue to cater events for the school system. Current board president Jennifer George confirms Ms. DiMaggio’s recollection of events in a sworn affidavit. Ms. George states that board counsel informed Ms. DiMaggio that continuing her catering business “would not be a problem and she could continue catering QACPS events.” (Response, Ex. 12). Arlene Taylor,

another board member who was sworn in at the same time as Ms. DiMaggio, also filed a sworn affidavit in which she states that Ms. DiMaggio was told by legal counsel that catering school events would not be a problem. (Response, Ex. 13). In the past year, Ms. DiMaggio states that she catered seven events for five school-related groups, for a total fee of \$5,300. The individual event costs ranged from \$58 to \$2,500. None of the catering contracts were put out for bid and the local board did not vote on her catering contracts.

Ms. Harper alleges that the chief financial officer of the school system approached her and the local superintendent in July 2015 to ask about the catering invoices. Ms. Harper, at that time, served as board president. After receiving legal advice, Ms. Harper and the superintendent shared their concerns with Ms. DiMaggio that the catering business violated the board's ethics policies. They reportedly advised her not to cater any more events where she would be paid directly by the local board.

The current board president, Ms. George, had a different recollection of events. According to Ms. George, Ms. DiMaggio continued to cater events for the school system for months and it only became an issue after Ms. DiMaggio disagreed with Ms. Harper on a policy issue. In her sworn affidavit, Ms. George states that, after the catering issue was raised again, Ms. George and Ms. DiMaggio reminded the superintendent and legal counsel that Ms. DiMaggio had been given permission by the superintendent and legal counsel to cater events for the school system.

Allegations of a conflict of interest are within the jurisdiction of the local board's Ethics Panel. To date, we are aware of no finding that Ms. DiMaggio committed an ethics violation. Accordingly, this allegation is not factually sufficient to support a charge of misconduct, immorality, willful neglect of duty or incompetence. The local board may wish, however, to revisit its policies concerning conducting business with the school system to ensure that those policies are clearly detailed and understood by local board members and the public.

Finally, Ms. DiMaggio is accused of conducting unauthorized visits to a local school and interfering with school operations through her role as a PTA officer. A sworn ethics complaint alleges the following:

"The principal, John Lischner publicly says that [Ms. DiMaggio] is there every day walking the halls and interacting with students and teachers. Ms. DiMaggio also holds an executive position on the PTSA at Sudlersville Elementary School. Interim principal, Richard McNeal, also said publicly that she is in the school every day. Teacher Amy Thren said that teachers try to avoid her because if she "gets a bee in her bonnet, she will make your life hell." Mr. Lischner has said publicly numerous times that she is constantly interfering with the everyday running of [Sudlersville Middle School]. He refuses to file complaints due to the ramifications that he feels will happen if he does so."

Ms. DiMaggio serves on the PTA for Sudlersville Elementary School and Sudlersville Middle School. She has been a member of those PTAs for approximately 30 years and served as an officer for the past nine years. Ms. DiMaggio explains that before she was sworn into her

local board office, she asked the superintendent and board counsel whether she could serve on both the local board and the PTA at the same time. She was told that she could continue to serve in both roles and to visit those schools without permission so long as she did so in her role as a PTA officer and not as a board member.

In an affidavit, board president Jennifer George states she was present when Ms. DiMaggio asked the current superintendent and board counsel about serving on the PTA. Ms. George confirms Ms. DiMaggio's recollection of events. (Response, Ex. 12). Mr. Lischner, principal of Sudlersville Middle School, also submitted a sworn affidavit in which he denied complaining about Ms. DiMaggio being in the school building. He stated that Ms. DiMaggio "does not interfere with the everyday running of [Sudlersville Middle School]." Mr. Lischner maintains that Ms. DiMaggio is "always welcome" in the school building and that "she has never been in the building without my complete authorization and approval." (Response, Ex. 4).

The affidavits state that Ms. DiMaggio received permission from the superintendent and board counsel to continue to serve on local PTAs and that the principal of the school she frequently visits denies complaining about her visits and has, in fact, authorized them. The only remaining allegation is that teachers avoid Ms. DiMaggio because if she "gets a bee in her bonnet" she can make a teacher's life "hell." In our view, these statements are not factually sufficient to support the complaint.

In sum, the State Board concludes that the allegations concerning ethics violations, threats against employees, conducting business with the board, and Ms. DiMaggio's role as a PTA officer are not factually sufficient. The remaining allegations are *factually* sufficient to move to the next stage in the process: a determination of whether the allegations are legally sufficient to support a charge.

Are the factually sufficient allegations legally sufficient to support the issuance of charges?

The remaining factual allegations (violations of the Open Meetings Act, improper behavior during meetings, inappropriate posts on social media, and disregarding public opinion and improper decision making), presumed true for our purposes here, in our view do not fit the definitions of immorality, incompetence, or willful neglect of duty, as defined above. Instead, they most closely fit within the category of "misconduct in office."

The next question is whether the factual allegations against Ms. DiMaggio support a "reasonable belief" that misconduct in office may have occurred.

Open Meetings Act violations

On May 9, 2016, the Open Meetings Compliance Board issued a decision in which it concluded that the local board committed five violations of the Open Meetings Act. See 10 Official Opinions of the Compliance Board 35 (2016). The Compliance Board found that the local board did not give proper notice of its February 9, 2016 special meeting; did not close the meeting by a publicly-held vote; did not provide the requisite information required before

closing the meeting; and did not make all of the required disclosures about three of its closed sessions in the minutes of subsequent meetings. *Id.*

The Compliance Board found that, although the local board posted notice of the Feb. 9 meeting in certain places on its website, it failed to include the meeting under its “Meeting Schedule” or under “Board Documents” and did not provide a meeting location. *Id.* at 37. In addition, the compliance board faulted the local board for describing the meeting as a “closed session.” *Id.* This implied that the public was not invited, even though the local board was required to take the vote to move into closed session during an open public session. *Id.* The local board further violated the Open Meetings Act by not taking a vote in public to close the session, not preparing written statements explaining the reasons for closing the meetings ahead-of-time, and failing to adopt the closed meeting minutes in a timely manner. *Id.* at 38-39.

Ms. DiMaggio does not specifically address the Compliance Board’s findings, but she does argue that the superintendent was in charge of ensuring notice of the local board’s meetings and making those meeting minutes accessible. In reviewing the findings of the Compliance Board, there is no indication that Ms. DiMaggio was individually responsible for these violations. The discussion of the superintendent’s contract was a personnel issue and the local board was permitted to discuss it in closed session. Although these violations are serious, we do not believe that this collective failure on the part of all members of the local board to follow the Open Meetings Act in this instance supports a reasonable belief that Ms. DiMaggio may have committed misconduct in office.

Conduct during the March 2016 board meeting

The decision to not renew the local superintendent’s contract was controversial, contentious, and caused great concern in some members of the school community. The board split 3 to 2 during the March 2016 meeting and many members of the public spoke out against the decision.

Of all the board members, Ms. DiMaggio engaged the most with the audience. At one point, she described feeling like “gum” on the bottom of the shoes of the audience, which led to a back-and-forth discussion with members of the public about whether the superintendent’s contract should have been discussed in closed session. Later, Ms. DiMaggio stated that she felt she had been bullied. The requesters claim that she identified a specific audience member as being a “bully.”

In her response, Ms. DiMaggio denies ever actually calling the audience member a bully. Board president George, who sat near Ms. DiMaggio during the meeting, submitted an affidavit in which she states that Ms. DiMaggio said the following: “[Audience member], you’re the Anti-Bullying . . . I am not going to win with her. I am just going to shut my mouth.” (Response, Ex. 12). In our independent review of the meeting video, Ms. DiMaggio does not appear to call the audience member a bully. The audio portion of the video picks up this exchange:

Board member Harper: It is a civil war.

DiMaggio: No it's not. It's bullying.

Harper: It has become a civil

DiMaggio: It's bullying, that's what it's become. That's what it is, bullying. [Names audience member]

Harper: No, no, no.

President George: Stop.

DiMaggio: I'll say it afterwards.

After the meeting, Ms. DiMaggio sent a Facebook message to the audience member and the following exchange occurred:

Ms. DiMaggio: I just wanted to let you know, even though we do not agree on the decision the board made tonight, I was not trying to call you out in a bad way. I was trying to get the point across that you do all the work for the anti bullying [campaign] and I felt that adults were doing a lot of bullying tonight, not you personally.

Audience member: That's not how it came across.

Ms. DiMaggio: I'm sorry I was cut off by [Ms. Harper] and not [able to] finish what I was going to say but what I just said to you was what I was going to say.

Ms. DiMaggio's statements were made during a heated discussion, one in which she was interrupted and heckled. Although she did not actually call an audience member a "bully," it could have been implied from the context of her statements. Regardless of whether she used the word "bully," it was not professional for Ms. DiMaggio to single out an audience member during a public meeting in this manner. Ms. DiMaggio seems to understand this because she reached out to the audience member afterward to explain her comments and apologize.

Social media posts

The removal requests present allegedly inappropriate social media posts from Ms. DiMaggio. These posts are undated Facebook postings, some of which are clearly addressing a public audience, while others appear to be part of private conversations. Relevant excerpts from the posts are included below:

Friends . . . you know when I'm on [Facebook] I post things about my boys, my Sally, my preschool kids and trying to help people in need. Well you are getting ready to get a totally different kind of post from me.

I'm pretty sure you all know the definition of a BULLY. Google says someone

who uses strength or influence to intimidate, typically to force someone to do what that person wants. We have anti bullying rallies and assemblies in our schools, we teach our kids character counts and punish them when bullying occurs. Well let me tell you, kids are not the only bullies!!!! We have a man in our community who thinks it is his right to call and harass 3 “new” board of education members, we have now been on the board for 15 months. When he couldn’t intimidate us to vote the way he wanted, he thought it was ok to post on his website our names, emails and our personal phone numbers. I don’t have a problem with my QACPS email, it’s public knowledge, but I have a real problem with him posting [not] just mine but the other 2 members’ telephone numbers. So [former board of education member], I’ll put your name out there so that all my friends know what a real bully looks like!!!!!!

Another page includes an exchange with another Facebook user concerning the local superintendent. In response to a complaint that information from the closed session was improperly shared with the public, Ms. DiMaggio wrote:

That’s right but I know 3 members that did not say a word to anyone about a contract being renewed or about a meeting taking place to renew this contract but somehow before that day was over . . . 3 board members were bombarded by emails and phone calls from 3 unscrupulous principals in the QACPS system ... would you happen to know if the other 2 board members might know something about that????

In another Facebook post, purportedly posted on March 7, 2016, Ms. DiMaggio wrote the following:

Friends . . . I know some of you have been worried about me for the last week and I now find it time to tell my side, only to a certain point because I must follow a code of ethics that I agreed to follow when I took this position.

I will tell you I have had some rather disturbing emails calling in my integrity and my character. I have been accused of having an agenda when I was elected on the board and some that cannot wait until my term is up so they can ‘get rid of me.’

If you truly know me, the only agenda I have ever had is to make sure the children in this county get the best education possible. You know that teachers, custodians and bus drivers are also at the top of that list. We teach children not to bully but adults seem to think they are exempt from that lesson. Because we do not agree on my decision doesn’t make it right to be hurtful. I have 3 boys that I have taught it is ok to agree to disagree but to never make personal attacks that you do not see eye to eye with.

I am the one that called some of the principals unscrupulous and I will not take that back because you as my friends have not been told everything!!! That was

said during a private conversation and it was copied and given to a few that find me unintelligent.

I have been called uneducated and ignorant, really, does it take a degree to be disrespectful and rude. I'm glad I don't have a degree. I have what some don't have and that is common sense and principles.

There are going to be many new and good changes in our school system and I know you want the same. I will not respond to what happened Wednesday evening, please understand that there are things I cannot speak about. But I will tell you there was a set up when we walked into that open session. You can call it blindsided, thrown under the bus or whatever you see fit to call it. Our words that were spoken were taken out of context and the newspaper was as biased as you could possibly be. I will close this by saying QACPS are good, but good is not enough any longer. QACPS deserves to be great.

Finally, Dr. Holocker shared an email she received from Ms. DiMaggio on March 4, 2016:

Dr. Holocker:

For about the 10th time and now in the newspaper you commented that board members took to social media to call principals unscrupulous. Would you please tell me who these board members were and where can I find it.

I think that people should know who those board members were.

In response to this email, Dr. Holocker sent Ms. DiMaggio a copy of DiMaggio's Facebook post referenced above that mentions the "unscrupulous" principals.

Ms. DiMaggio explains that the initial Facebook post was made in response to a former board member posting her personal phone number on the Internet. In response, she began to receive "numerous hateful voicemail messages" about the decision not to renew the superintendent's contract. After being asked to remove the personal phone numbers, the former board member declined to do so. As to the comment about "unscrupulous" principals, Ms. DiMaggio states that her comment was initially made in a private conversation and that she did not personally identify any specific principals. She explains that she made her statement with the belief that some principals were deliberately spreading false information about the vote regarding the superintendent's contract. Ms. DiMaggio further argues that her statement that "there are going to be many new and good changes in our school system" was a reference to the positive change that a new superintendent could bring to the system, not a threat against anyone's job.

In our view, taken together, these social media posts show a certain lack of professionalism. Ms. DiMaggio would have been better served not to engage in back-and-forth discussions through social media or to post comments without fully considering the potential impact of her actions. Going forward, Ms. DiMaggio must understand that her conduct reflects not just on her, but on the board as a whole.

Disregarding public opinion/improper decision making

The requesters assert that their views were not considered and the decision not to renew the superintendent's contract was wrong. We point out, however, that by law the board has the power to renew or not renew the local superintendent's contract. There is no statutory requirement that the board consider the views of the public when it makes an appointment. Local board members should weigh their decision carefully, and while we believe it is good practice and policy to take into account the views of the public, the final decision ultimately belongs to the board.

In her response to the State Board, Ms. DiMaggio explains that she cannot discuss the details of her decision regarding the superintendent because it is a confidential personnel matter. In general, Ms. DiMaggio stated that she heard and appreciated the comments people made in support of the superintendent. In her response, she states that the school system's "declining performance was a huge factor in my decision to make a change." Although she does not place all of the blame for that on the superintendent, Ms. DiMaggio states that "I voted to make a change that I hope will change our school system for the better both in terms of fairness to students and personnel and in an increase in our performance in state rankings."

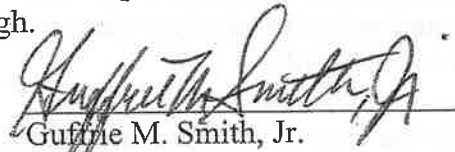
We agree that the decision on whether to retain a superintendent is a quintessential local issue, entrusted to the board members who were voted into office by the citizens of the county. Elections provide an ultimate check on whether the citizens approve of the decisions made by their elected representatives. The State Board's 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. Although some in the public may disagree with the wisdom of the decision made by the local board, the local board members' refusal to be swayed by the requesters' opinions and the rightness or wrongness of the decision to not renew the superintendent's contract in itself does not support a reasonable belief that misconduct in office may have occurred.

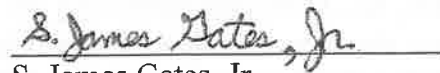
Allegations as a whole

Although each of these individual allegations, by itself, might not support a reasonable belief that misconduct in office could have occurred, the State Board has previously considered whether multiple incidents taken together support the filing of charges. A pattern of incidents could support a reasonable belief that misconduct occurred even where individual incidents, standing alone, might not support such a belief. We acknowledge that board member DiMaggio's behavior has been confrontational, unprofessional, and problematic at times, but we do not believe that the incidents, taken together, provide a reasonable belief that "misconduct in office" as it is defined may have occurred. Misconduct in office is malfeasance or misfeasance. Conduct that rises to that level requires more than behaving in a manner that is sometimes inappropriate and problematic.

CONCLUSION

The State Board declines to issue charges because it cannot reasonably find that the removal requests against board member Annette DiMaggio are factually and legally sufficient to support a charge of misconduct in office, immorality, incompetence, or willful neglect of duty. We have discussed in this opinion, however, Ms. DiMaggio's comments to audience members at the April 2016 board meeting and her inappropriate statements on social media. We caution all board members that their conduct and comments must be representative of good boardmanship at all times, especially when emotions are running high.

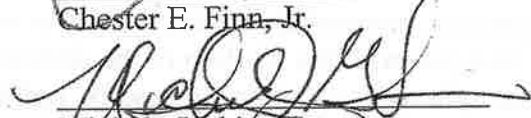

Guffie M. Smith, Jr.
President

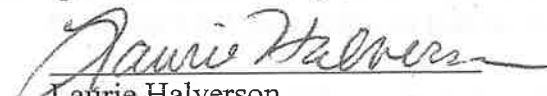

S. James Gates, Jr.
Vice-President

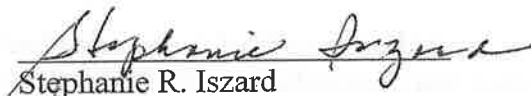

James H. DeGraffenreidt, Jr.

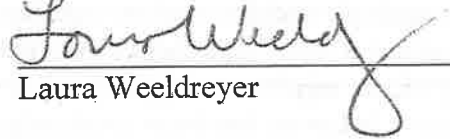

Linda Eberhart


Chester E. Finn, Jr.


Michele Jenkins Guyton


Laurie Halverson


Stephanie R. Iszard


Laura Weeldreyer

Recused:
Madhu Sidhu
Andrew R. Smarick

June 28, 2016