

IN THE MATTER OF  
REQUEST FOR REMOVAL OF  
LOCAL BOARD MEMBER  
JUANITA MILLER

BEFORE THE  
MARYLAND  
STATE BOARD  
OF EDUCATION  
Opinion No.: 23-20

OPINION (Corrected Copy)

INTRODUCTION

The State Board issued charges for the removal of Dr. Juanita Miller (“Respondent”) as a member of the Prince George’s County Board of Education (“local board”) based on a complaint filed by several local board members (“Petitioners”).<sup>1</sup> Pursuant to the process set forth in COMAR 13A.01.05.12, an administrative law judge (“ALJ”) at the Office of Administrative Hearings (“OAH”) conducted an evidentiary hearing on the charges and issued a Proposed Decision.

The allegations in this matter surround disputes regarding the process for hiring interim local board counsel following the resignation of regular counsel and the timing of the disclosure of certain ethics reports to the board. The evidence in this case paints a picture of a deeply divided and acrimonious board with each faction maneuvering in ways to serve their own agenda. The ALJ recognized the “distinctly hostile environment” of the local board. (Proposed Decision at 40). He aptly described the discord stating that while Respondent “attempted to hold the Local Board to its duties,” the “Petitioners, and sometimes other Board members, made the Respondent’s task exceedingly difficult, and she was not reluctant to battle her detractors or use the power of her position to gain outcomes she felt were desirable.” *Id.* Ultimately, after reviewing the plethora of testimony and documentary evidence, the ALJ found no evidence to support the charges for removal and recommends that the State Board dismiss.

The Petitioners filed exceptions to the ALJ’s Proposed Decision and Respondent filed a response. The State Board held oral argument on the exceptions on July 25, 2023.

The lengthy exceptions document filed by Petitioners attempts to relitigate the case presented before the ALJ. We find that the voluminous record in this case supports the ALJ’s decision and we affirm the ALJ’s decision and dismiss the charges.

FACTUAL BACKGROUND

The complete factual background is set forth in the ALJ’s Proposed Decision, Findings of Fact, at p. 8 – 17. We highlight some of the procedural facts below.

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<sup>1</sup> Those individuals are David Murray, Joshua Thomas, Shayla Adams-Stafford, Raaheela Ahmed, Kenneth Harris, and Edward Burroughs. Ms. Ahmed, Mr. Burroughs, and Mr. Thomas are no longer members of the local board.

On June 9, 2022, the State Board issued charges for the removal of Respondent for misconduct in office, willful neglect of duty, and incompetency as follows:

- Failing to sign a contract with Pugh Law Group for legal services that was approved by the local board at its April 28, 2021 board meeting. Engaging the legal services of the law firms Karpinski, Cornbrooks & Karp, P.A. and Bill Shelton Attorney at Law, LLC without local board approval. Inviting unauthorized guests Kevin Karpinski, Esq. and Bill Shelton, Esq. to attend confidential executive sessions of the local board on June 24, 2021 and February 24, 2022, respectively.<sup>2</sup>
- Withholding from the local board seven ethics complaints and failing to timely present to the local board the findings and recommendations of the Ethics Panel (“ethics reports”) on the complaints so that the local board could fulfill its responsibility to make a final decision under Board Policy 0107.

The State Board found all other allegations in the complaint to be either factually and/or legally insufficient to support issuance of charges.<sup>3</sup>

Respondent requested an evidentiary hearing on the charges. We transferred the matter to OAH for an ALJ to conduct an evidentiary hearing and prepare findings of fact and conclusions of law. The ALJ held the hearing by videoconference over the course of 9 days; heard testimony of 14 witnesses; and reviewed over 80 exhibits, including video evidence of several local board meetings relevant to this matter. On March 6, 2023, the ALJ issued the Proposed Decision finding insufficient evidence to support charges of misconduct in office, willful neglect of duty, and incompetence. The ALJ recommends that the State Board dismiss the removal charges against Respondent.

The Petitioners filed exceptions to the ALJ’s Proposed Decision and Respondent submitted a response.

#### ALJ’s Proposed Decision

##### *Legal Services/Parliamentarian Services Contracts*

#### **Pugh Law Group**

The ALJ determined that the evidence did not support the allegation that Respondent failed to sign the Pugh contract for interim legal counsel for the board in violation of local board Bylaw No. 9210.<sup>4</sup> The ALJ explained that the local board voted on April 28, 2021, to approve the Pugh contract and to require Respondent to sign the Pugh contract by April 30, 2021, but then did not provide the contract. The ALJ found that Respondent had legitimate concerns over the validity of the April 28, 2021 meeting and the local board’s vote to approve the contract, specifically with regard to the establishment of a quorum and whether the student board member could vote. The ALJ also determined that, looking at the procurement process as a whole, while

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<sup>2</sup> The February 24, 2021 date in the charging document was a typographical error.

<sup>3</sup> Many of the allegations concerned issues regarding the day-to-day internal operations of the local board that are not appropriate for resolution by the State Board through a removal request.

<sup>4</sup> Bylaw 9210 states, in relevant part, that “The Chair shall preside at all meetings, sign authorized or approved contracts and other documents on behalf of the Board, and perform such duties as are prescribed by law or by the Board.”

Respondent was required to sign board-approved contracts, her signature would have been essentially meaningless to executing the contract because the required signatories to a valid contract are the Chief Executive Officer (“CEO”) or the CEO’s designee and a representative of the entity providing the service. Thus, the ALJ found that the local board’s actions concerning the Pugh contract “were geared more toward harassing [Dr. Miller] and generating a complaint against her than executing an enforceable contract for interim legal services.” (Proposed Decision at 19 – 25).

### **Karpinski, Cornbrooks & Karp, P.A.**

The ALJ determined that the evidence failed to support the allegation that Respondent improperly engaged Kevin Karpinski to provide interim legal services to the board in violation of local board Bylaw No. 9270<sup>5</sup> by unilaterally engaging Karpinski without seeking board approval. A Prince George’s County Attorney requested Karpinski to consider serving as interim counsel. The ALJ stated that while Respondent cooperated in the process by providing a written justification for the contract, she did not engage Karpinski and did not sign the contract. Rather, the board Vice Chair and Mr. Keith Stewart, Prince George’s County Public Schools (“PGCPS”) Director of Purchasing and Supply Services, followed the PGCPS procurement procedures to develop a contract. Mr. Stewart signed the contract. The ALJ further noted that local board approval for the contract was not required under PGCPS procurement procedures because it was a contract for less than \$25,000.00. (Proposed Decision at 25 – 27).<sup>6</sup>

The ALJ also found that while Respondent invited Karpinski to the local board’s executive session on June 24, 2021, she did not violate Bylaw No. 9270 in doing so because she did not attempt to “compel action” in the local board’s name. Rather there was a disagreement over who may attend a closed executive session of the board and Karpinski did not attend an executive session or have access to confidential information. As stated by the ALJ, “The simple facts are that the invitation was extended, Mr. Karpinski appeared in response to it, and the Board cancelled the invitation.” (Proposed Decision at 31).

### **Bill Shelton Attorney at Law, LLC**

The ALJ found that the evidence failed to support the allegation that Respondent improperly engaged Bill Shelton Attorney at Law, LLC to provide legal services to the board without local board approval. Rather, the evidence demonstrated that Respondent engaged Shelton Enterprises, LLC, to provide parliamentary services at local board meetings, and that neither Shelton Enterprises, LLC, nor Bill Shelton, Attorney at Law, LLC ever provided legal services to the local board. The ALJ further determined that there was no evidence establishing that Respondent improperly invited Mr. Shelton to attend an executive session on February 24, 2022, without board authorization. Rather, the request for Mr. Shelton’s services came from Mr. Cooper,<sup>7</sup> Board Interim Chief of Staff, on behalf of the local board and the arrangements were made through the PGCPS procurement process. (Proposed Decision at 27 – 28; 32 – 33).

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<sup>5</sup> Bylaw 9270 states, in relevant part, that “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.”

<sup>6</sup> At all times relevant to this appeal, Board policy 3323 required board approval of contracts of \$25,000 or more. This policy was amended on August 18, 2022 to increase the threshold to \$50,000. We agree with the ALJ that the \$25,000 threshold is the appropriate threshold for purposes of this appeal.

<sup>7</sup> Mr. Cooper serves as the Petitioners’ counsel in this matter.

## *Ethics Complaints*

The ALJ found insufficient evidence to support the allegation that Respondent improperly withheld or delayed providing the ethics complaints to the local board preventing the local board from fulfilling its responsibility to either dismiss the complaints or take enforcement action under board policy 0107 (*Ethics Regulations*). The ALJ explained that neither policy 0107, nor any other provision of law, contains a timeline for presentation to and a vote by the local board on the Ethics Panel's recommendations. Thus, while the ALJ determined that there was some delay in providing the ethics reports to the local board, there was no improper withholding or delay in violation of board policy. Respondent ultimately provided the reports to the local board for a vote and there was no evidence presented that anyone was prejudiced by the delay. (Proposed Decision at 36 – 39).

## STANDARD OF REVIEW

This appeal involves the request for removal of a local board member. Under current law, the State Board with the approval of the Governor 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).

The State Board transferred this case to OAH for proposed findings of fact and conclusions of law by an ALJ. In such cases, the State Board may affirm, reverse, modify or remand the ALJ's Proposed Decision. The State Board's final decision, however, must identify and state reasons for any changes, modifications or amendments to the Proposed Decision. *See* Md. Code Ann., State Gov't §10-216(b). In reviewing the ALJ's proposed decision, the State Board must give deference to the ALJ's demeanor-based credibility findings unless there are strong reasons present that support rejecting such assessments. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994).

## LEGAL ANALYSIS

The State Board has seen a significant increase in requests for removal filed against fellow local board members. Although we were initially concerned given the seriousness of the allegations in the initial complaint, the evidence developed in this case did not support the allegations but rather revealed petty disputes over day-to-day internal operations between the parties that could have been easily resolved through professional discourse. This case demonstrates the fruitlessness of the wasted resources expended to address such disputes, which are not appropriate for resolution by the State Board through the removal request. PGPCS board members are charged with the important mission, "To Provide a Great Education that Empowers All Students and Contributes to Thriving Communities." (Prince George's County Board of Education Handbook, p. i). The disputes at issue in this case detract from this mission. We urge all local board members to stay on course to serve Maryland's students.

## *Bases for Removal*

The charges against Respondent were for misconduct in office, willful neglect of duty, and incompetency. The standard for each basis is set forth below.

- *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 (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)).
- *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 . . . 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).
- *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).

## *Exceptions*

Petitioners have filed in excess of 30 exceptions to the ALJ’s Proposed Decision. We address them below. Where possible, we have combined exceptions.

### **Exceptions Generally**

Petitioners take exception to numerous factual findings of the ALJ claiming that he omitted, misconstrued, or exaggerated material facts. The sheer volume of the exceptions related to the ALJ’s factual findings demonstrate that the Petitioners are attempting to relitigate this matter through their exceptions. The majority of Petitioners’ exceptions do not allege that the stated factual finding made by the ALJ lacks support in the record. Rather, the basis for these exceptions is that the ALJ should have cited and relied upon additional testimony and documentary evidence that was part of the record. The decision as to the weight a witness’ testimony should be given is within the purview of the ALJ who has the opportunity to assess the demeanor and truthfulness of the witness. Maryland courts have long recognized that “weighing

the credibility of witnesses and resolving any conflicts in the evidence are tasks for the fact finder.” *State v. Stanley*, 351 Md. 733, 750 (1998); *Dawson v. State*, 329 Md. 275, 281 (1993) (“we are mindful of the respective role of the [appellate] court and the [trier of fact]; it is the [trier of fact’s] task, not the court’s to measure the weight of the evidence and to judge credibility of witnesses.”).

The Maryland State Board of Education has recognized this same principle as it applies to the role of an administrative law judge in weighing evidence and credibility of witnesses in an appeal hearing. In *Brebnor v. Baltimore City Bd. of School Comm’rs.*, MSBE Op. No. 19-38 (2019), an appellant argued that the ALJ should have cited and relied upon additional testimony and documentary evidence that was part of the record. The State Board stated that, “[h]earing Officers are not required to give equal weight to all of the evidence.” *Hoover v. Montgomery County Bd. of Educ.*, MSBE Op. No. 19-03, (citing *Karp v. Baltimore City Bd. of School Comm’rs.*, MSBE Op. No. 15-39 (2015)). As the fact finder, it is the ALJ’s job to sort through the evidence and reach factual conclusions based on the weight the ALJ assigns to that evidence. It is also not necessary for an ALJ to cite to every piece of evidence or testimony given in a case.” *Brebnor v. Baltimore City Bd. of School Comm’rs.*, MSBE Op. No. 19-38.

We find that the ALJ carefully weighed the testimony and the credibility of the witnesses and carefully developed the factual findings that are supported by substantial evidence in this record. We also find that the ALJ issued a well-reasoned and comprehensive Proposed Decision and reached legal conclusions consistent with applicable law, and local board policy and procedures. We will not separately address each of the Petitioners’ exceptions, but rather will address those exceptions that warrant further analysis.

### **Evidence of Audit Report and Office of Inspector General for Education Report (Exceptions 1 & 2, p. 3 - 7)**

Petitioners maintain that the ALJ erred by excluding from evidence the Maryland State Department of Education (“MSDE”) performance audit of the local board for fiscal years 2020 and 2021, prepared by Premier Group Services, Inc. (“Audit Report”), and the Maryland Office of the Inspector General Investigative Report Summary (“OIGE Report”) regarding its investigation of the local board’s Ethics Advisory Panel. An ALJ may exclude evidence that is incompetent, immaterial, or irrelevant at an OAH contested case hearing. *See* State Gov’t Art. §10-213; COMAR 28.02.01.21.

Petitioners argue that the Audit Report is relevant because it identified specific local board policy and bylaw violations by Respondent. They refer to the findings that “[a]n individual board member executed contracts on behalf of the [local board] without a board vote or approval” and that the “contracts were initiated by an individual board member rather than in pursuance of specific instructions by the [local board], thereby violating the board Bylaws.” (Pet. Ex. 61 at 3, 25). Petitioners maintain that the Audit Report is also relevant because it provides persuasive guidance regarding the interpretation and application of the local board’s bylaws – “specifically that an individual Board member violates the Local Board’s Bylaws when he or she cause contracts to be executed absent specific instructions by the Local Board.”

Petitioners argue that the OIGE Report is relevant and probative to this case because the OIGE Report found that Respondent violated board policy 0107 by secretly “assisting a non-profit agency and an individual with the filing of their respective [ethics] complaints” and that such actions “would have precluded her from rendering a fair and impartial vote and subsequent enforcement action.” (Pet. Ex. 41). Petitioners argue that this supports their claim that the Respondent “abused the Ethics Policy 0108 by timely presenting certain ethics reports in July 2021 (*i.e.* the ones that the OIGE report found that she had assisted in writing) while withholding and not timely presenting the other ethics reports, including one against herself.” (Excpt. at 6).

There was much discussion regarding the introduction of the Audit Report and the OIGE Report into evidence at different parts of the hearing. The ALJ initially ruled that Petitioners failed to establish a sufficient foundation to enter the OIGE Report into evidence because the witness did not write the Report. (T. 703). The ALJ later ruled that the OIGE Report was not competent evidence and denied its admission. He explained that as the finder of fact, he could not rely on the facts deduced by the Inspector General from a separate proceeding to find facts based on the evidence presented in the OAH hearing. (T. 905). The ALJ also found the OIGE Report would be redundant regarding the timing of the presentation of the ethics reports to the local board. (T. 894 - 895). Similarly, the ALJ denied admission of the Audit Report, stating that he “perceive[d] it as being [his] job to determine what, if any, violations of bylaws or policies occurred” and that he would not “countenance other agencies ...[c]onclusions on those issues.” (T. 1461). He stated that it was his job to decide on the evidence presented at the OAH hearing. (T. 1462).

We concur with the ALJ’s decisions regarding exclusion of the evidence. Petitioners’ argument is essentially that the ALJ should accept the findings and conclusions of the Audit Report and the OIGE Report as conclusive of the factual and legal issues presented in this case. As finder of fact, there was no need for the ALJ to rely on the findings and conclusions made by other individuals in separate proceedings on evidence not presented at the OAH hearing. It is the ALJ’s responsibility to consider the evidence presented at the OAH hearing and make factual findings and conclusions of law. Furthermore, the Audit Report contains numerous hearsay statements attributed to unidentified individuals with no indication if the statements were taken under oath, no reference to the circumstances under which they were made, and no ability to examine the witnesses for the ALJ to assess credibility. *See Rosov v. Maryland State Bd. of Dental Examiners*, 163 Md. App. 98, 116 - 117 (2005)(admission of investigator report proper where witness’ statements were taken under oath and witness was available for cross-examination at hearing). The OIGE Report refers to documents not admitted in the case and not attached to the OIGE Report and would have been redundant on the timing of the ethics reports. Moreover, even if the Audit Report and OIGE Report had been admitted as evidence in the case, it would not change the outcome.

### **Impact of Conduct on Local Board Functioning (Exception 3, p. 8)**

Petitioners argue that the ALJ failed to consider or address Respondent’s substantial violations that were harmful to the functioning of the local board. They claim that Respondent’s role in obstructing the local board’s ability to retain legal counsel forced the board to go without legal counsel for over 10 weeks, which severely impaired the board’s ability to perform its quasi-judicial function regarding school system appeals. Petitioners, however, acknowledge that the

standard for removal first requires a finding that a ground for removal has occurred before reaching the second prong of whether the action renders the individual unfit to be a local board member. Here, the ALJ found that Respondent did not commit a violation of any statute, policy, or bylaw, thus no discussion of the impact of the alleged violations on the board was necessary.

Neither Respondent nor the Petitioners have clean hands here. The record is replete with many examples of escalating scenarios in which the opposing factions on the board were attempting to outmaneuver each other, leading us to this point where Petitioners have taken issue with many of Respondent's actions resulting in the final maneuver of requesting her removal. For example, the ALJ concluded that the local board's actions with regard to the Pugh contract were geared more towards generating a complaint against her than executing an enforceable contract. (Proposed Decision at 25).

The ALJ correctly concluded that the Respondent:

Performed her duties competently in a distinctly hostile environment. She attempted to hold the Local Board to its duties as outlined in section 4-401 of the Education Article. The Petitioners, and sometimes other Board members, made the Respondent's task exceedingly difficult, and she was not reluctant to battle her detractors or use the power of her position to gain outcomes she felt were desirable.

(Proposed Decision at 40). The removal process is not intended as a mechanism for the State Board to act a referee to disagreeing board members.

#### **Finding of Fact 34 (Exception 11, p. 18 - 19)**

Petitioners take exception to Finding of Fact, ¶34 which states:

34. The Local Board did not present the Pugh contract to the Respondent for her signature.

Petitioners argue that the factual finding is erroneous based on the testimony and documentary evidence in the record. The ALJ made certain determinations in weighing the evidence. Respondent testified that she did not see the Pugh contract after the April 28 meeting. The record reveals that the circumstances surrounding the Pugh contract were in a complete and utter state of confusion. As discussed in more detail below, the Respondent had reasonable concerns at the time about the April 28 meeting and vote, and then the contract signed by Ms. Pugh disappeared. There is no dispute that no member of the local board provided to Respondent the contract signed by Ms. Pugh for Respondent's signature.

#### **Finding of Fact 44 (Exception 14, p. 21 - 22)**

Petitioners take exception to Finding of Fact, ¶44 which states: "Neither the Local Board, the Respondent, nor Ms. Pugh took any further action to develop or execute a contract with Pugh." This factual finding refers to what occurred after the June 4, 2021, vote in which the local



board voted to retain Ms. Pugh. (See ¶43). This factual finding is of no consequence to the determination in this case. As the ALJ stated, “[t]o the extent any other contract with the Pugh Law Group was considered, approved, signed, or unsigned is completely irrelevant to the charges and was not established in any event.” (Proposed Decision at 20).

**Findings of Fact 45, 46, 47, 50, and 53 (Exceptions 15 –20, p. 22 - 26)**

Petitioners take exception to Findings of Fact, ¶45, 46, 47, 50, and 53, which state:

45. Rhonda L. Weaver, County Attorney for Prince George’s County, mentioned to Mr. Karpinski that the Local Board needed interim legal counsel and asked if his law firm would be willing to serve in that capacity.

46. Mr. Karpinski agreed and was put in touch with Ms. Williams, the Local Board’s vice chair; and Mr. Stewart, PCGPS Director of Purchasing and Supply Services.

47. On May 21, 2021, the Respondent authorized Mr. Stewart to proceed with preparing a contract with Karpinski, Cornbrooks & Karp, P.A. (Karpinski) to serve as interim legal counsel.

50. The Respondent did not sign the Karpinski contract.

52. The contract provided that Karpinski would serve as the Local Board’s interim legal counsel from May 25, 2021 to June 30, 2021, and that the total reimbursement Karpinski was to receive would not exceed \$24,999.00.

53. Mr. Stewart correctly advised the Respondent and Mr. Karpinski that contracts for professional services for less than \$25,000 did not require approval by the Local Board.

Petitioners here argue again that the factual findings are incomplete and should have contained additional information. As stated above, the ALJ need not cite to every piece of evidence. The factual findings in ¶45 and 46 were directly testified to by Mr. Karpinski. His testimony was not rebutted or challenged. The factual findings in ¶47, 50, 52, and 53 are all supported by substantial evidence in the record. The CEO, Mr. Stewart, and Ms. Williams all testified that the CEO had delegated to Mr. Stewart her authority to sign the Karpinski contract for interim legal services until the selection of a permanent legal counsel was finalized; Mr. Stewart signed the Karpinski contract; and the contract was for services less than \$25,000.00 and did not require board approval. Dr. Miller testified that she relied upon the advice of the procurement office with regard to her authorization to proceed with the Karpinski contract.

**Finding of Fact 86 (Exception 31, p. 34)**

Petitioners take exception to Finding of Fact ¶86, which states: “The Respondent did not provide copies of the [ethics] reports until two or three months had passed.” Petitioners argue

that his finding is erroneous and that the facts demonstrate that Respondent failed to provide copies of seven separate reports over the span of nine months.

There is no confusion about the timeframes surrounding the ethics reports in the factual findings. Paragraphs 75 and 79 refer to the dates the Ethics Panel delivered all of the reports to the Respondent. Paragraph 86 follows ¶84 which refers to the report delivered by the Ethics Panel Chair at the board's meeting on December 9, 2021, that included information about the Ethics Panel's recommendation to dismiss seven ethics complaints, and ¶85 which mentions that board members then complained they had not seen the reports and took efforts to seek copies of them. It is obvious here that the ALJ was using the December 9, 2021, meeting date as the starting point for the reference in ¶86. There is nothing erroneous about the factual finding.

### **Pugh Contract (Exception 33, p. 35-41)**

Petitioners take exception to numerous facts and conclusions in the ALJ's discussion in which he found that the evidence did not support the charge that Respondent failed to sign a contract with Pugh Law Group for legal services that was approved at the local board's special meeting on April 28, 2021.

The evidence in the case supports the ALJ's determination. The Respondent testified regarding her reasons for not signing the Pugh contract. She was initially concerned with the legitimacy of certain aspects of the April 28 meeting including the presence of a quorum, the validity of the vote, and the appointment of Mr. Burroughs as chair *pro tem* at the meeting, and compliance with the Open Meetings Act. She was also concerned whether procurement was aware of the contract. Suzanne King, Board Executive Director, also testified regarding concerns about the existence of a quorum and Open Meetings Act compliance. The ALJ found Respondent's testimony about concerns over the validity of the meeting and the local board's vote on the Pugh contract to be credible. It is not necessary for purposes of this case for Respondent to demonstrate whether her concerns were accurate in the end. The ALJ correctly understood Respondent's explanation in this context to be relevant to her actions in not signing the contract - that her unwillingness to sign to contract was reasonable in light of the fact that she believed it had not been properly approved by the local board.

Before Respondent could resolve the concerns, she learned that Mr. Burroughs and Ms. Pugh had signed the contract.<sup>8</sup> Respondent tried to obtain a copy of the signed contract, but it seemingly disappeared. As Respondent made clear in her testimony, once she learned that Mr. Burroughs had signed the Pugh contract she could not proceed with signing a contract for the same services knowing another contract was already in existence. In addition, she had concerns about Mr. Burroughs' authority, or lack thereof, to sign the Pugh contract.<sup>9</sup> The ALJ noted that the matter concerning the Pugh contract "was in a state of utter confusion over the next two weeks after the April 28 meeting, and on May 12, 2021, the Local Board voted to void the Pugh

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<sup>8</sup> Under Petitioners' theory of the case, Mr. Burroughs signed the contract in accordance with the local board's vote directing him to sign if Respondent had not done so by April 30. Thus, under that theory there would be no need for Respondent to sign once Mr. Burroughs did so.

<sup>9</sup> As discussed in the next section, the Respondent was aware of PGCP's obligation to assess the contract for procurement purposes, consistent with the Superintendent's statutory obligation and local board procurement policy and procedures.

contract, meet with Ms. Pugh, and work with the procurement department to develop a valid contract.” (Proposed Decision at 22). Under these circumstances, Respondent’s failure to sign the contract cannot support charges for removal.

The ALJ’s decision includes a discussion concerning whether the Respondent’s signature on the contract was necessary under the PGCPs procurement scheme. The ALJ explains that the signature to a valid contract is the CEO or the CEO’s designee, thus Respondent’s signature alone would not have produced a valid and enforceable contract. (Proposed Decision at 25). The ALJ discusses this matter to point out that the local board’s actions concerning the Pugh contract appeared to be more aimed at harassing the Respondent and generating a complaint against her than at executing an enforceable contract for interim legal services. Such a finding explains the backdrop under which Respondent was operating under at the time.

### **Karpinski Contract (Exception 34, p. at 41-44)**

Petitioners take exception to the ALJ’s analysis of the Karpinski contract. The Petitioners argue that because the Respondent provided written justification for an immediate contract on May 21, 2021, that this action equates to her unilaterally engaging Mr. Karpinski as interim counsel. Again, the Petitioners attempt to identify one single action without any context as to the enormity of the challenge faced by the Respondent in leading the board in its seemingly simple obligation to hire interim counsel so order could be restored. There is no doubt that the Respondent understood that the local board had to agree upon the selection of counsel. The board rejected his engagement. We do not find that these facts support the conclusion that the Respondent “compelled” the board to hire Mr. Karpinski in violation of board policy. Rather, the record demonstrates that the parties simply could not agree as to whom should be hired for the brief 10-week period and each side was engaging in gamesmanship to outmaneuver the other side’s selection. We find the maneuverings by each side were unprofessional, but we agree with the ALJ that the maneuverings did not rise to the level to warrant removal.

The written justification provided by the Respondent was part of the procurement process necessary to comply with the statutory provision requiring the CEO, or in this case, her designee, Mr. Stewart to sign off on any contract for legal services for the board. Because the issue is not dispositive, we decline to opine on the ALJ’s conclusion that the local board’s procedures did not require local board approval for the Karpinski contract because of its value. In our decision in *Bd. of Educ. of Howard County v. Renee Foose*, MSBE Op. No. 17-13 (2017), we analyzed the interpretation of the two relevant statutes at issue in this appeal regarding the Karpinski contract. The first is the local board’s right “to retain counsel to represent it in legal matters that affect the board and to contract for payment of a reasonable fee to the counsel.” Ed. Art. §4-104(a). The second provides that “[a] contract made by a county board is not valid without the written approval of the county superintendent.” Ed. Art. §4-205(d). In *Foose*, we rejected the local board’s argument that its specific statutory authority to contract for legal services exempts its contracts for legal services from approval of the superintendent. We held “[t]he words of the statutes are clear – a board may contract to retain legal counsel to represent it, but no board contract is valid unless approved in writing by the Superintendent.” *Foose* at 4. We held the Superintendent’s right of approval placed some boundaries around the board’s right to choose its counsel, “a check and balance, so to speak, subject to the superintendent’s assessment of the appropriateness of the contract.” *Id.* at 5.

The ALJ appropriately credited the un rebutted testimony of Mr. Karpinski and Mr. Stewart, PGCPD Director of Purchasing & Supply, as to how Mr. Karpinski became involved. There simply is no evidence that Respondent solicited Mr. Karpinski, signed a contract with Mr. Karpinski, or even knew Mr. Karpinski prior to his contact with Mr. Stewart. The ALJ ultimately found the Respondent's testimony credible and concluded it was reasonable for her to rely on the expertise and experience of these individuals.

We agree the ALJ correctly concluded that Petitioners failed to meet their burden to prove that the Respondent engaged Karpinski in violation of local board policy.

### **Board Meeting on June 24, 2023 (Exception 36 misnumbered as 33, p. 47)**

Although not clear, this exception appears to object to the legal conclusion of the ALJ regarding the Respondent's invitation to Karpinski to attend the board meeting on June 24, 2023. The ALJ found that while Respondent invited Karpinski to the local board's executive session on June 24, 2021, she did not violate Bylaw No. 9270 in doing so because she did not attempt to "compel action" in the local board's name. Rather, there was a disagreement over who may attend a closed executive session of the board and Karpinski did not attend an executive session or have access to confidential information. As stated by the ALJ, "The simple facts are that the invitation was extended, Mr. Karpinski appeared in response to it, and the Board cancelled the invitation." (Proposed Decision at 31). We agree that such an invitation under these circumstances does not give rise to grounds for removal of a board member.

### **Shelton Contract and Invitation to Executive Session (Exceptions 35 & 37 misnumbered as 33, p. 44-48)**

Petitioners take exception to the ALJ's analysis of the Shelton contract, arguing that the ALJ should not have relied on a technical mistake regarding the name of Shelton's firm in the charging document, or the fact that it was for parliamentary services and not legal services when parliamentary services were typically performed by board counsel. They also argue that the ALJ's determination that Respondent did not invite Mr. Shelton to the executive session on February 24, 2022 without board authorization is not supported by the record.

Petitioners had the opportunity to set forth all allegations in a complete and accurate format in their request for removal. They filed a removal request supported by an affidavit alleging that Respondent engaged the services of Bill Shelton, Esq. Based on the information provided, the State Board issued a charge referencing Mr. Shelton's law firm, Bill Shelton Attorney at Law LLC. At no time did Petitioners request that the State Board correct the charge. We find that it was not error for the ALJ to rely on the charge as stated.

Nevertheless, any action taken by Respondent to hire Mr. Shelton's parliamentarian services through Shelton Enterprises, LLC, as opposed to legal services, was to ensure that the local board had such services to maintain order at the meeting. This was needed so that the board could engage in the work of the school system rather than being plagued by acrimonious interactions obstructing board business. Petitioners' faction of the board, however, did not want Mr. Shelton's services. Like the scenario with Mr. Karpinski, this was a disagreement over who

may attend a closed executive session of the board to provide services. Mr. Shelton was invited to the February 24 executive session and there is record evidence to support the ALJ's determination that Mr. Cooper issued an invitation. In the end, however, the board did not convene the executive session, effectively rescinding the invitation, and Mr. Shelton did not attend the executive session or have access to confidential information. So again, the Respondent's actions did not result in the compelling of any board action. Given the nature of the services and the totality of circumstances here, we do not find that any of Respondent's conduct regarding Mr. Shelton's services warrant removal.

### **Cumulative Effect of Conduct (Exceptions 36 & 37 misnumbered as 33, p. 47-48)**

Petitioners maintain that the cumulative effect of all of Respondent's conduct establishes grounds for removal. We agree with the ALJ's conclusion that Respondent did not engage in conduct to support the charges of misconduct in office, willful neglect of duty, or incompetence, either individually or collectively. This exception lacks merit.

### **Ethics Complaints (Exceptions 32 & 38 misnumbered as 33, p. 34-35; 48-49)**

Petitioners take exception to the ALJ's determinations on the ethics complaints, essentially arguing that the ALJ misinterpreted fact and law regarding the ethics complaints charge issued by the State Board. The ALJ was tasked with determining whether Respondent withheld seven ethics complaints from the local board and failed to timely present to the local board the Ethics Panels' findings and recommendations on the complaints, thereby prohibiting the local board from fulfilling its responsibility to make a final decision on the complaints under board policy 0107. In determining whether Respondent failed to timely present the ethics complaints and reports to the local board, the ALJ correctly found that the relevant policies and bylaws contained no time requirement within which they had to be presented to the local board for a final determination.

Petitioners take exception to the ALJ's Finding of Fact ¶88 which states that "[n]o Local Board policy or bylaw provides a time frame for the Board's action on reports received from the Ethics Panel," maintaining that Board Policy 0107 gives the Ethics Panel the responsibility of interpreting the ethics policy and the Panel advised Respondent to present the reports at issue as soon as possible. This exception, however, lacks merit. The factual finding is accurate in that no board policy or board bylaw contains a timeframe for the board's action on reports received from the Ethics Panel. Indeed, Petitioner's own testimony acknowledged that there is no stated timeframe, nor were they aware of any. (T.251-252; 565).

The record is clear that Respondent presented several of the ethics reports at the July 28, 2021 meeting because the Ethics Panel specified that the local board must issue a final decision on those complaints by August 31, 2021. The reports presented in July were the ones in which the Ethics Panel had recommended action be taken against the board members. Respondent did not present the other ethics reports as quickly after receipt because the Ethics Panel prescribed no specific deadline for those reports. Given that the Ethics Panel had recommended dismissal of these remaining complaints, Respondent did not present the remaining ethics reports to the local board with the same urgency. Respondent ultimately presented the remaining ethics complaints

and reports to the local board and the local board voted to dismiss in accordance with the recommendations of the Ethics Panel. We find no conduct here that warrants removal.

CONCLUSION

For all of these reasons, we adopt the Proposed Decision of the ALJ and dismiss the charges for removal of Respondent as a member of the Prince George’s County Board of Education.

Signatures on File:

\_\_\_\_\_  
Clarence C. Crawford  
President

\_\_\_\_\_  
Joshua L. Michael  
Vice-President

\_\_\_\_\_  
Chuen-Chin Bianca Chang

\_\_\_\_\_  
Susan J. Getty

\_\_\_\_\_  
Nick Greer

\_\_\_\_\_  
Irma E. Johnson

\_\_\_\_\_  
Rachel McCusker

\_\_\_\_\_  
Joan Mele-McCarthy

\_\_\_\_\_  
Samir Paul

\_\_\_\_\_  
Abisola Ayoola

Recused:<sup>10</sup>  
Monica Goldson

\_\_\_\_\_  
<sup>10</sup> Dr. Goldson did not participate in the oral argument, deliberations, or vote in this matter.

Absent:  
Shawn D. Bartley  
Warner I. Sumpter  
Holly C. Wilcox

July 25, 2023

**EDWARD BURROUGHS, et al.,**

**PETITIONERS**

**v.**

**JUANITA MILLER,**

**RESPONDENT**

\* **BEFORE RICHARD O’CONNOR,**  
\* **ADMINISTRATIVE LAW JUDGE,**  
\* **THE MARYLAND OFFICE OF**  
\* **ADMINISTRATIVE HEARINGS**  
\* **OAH No.: MSDE-BE-17-22-13962**

\* \* \* \* \*

**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
CONCLUSIONS OF LAW  
RECOMMENDATION

**STATEMENT OF THE CASE**

Edward Burroughs, Raaheela Ahmed, David Murray, Shayla Adams-Stafford, Kenneth Harris, and Joshua Thomas (Petitioners) petitioned the Maryland State Board of Education (State Board) to remove Juanita Miller (Respondent) from her position on the Board of Education of Prince George’s County (Local Board or Board). On May 31, 2022, the State Board issued a notice of charges against the Respondent stating that the Petitioners had presented sufficient evidence to charge the Respondent with misconduct in office, willful neglect of duty, and incompetence.

The Respondent requested a hearing, and, on June 13, 2022, the State Board transmitted the matter to the Office of Administrative Hearings (OAH) for a contested case hearing.

I held a hearing by videoconference on November 28, 29, and 30, 2022; December 1, 2, 19, 20, and 21, 2022; and January 18, 2023. Brandon F. Cooper, Esquire, represented the Petitioners. Sydney M. Patterson, Esquire; Bruce L. Marcus, Esquire; and Marcus Bonsib, LLC, represented the Respondent.



Procedure is governed by the contested case provisions of the Administrative Procedure Act, the procedures applicable to requests to remove a local school board member, and the OAH's Rules of Procedure. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2021); Code of Maryland Regulations (COMAR) 13A.01.05.12; COMAR 28.02.01.

### **ISSUES**

The issues are (1) whether the Respondent committed misconduct in office, willfully neglected her duty, or was incompetent; and (2) if so, whether the Respondent's actions are grounds for removing her from the Local Board.

### **SUMMARY OF THE EVIDENCE**

#### **Exhibits<sup>1</sup>**

The Petitioners submitted the following exhibits, which I admitted into evidence except as noted:

- Pet. Ex. 1. Page 15 of the Maryland School Law Deskbook.
- Pet. Ex. 2. Special Board Meeting Minutes, April 28, 2021.
- Pet. Ex. 3. Removed.<sup>2</sup>
- Pet. Ex. 4. Video of Local Board meeting, April 28, 2021.<sup>3</sup>
- Pet. Ex. 5. Not admitted.
- Pet. Ex. 6. Not admitted.
- Pet. Ex. 7. Board of Education Handbook, revised November 2017.
- Pet. Ex. 8. Board of Education Policy No. 0108, amended March 21, 2017.
- Pet. Ex. 9. Board of Education Bylaw No. 9210, amended March 21, 2017.

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<sup>1</sup> Exhibit numbers that have been omitted from these lists indicate that no exhibits with those numbers were marked for identification, offered as evidence, or admitted into evidence. The notation "not admitted" means that the exhibit was marked and either not offered as evidence or offered and not admitted. All the listed exhibits remain with the file as part of the administrative record.

<sup>2</sup> The Petitioners listed Exhibit 3 as the Special Board Meeting Minutes of June 4, 2021. However, those Minutes were admitted into evidence as Petitioners' Exhibit 18.

<sup>3</sup> The Petitioners' video exhibits are contained on a single USB drive.

- Pet. Ex. 10. Board of Education Bylaw No. 9270, amended September 28, 2000.
- Pet. Ex. 11. Board of Education Bylaw No. 9250, amended September 28, 2000.
- Pet. Ex. 12. Board of Education Bylaw No. 9360, amended March 21, 2017.
- Pet. Ex. 13. Emails between David Murray and Roger Thomas, April 21, 2021.
- Pet. Ex. 14. Not admitted.
- Pet. Ex. 15. Emails among Edward Burroughs, Joshua Thomas, and the Respondent, April 29 to May 5, 2021.
- Pet. Ex. 16. Emails between Mr. Murray and Diana Wyles, April 23 and 24, 2021.
- Pet. Ex. 17. Email from Rosalyn Pugh to the Respondent, May 28, 2021.
- Pet. Ex. 18. Special Board Meeting Minutes, June 4, 2021.
- Pet. Ex. 19. Board Meeting Minutes, May 12, 2021.
- Pet. Ex. 20. Professional Legal Services Agreement, May 26, 2021.
- Pet. Ex. 21. Video of Local Board meeting, May 26, 2021.
- Pet. Ex. 22. Memorandum from Monica Goldson to the Respondent, undated.
- Pet. Ex. 23. Cancellation of Special Board Meeting, June 1, 2021.
- Pet. Ex. 24. Emails among Curtis Valentine, Joshua Thomas, the Respondent, and Dr. Goldson, June 1 and 2, 2021.
- Pet. Ex. 25. Video of Local Board meeting, June 4, 2021.
- Pet. Ex. 26. Video of Local Board meeting, June 24, 2021.
- Pet. Ex. 27. Board Meeting Minutes, June 24, 2021.
- Pet. Ex. 28. Not admitted.
- Pet. Ex. 29. Not admitted.
- Pet. Ex. 30. Not admitted.
- Pet. Ex. 31. Invoice, February 26, 2022.
- Pet. Ex. 32. Email from the Respondent to Aisha Berkeley, February 27, 2022.

- Pet. Ex. 33. Board of Education Policy No. 0107, amended March 21, 2017.
- Pet. Ex. 34. Not admitted.
- Pet. Ex. 35. Video of Local Board meeting, July 28, 2021.
- Pet. Ex. 36. Emails between the Respondent and Belinda Queen, November 19 and 20, 2021.
- Pet. Ex. 37. Report to the Board of Education of Prince George's County from the Ethics Panel, December 9, 2021.<sup>4</sup>
- Pet. Ex. 38. Video of Local Board meeting, December 9, 2021.
- Pet. Ex. 39. Emails among Raaheela Ahmed, Mr. Cooper, the Respondent, Ms. Queen, Shayla Adams-Stafford, and Gregory Morton, December 14 to 17, 2021.
- Pet. Ex. 40. Email from the Respondent to Andrew Nussbaum, January 6, 2022.
- Pet. Ex. 41. Not admitted.
- Pet. Ex. 42. WUSA9 article, '*Dysfunctional*' Prince George's County School Board at a Standstill, June 25, 2021.<sup>5</sup>
- Pet. Ex. 43. Letter from Sarah Benson Brantley, Counsel to the General Assembly, to The Honorable Julian Ivey, March 3, 2021.
- Pet. Ex. 44. Not admitted.
- Pet. Ex. 45. Not admitted.
- Pet. Ex. 46. Email from Ms. Williams to Mr. Stewart, June 16, 2021.
- Pet. Ex. 47. Prince George's County Public Schools Purchasing and Supply Services Procedure Manual, pages 1-2 and 10-14, May 2, 2017.
- Pet. Ex 47A. Prince George's County Public Schools Purchasing and Supply Services Procedure Manual, pages 1-39 (entire document), undated.
- Pet. Ex. 48. Email from Dr. Goldson to the Respondent and Sonya Williams, September 13, 2021.
- Pet. Ex. 49. Purchase Order, June 29, 2021.
- Pet. Ex. 50. Not admitted.

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<sup>4</sup> The right-hand edges of most pages of this exhibit, including some text, are cut off.

<sup>5</sup> I admitted this exhibit into evidence only to show its existence. The contents of the article are not part of the evidence.

- Pet. Ex. 51. Not admitted.
- Pet. Ex. 52. Emails among Mr. Morton, the Respondent, and Pamela Boozer-Strother, June 16, 2021.
- Pet. Ex. 53. Not admitted.
- Pet. Ex. 54. Not admitted.
- Pet. Ex. 59. Email from Bill Shelton to the Respondent, September 5, 2021.
- Pet. Ex. 60. Professional Services Contract, July 28, 2021.
- Pet. Ex. 61. Not admitted.
- Pet. Ex. 62. Emails between Mr. Burroughs and Ms. Williams, May 3, 2021.
- Pet. Ex. 63. Board Meeting Minutes, August 12, 2021.
- Pet. Ex. 66. Not admitted.
- Pet. Ex. 67. Not admitted.
- Pet. Ex. 68. Not admitted.

The Respondent submitted the following exhibits, which I admitted into evidence except as noted:

- Resp. Ex. 1. The Respondent's résumé.
- Resp. Ex. 2. Emails among the Respondent, Michele Winston, Roger Thomas, and Ms. Adams-Stafford, January 19 and 27, 2021.
- Resp. Ex. 3. Board Meeting Minutes, May 12, 2021.
- Resp. Ex. 4. Emails between the Respondent and Ms. Pugh, May 17, 2021.
- Resp. Ex. 5. Emails between the Respondent and Mr. Burroughs, May 17, 2021.
- Resp. Ex. 6. Email from the Respondent to Ms. Pugh, May 18, 2021.
- Resp. Ex. 7. Email from Ms. Pugh to the Respondent, May 21, 2021.
- Resp. Ex. 8. Special Board Meeting Minutes, May 26, 2021.

- Resp. Ex. 9. Video of part of a Local Board meeting, May 26, 2021.<sup>6</sup>
- Resp. Ex. 10. Emails among Trina Young, Dr. Goldson, the Respondent, Ms. Williams, and Mr. Cooper, June 14 and 24, 2021.
- Resp. Ex. 11. Video of part of a Local Board meeting, June 24, 2021.
- Resp. Ex. 12. Board Meeting Minutes, July 28, 2021.
- Resp. Ex. 13. Video of part of a Local Board meeting, July 28, 2021.
- Resp. Ex. 14. Emails among Mr. Morton, the Respondent, and Ms. Adams-Stafford, September 1 and October 29, 2021.
- Resp. Ex. 15. Ethics Panel Findings of Fact, Conclusions of Law, and Recommendations for Action, redacted,<sup>7</sup> November 8, 2021.
- Resp. Ex. 19. Not admitted.
- Resp. Ex. 21. Executive Session minutes, November 18, 2021.
- Resp. Ex. 22. Board Meeting Minutes, February 24, 2022.
- Resp. Ex. 23. Board Work Session Minutes, March 10, 2022.
- Resp. Ex. 24. Local Board executive session notes, March 10, 2022.
- Resp. Ex. 25. Emails between the Respondent and Ms. Ahmed, January 11, 2021.
- Resp. Ex. 29. Video of part of a Local Board meeting, April 28, 2021.
- Resp. Ex. 30. Email from the Respondent to Mr. Cooper, July 20, 2021; letter with Billing Statement from Roger Thomas to the Respondent, July 20, 2021.
- Resp. Ex. 31. Board of Education Policy No. 3323, amended August 18, 2022.
- Resp. Ex. 33. Prince George's County Public Schools Purchasing and Supply Services Procedure Manual, pages 1-2 and 10-14, May 2, 2017.
- Resp. Ex. 35. Emails among Mr. Cooper, Dr. Goldson, and Keith Stewart, February 8, 9, and 10, 2022.
- Resp. Ex. 36. Emails between Mr. Cooper and Mr. Stewart, February 10, 2022.

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<sup>6</sup> The Respondent's video exhibits are contained on a single USB drive.

<sup>7</sup> The names of the subjects of the ethics complaints have been redacted from all Ethics Panel reports (Respondent's Exhibits 15, 54, and 55).

- Resp. Ex. 37. Instructions for Completing Prince George's County Public Schools Consultant Contract Template.
- Resp. Ex. 39. Memorandum from Mr. Stewart to Dr. Goldson, June 21, 2022.
- Resp. Ex. 40. Procurement Selection Process Robertson's Law Group.docx, June 21, 2022.
- Resp. Ex. 42. Appendix A, covering March 18, 2021, to November 19, 2021.
- Resp. Ex. 43. Board of Education Policy No. 0109, amended November 10, 2022.
- Resp. Ex. 44. Emails among Mr. Stewart, Ms. Williams, and the Respondent, May 25, 2021.
- Resp. Ex. 45. Memorandum from the Respondent and Ms. Williams to Mr. Stewart, May 21, 2021.
- Resp. Ex. 47. Email from the Respondent to Mr. Morton and Mr. Stellman, June 8, 2021; email from Ms. Pugh to the Local Board, June 7, 2021; email from Mr. Morton to the Respondent, June 8, 2021; email from Ms. Queen to the Respondent, June 8, 2021.
- Resp. Ex. 49. Emails among Tonya Wingfield, Dr. Goldson, Mr. Stewart, Ms. Williams, and the Respondent, June 7 to 15, 2021.
- Resp. Ex. 52. Purchase Requisitions for parliamentary services, August 13, 2021; September 12, 2021; October 29, 2021; and November 15, 2021.
- Resp. Ex. 54. Recommendation of Dismissal of Ethics Complaint, redacted, September 1, 2021.
- Resp. Ex. 55. Ethics Panel Findings of Fact, Conclusions of Law, and Recommendations for Action, redacted, July 23, 2021.
- Resp. Ex. 56. Email from the Respondent to Local Board members, May 21, 2021.
- Resp. Ex. 57. Board Work Session Minutes, June 10, 2021.

#### Witnesses

The following witnesses testified on behalf of the Petitioners:

1. Dr.<sup>8</sup> Kenneth Harris II, Petitioner and member of the Local Board.
2. Raheela Ahmed, Petitioner and former member of the Local Board.
3. Rosalyn Pugh, attorney.
4. Aisha Berkely, former administrative secretary of the Local Board.

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<sup>8</sup> The witness did not state what type of doctoral degree he holds.

5. Valerie Ervin, former Local Board liaison to the chief executive officer of the Prince George's County Public Schools.
6. Shayla Adams-Stafford, Petitioner and member of the Local Board.
7. Edward Burroughs III, Petitioner, former member of the Local Board, current member of the Prince George's County Council.
8. David Murray, Petitioner and member of the Local Board.

The Respondent testified and presented testimony from the following witnesses:

1. Kevin Karpinski, attorney.
2. Keith Stewart, Director of Purchasing and Supply Services, Prince George's County Public Schools.
3. Monica Goldson, Ph.D., Chief Executive Officer, Prince George's County Public Schools.
4. Suzann King, former Executive Director of the Local Board.
5. Pamela Boozer-Strother, member of the Local Board.
6. Sonya Williams, former vice-chairperson of the Local Board.

Ms. Boozer-Strother also testified as an administrative law judge's witness on an issue of possible intimidation of a witness.

### **FINDINGS OF FACT**

#### *The Entities Involved in This Case*

1. The Local Board comprises fourteen members – nine elected members, four members appointed by the County Executive or County Council, and one student member.
2. The Local Board has a support staff of personnel who work in the Board office and report to the Local Board.
3. The Local Board has authority to retain, and does retain, legal counsel. Board counsel represents only the Board and is separate and distinct from the Prince George's County Public Schools (PGCPS) general counsel's office.

4. The chief executive officer (CEO) of PGCPS oversees the functioning and operations of the school district.
5. The CEO serves *ex officio* as the Secretary and Treasurer of the Local Board.
6. PGCPS includes a Purchasing Office that is responsible for procurement of goods and services for PGCPS.
7. The Local Board has a procurement policy, but it is not a policy that is exclusive to the Board.
8. PGCPS has an Ethics Panel whose members are appointed by the chairperson of the Local Board with the concurrence of the other members of the Board.

*The Individuals Involved*

9. The County Executive appointed the Respondent as chairperson of the Local Board in early January 2021, and she continued in that position at all times relevant to this decision.
10. The Petitioners were members of the Local Board when the Respondent was appointed, and all remained on the Board through most of 2021. Mr. Burroughs resigned in late 2021 to run for County Council, Ms. Ahmed resigned in February 2022, and Joshua Thomas is not currently a member of the Local Board. Dr. Harris, Ms. Adams-Stafford, and Mr. Murray remain on the Board.
11. Dr. Goldson has been CEO of PGCPS at all relevant times.
12. Roger Thomas was Local Board counsel until May 4, 2021.
13. Mr. Stewart has been Director of Purchasing and Supply Services, i.e., head of the Purchasing Office, for PGCPS at all relevant times.
14. Ms. Williams was the vice-chair of the Local Board at all relevant times.
15. Mr. Morton was chairman of the Ethics Panel at all relevant times.



*The Situation in Early 2021*

16. Shortly before the Respondent was appointed, the Local Board had voted to revise the Board's committees and to make personnel changes in the Board office, including termination of some employees and elimination of certain positions.

17. When the Respondent joined the Board, she requested that the changes recently voted on not be implemented immediately.

18. The Local Board declined the Respondent's request.

19. The Local Board divided into factions, with the Petitioners and at least one other member voting as a bloc, often opposed by the Respondent, Ms. Williams, and other members.

*The Pugh Contract*

20. In April 2021, Board counsel Roger Thomas gave notice that he was resigning effective May 4, 2021.

21. Because requests for proposals and the procurement process for a new Board counsel would take months, Roger Thomas's resignation would leave the Local Board without legal counsel for a significant period.

22. Members of the Local Board, including the Petitioners, felt that the Board should act immediately to retain interim counsel.

23. Board member David Murray reached out to Ms. Pugh to solicit her for the interim legal counsel position.

24. Mr. Murray drafted the contract with Pugh Law Group (Pugh) and sent it to PGCPs Associate General Counsel Diana Wyles and Mr. Stewart for review. The reviewers suggested some minor edits, which Mr. Murray incorporated.

25. The proposed contract with Pugh was posted on BoardDocs, a school board management software program that the Local Board uses to inform its members and the public about the schedule of meetings, meeting agendas, actions taken at meetings, and other relevant items.

26. A regularly-scheduled meeting of the Local Board had been set for April 29, 2021, but the issue of interim legal counsel was not on the agenda.

27. Five members of the Local Board, as allowed by Board policy, called a special meeting for April 28, 2021 to take action on the issue of interim legal counsel.

28. Attendees at the special meeting were the six Petitioners and Board member Belinda Queen.

29. The Respondent and vice-chair Ms. Williams were not present.

30. The seven attendees declared that a quorum of the Local Board was present because the Board intended to go into a closed session to discuss matters upon which the student member was unable to vote.

31. The Local Board voted to close the meeting.

32. The Local Board elected Mr. Burroughs as chairperson pro tem.<sup>9</sup>

33. The Local Board voted to approve a contract with Pugh to provide interim legal services to the Board. The Board further voted to require the Respondent to sign the Pugh contract on behalf of the Board by close of business on April 30, 2021, and to direct Mr. Burroughs to sign the contract on behalf of the Board if the Respondent did not sign by April 30, 2021.

34. The Local Board did not present the Pugh contract to the Respondent for her signature.

35. The Respondent did not sign the contract with Pugh.

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<sup>9</sup> This is an abbreviation of the Latin phrase *pro tempore*, meaning “for the present time.”

36. Mr. Burroughs and Ms. Pugh signed the contract on or about May 4, 2021.

37. The Purchasing Office did not consider the Pugh contract valid, and Dr. Goldson told Mr. Burroughs that his signature on the contract was worthless.

38. In response to the Respondent's inquiries concerning the whereabouts of the contract, both Ms. Pugh and Mr. Burroughs denied having it.

39. On May 12, 2021, the Local Board voted to void the Pugh contract, meet with Ms. Pugh, and work with procurement to develop a proper contract for interim legal services.

40. The Respondent scheduled a meeting with Ms. Pugh for May 18, 2021, but the meeting did not take place.

41. On May 21, 2021, Ms. Pugh withdrew her firm from consideration as interim legal counsel.

42. On May 28, 2021, Ms. Pugh requested that her firm again be considered for the position of interim legal counsel.

43. The Local Board again voted to retain Pugh as interim legal counsel on June 4, 2021.

44. Neither the Local Board, the Respondent, nor Ms. Pugh took any further action to develop or execute a contract with Pugh.

#### *The Karpinski Contract*

45. Rhonda L. Weaver, County Attorney for Prince George's County, mentioned to Mr. Karpinski that the Local Board needed interim legal counsel and asked if his law firm would be willing to serve in that capacity.

46. Mr. Karpinski agreed and was put in touch with Ms. Williams, the Local Board's vice-chair; and Mr. Stewart, PGCPD Director of Purchasing and Supply Services.

47. On May 21, 2021, the Respondent authorized Mr. Stewart to proceed with preparing a contract with Karpinski, Cornbrooks & Karp, P.A. (Karpinski) to serve as interim legal counsel.

48. The Local Board had not approved a contract with Karpinski.

49. Mr. Stewart and the Purchasing Office prepared a contract with Karpinski, which Mr. Karpinski signed on May 24, 2021, and Mr. Stewart signed on May 26, 2021.

50. The Respondent did not sign the Karpinski contract.

51. Dr. Goldson had delegated to Mr. Stewart her authority to sign contracts for less than \$25,000.00.

52. The contract provided that Karpinski would serve as the Local Board's interim legal counsel from May 25, 2021 to June 30, 2021, and that the total reimbursement Karpinski was to receive would not exceed \$24,999.00.

53. Mr. Stewart correctly advised the Respondent and Mr. Karpinski that contracts for professional services for less than \$25,000.00 did not require approval by the Local Board.

54. On June 2, 2021, Dr. Goldson informed the Local Board that PGCPs administration would not execute the Karpinski contract because Karpinski would not be providing services to the administration.

55. On June 4, 2021, the Local Board voted to void the Karpinski contract.

#### Mr. Shelton's Employment

56. On or about July 28, 2021, the Respondent engaged Bill Shelton, doing business as Shelton Enterprises, LLC, to provide parliamentarian services at meetings of the Local Board.

57. The Local Board needed a parliamentarian because the individuals who had previously provided that service were no longer available. Board counsel Roger Thomas had resigned, and Executive Director Suzann King had been terminated by the Board. No interim

counsel had been chosen, and Ms. King's replacement, Devan Martin, was unfamiliar with parliamentary procedure and Board policies.<sup>10</sup>

58. Shelton Enterprises, LLC, is a different entity from Bill Shelton Attorney at Law LLC.

59. Shelton Enterprises, LLC, provided parliamentarian services to five Local Board meetings and work sessions in 2021.

60. Shelton Enterprises, LLC, received payment for services by submitting invoices to the Respondent, which she approved.

61. Neither the Respondent nor the Local Board engaged Bill Shelton Attorney at Law LLC to provide any services to the Board.

62. Neither Bill Shelton Attorney at Law LLC, nor Shelton Enterprises, LLC, provided legal services to the Local Board.

63. The Local Board voted to terminate Shelton Enterprises, LLC's contract on or about October 28, 2021.

*The Meeting on June 24, 2021*

64. On June 24, 2021, the Local Board had scheduled a two-hour closed executive session followed by a public meeting.

65. The Respondent invited Mr. Karpinski to attend the executive session as interim legal counsel to the Local Board.

66. Mr. Karpinski believed that he had a validly executed contract to provide legal services to the Local Board.

67. The Local Board voted not to go into executive session, the primary reason being Mr. Karpinski's presence.

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<sup>10</sup> The Local Board had abolished the position of executive director; Mr. Martin's title was chief of staff.

*The Meeting on February 24, 2022*

68. By February 2022, the Local Board had hired Andrew Nussbaum as interim legal counsel.

69. Mr. Cooper was interim chief of staff of the Local Board, Mr. Martin having resigned after a brief tenure.

70. On February 9, 2022, Mr. Cooper inquired of Dr. Goldson about the proper protocol for retaining Mr. Shelton as parliamentarian for a Board meeting on February 24, 2022.

71. Dr. Goldson passed the request on to her staff, and Mr. Stewart contacted Mr. Cooper and gave him the necessary information about hiring Shelton Enterprises, LLC.

72. The Local Board planned an executive session and a public meeting for February 24, 2022. The executive session was not held because a quorum was not present.

73. Mr. Shelton attended the Local Board meeting on February 24, 2022 and was excused after the executive session did not occur. Shelton Enterprises, LLC, billed the Board for three hours of service, which the Respondent approved.

*The Ethics Complaints*

74. The Ethics Panel investigates sworn ethics complaints and makes recommendations for final action to the Local Board.

75. On July 23, 2021, the Ethics Panel delivered to the Respondent its Findings of Fact, Conclusions of Law, and Recommendations for Action on ethics complaints #2021-001 through #2021-005, all of which involved a single member of the Local Board.

76. The Ethics Panel upheld the allegations and recommended that the Local Board take prompt action to correct and deter unethical conduct.

77. The Ethics Panel advised the Local Board that, in its opinion, the Board was required to act on the recommendations by August 31, 2021, to meet its statutory obligations.

78. The Local Board approved the Ethics Panel’s report in an executive session on July 28, 2021.

79. On September 1, 2021, the Ethics Panel delivered to the Respondent its Recommendation of Dismissal of Ethics Complaint #2021-008, which involved a member of the Local Board.

80. The Ethics Panel’s recommendation included no timetable for action by the Local Board. An accompanying email from Mr. Morton urged the local Board “to address this recommendation as soon as possible.”

81. On November 8, 2021, the Ethics Panel delivered to the Respondent its Findings of Fact, Conclusions of Law, and Recommendations for Action on ethics complaints #2021-010 and #2021-012, both of which involved a single member of the Local Board.

82. The Ethics Panel’s recommendation included no timetable for action by the Local Board.

83. The Ethics Panel’s policy is to provide copies of its recommendations to the person who is the subject of the complaint and to the Local Board chairperson.

84. On December 9, 2021, Mr. Morton, chair of the Ethics Panel, delivered an annual report to the Local Board that included information that in the past year the panel had recommended that seven ethics complaints be dismissed.

85. Several Local Board members complained that they had never seen these reports and undertook efforts to obtain copies from the Respondent, Mr. Morton, and PGCPs administration.

86. The Respondent did not provide copies of the reports until two or three months had passed.

87. The seven complaints that the Ethics Panel had recommended for dismissal were distributed to Local Board members and acted upon in March 2022.

88. No Local Board policy or bylaw provides a time frame for the Board's action on reports received from the Ethics Panel.

### **DISCUSSION**

Neither the State Board nor the Local Board are parties to this action. The Petitioners requested the Respondent's removal as residents of the Prince George's County Public School District. COMAR 13A.01.05.12A.

The Petitioners assert that the Respondent's actions require her removal from the Local Board and therefore bear the burden of proof in this case. COMAR 28.02.01.21K(2)(a). The standard of proof is by a preponderance of the evidence. Md. Code Ann., State Gov't § 10-217 (2021); COMAR 28.02.01.21K(1). To prove something by a preponderance of the evidence means "to prove that something is more likely so than not so" when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep't*, 369 Md. 108, 125 n.16 (2002).

Section 3-1002(i) of the Education Article governs removal of Local Board members:

(i)(1) With the approval of the Governor, the State Board may remove a member of the county board for any of the following reasons:

- (i) Immorality;
- (ii) Misconduct in office;
- (iii) Incompetency; or
- (iv) Willful neglect of duty.

(2) Before removing a member, the State Board shall send the member a copy of the charges pending and give the member an opportunity within 10 days to request a hearing.

(3) If the member requests a hearing within the 10-day period:

(i) The State Board promptly shall 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

(ii) 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.

(4) A member removed under this subsection has the right to judicial review of the removal by the Circuit Court for Prince George's County based on an administrative record and such additional evidence as would be authorized by § 10-222(f) and (g) of the State Government Article.

Md. Code Ann., Educ. § 3-1002(i) (2022).



The State Board's charges encompass subsections (ii), (iii), and (iv), above; the Petitioners allege that the Respondent committed misconduct in office, willfully neglected her duty, and was incompetent, requiring her removal from the Local Board. As transmitted by the State Board, the specifics of those charges are as follows:

- Failing to sign a contract with Pugh Law Group for legal services that was approved by the local board at its April 28, 2021 board meeting. Engaging the law firms Karpinski, Cornbrooks & Karp, P.A. and Bill Shelton Attorney at Law, LLC without local board approval. Inviting unauthorized guests Kevin Karpinski, Esq. and Bill Shelton, Esq. to attend confidential executive sessions of the local Board on June 24, 2021 and February 24, 2021,<sup>11</sup> respectively.
- Withholding from the local board seven ethics complaints and failing to timely present to the local board the findings and recommendations of the Ethics Panel on the complaints so the Local Board could fulfill its responsibility to make a final decision under Board Policy 0107.

Maryland State Board of Education charges, May 31, 2022.

As written by the State Board, the charges include seven specific actions by the Respondent that, according to the Petitioners, require her removal from the Local Board. Those actions are the following:

1. The Respondent failed to sign a contract for legal services with Pugh after the Local Board approved the contract on April 28, 2021.
2. The Respondent engaged Karpinski to provide legal services to the Local Board without Local Board approval.
3. The Respondent engaged Bill Shelton Attorney at Law LLC to provide legal services to the Local Board without Local Board approval.
4. The Respondent invited Mr. Karpinski to attend a confidential Local Board executive session on June 24, 2021.

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<sup>11</sup> Based on the evidence presented at the hearing, I infer that the State Board's date of February 24, 2021 was a typographical error, and that the matter complained of actually occurred on February 24, 2022.

5. The Respondent invited Mr. Shelton to attend a confidential Local Board executive session on February 24, 2022.

6. The Respondent withheld seven ethics complaints from the Local Board.

7. The Respondent did not timely present to the Local Board the findings and recommendations of the Ethics Panel on ethics complaints so the Local Board could make final decisions under Local Board policy 0107.

I shall address each of the specific allegations in turn and consider whether the evidence supports those allegations and, if so, whether any violations of law or Local Board policies amount to misconduct, willful neglect of duty, or incompetence.

### **1. The Pugh Contract**

The Petitioners' argument that the Respondent violated Local Board policy by not signing the Pugh contract is based on Local Board Bylaw No. 9210, which, in relevant part, states as follows: "The Chair shall preside at all meetings, sign authorized or approved contracts and other documents on behalf of the Board, and perform such duties as are prescribed by law or by the Board." Pet. Ex. 9. The Petitioners maintain that the Pugh contract was authorized and approved by the Board; therefore, the Respondent's failure to sign it violated the above bylaw. The evidence does not support the Petitioners' position.

Local boards of education may retain counsel and contract for payment of a reasonable fee to counsel. Md. Code Ann., Educ. § 4-104(a)(1) (2022). The Local Board, in a special meeting on April 28, 2021, approved a contract with Pugh to provide interim legal services to the Board. The method by which it did so, however, is questionable.

According to Local Board Bylaw No. 9360, special meetings of the Board may be called by written request of at least five members of the Board submitted not less than seventy-two hours in advance of the meeting. The record contains no indication that these conditions were not met.<sup>12</sup> Ms. Ahmed testified that the Petitioners called the meeting because the issue of interim legal counsel was not on the agenda for the local Board's regularly-scheduled meeting the next day.

The attendees elected Mr. Burroughs as chairman pro tem., since neither the Respondent nor vice-chair Ms. Williams were present. Local Board Bylaw No. 9360 states that the "Board shall observe Robert's Rules of Order," which provide for election of a chair pro tem. as follows:

But the regular chairman, knowing that he will be absent from a future meeting, cannot authorize another member to act in his place at such meeting; the secretary, or, in his absence, some other member should in such case call the meeting to order, and a chairman *pro tem.* be elected who would hold office during that session, unless such office is terminated by the entrance of the president or a vice president, or by the election of another chairman pro tem., which may be done by a majority vote.

RRO Revised, 4<sup>th</sup> ed., Art. X, § 58.

The seven Board members who attended the meeting (the Petitioners and Ms. Queen) declared that they constituted a quorum and were thus authorized to conduct business. With a fourteen-member Board, a quorum would normally be eight members, but would decline to seven if the Board were considering issues that the student member could not vote on. Student members are prohibited from voting as follows:

- (3) The student member may vote on all matters before the board except those relating to:
- (i) Capital and operating budgets;
  - (ii) School closings, reopenings, and boundaries;
  - (iii) Collective bargaining decisions;
  - (iv) Student disciplinary matters;

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<sup>12</sup> Neither party offered any documents that had been posted on BoardDocs, where one might expect to find the written requests for the special meeting and its agenda, as well as the proposed Pugh contract.

- (v) Teacher and administrator disciplinary matters as provided under § 6-202(a) of this article; and
- (vi) Other personnel matters.

(4) On an affirmative vote of a majority of the elected and appointed members of the county board, the board may determine if a matter before the board relates to a subject that the student member may not vote on under paragraph (3) of this subsection.

Md. Code Ann., Educ. § 3-1002(g) (2022).

The minutes of the April 28, 2021 meeting do not contain any indication that the Local Board voted to determine that the matter before the Board related to a subject that the student member could not vote on. Instead, the minutes simply state that “the action item on the agenda is not a permissible topic for the Student Member to vote, the Chairman Pro-tem proceeded with the Special Board meeting, with a quorum of 7 Board members.” Pet. Ex. 2.

In addition to not following the procedure outlined in section 3-1002(g)(4), the Local Board’s decision that the student member could not vote on a contract for interim legal services seems incorrect. Retaining Board counsel does not fall into any of the categories enumerated in section 3-1002(g)(3)(i)-(v) above, leaving “other personnel matters” as the only remaining possibility. But, if retained, Ms. Pugh or other legal counsel would not be PGCPs personnel, which I understand to mean employees of the school system, not outside professionals under contract.

The Local Board voted to close the meeting and took up the matter of the Pugh contract. Mr. Murray had contacted Ms. Pugh to gauge her interest in becoming interim counsel, and had prepared a contract, which Ms. Wyles of the general counsel’s office and Mr. Stewart of the purchasing office had reviewed. Apparently, the proposed contract was posted on BoardDocs before the meeting.

The Local Board voted to approve the contract with Pugh as written, and further voted to compel the Respondent to sign the contract by the close of business on April 30, 2021. If the Respondent had not signed by that deadline, the Board authorized Mr. Burroughs, as chair pro tem., to sign the contract on behalf of the Board.

At the hearing, Ms. Pugh testified that, after the meeting, someone from the Board contacted her and suggested that the contract had to be submitted to procurement. She further stated that on May 4, 2021, she met with Mr. Burroughs, who presented her with what she called an “incomplete contract,” which she signed. Mr. Burroughs testified that he also signed the contract on May 4, 2021, but he did not call it incomplete.

After that, the Pugh contract disappeared. The Respondent tried to track it down and obtain a copy, but both Ms. Pugh and Mr. Burroughs insisted that they did not have it. As of the dates of the hearing, the contract had not resurfaced, and neither party produced a copy. The matter was in a state of utter confusion over the next two weeks after the April 28 meeting, and on May 12, 2021, the Local Board voted to void the Pugh contract, meet with Ms. Pugh, and work with the procurement department to develop a valid contract.

The Respondent set up a meeting with Ms. Pugh for May 18, 2021, and Ms. Pugh testified that she expected to sign a contract on that date. But the meeting never happened – the Respondent testified that she cancelled it because of the ongoing questions about the validity of the contract and its whereabouts.

The evidence establishes that the Respondent did nothing improper during this flurry of activity. To the charge that she failed to sign the Pugh contract after the Local Board had approved it, the obvious answer is that the contract was not available for her signature. No Board member gave the contract to the Respondent with the instruction to sign it.

The contract went missing after the April 28 meeting, although it was apparently in Mr. Burroughs's possession, since he produced it at the May 4 meeting with Ms. Pugh. After that, the contract vanished and was never seen again.

Additionally, the Respondent had legitimate concerns over the validity of the meeting on April 28, 2021, and the Local Board's vote to approve the Pugh contract. Although there has been no complaint to the State Board, and the Local Board's actions are presumptively valid, at the time, the Respondent felt strongly that the Petitioners and Ms. Queen did not constitute a quorum and their actions carried no weight. The Respondent was unwilling to sign a contract that, in her view, had not been properly approved by the Local Board, and her position on this issue was not unreasonable.

I also note that Mr. Burroughs had no authority to sign the Pugh contract. His role as chair pro tem. expired at the end of the April 28 meeting. Dr. Goldson was correct to tell him that his signature on the contract was worthless. This brings up another point – that the Local Board's pursuit of the Pugh contract revealed a thorough misunderstanding of the PGCPS's procurement procedures and the Respondent's role in them.

The Petitioners, and possibly other Local Board members, seemed to think of the Local Board as an independent entity that could act without regard for PGCPS. However, the Education Article establishes a statutory scheme wherein boards of education and school system administrators act in concert for the betterment of public education. For example, section 4-205(c)(2) of the Education Article provides that the "county superintendent shall decide all controversies and disputes that involve: (i) the rules and regulations of the county board; and (ii) the proper administration of the county public school system." In Prince George's County: "The purpose of the county board is to: (1) Raise the level of academic achievement of the students in the Prince George's County public school system; and (2) Raise the level of engagement of the

parents, students, and community as a whole.” Md. Code Ann., Educ. § 4-401 (2022). The PGCPs CEO’s powers and duties, in addition to those granted to all county superintendents, include the overall administration of the school system and oversight and management of its fiscal affairs. *Id.* § 4-402(b). Perhaps most importantly, “A contract made by a county board is not valid without the written approval of the county superintendent.” *Id.* § 4-205(d).

This last provision brings us back to the PGCPs’s procurement procedures. The Local Board does not have its own procurement process that is separate from that of PGCPs, and section 4-205(d) provides a clear statutory basis for the Board to follow the school system’s procedures. The State Board upheld the validity of section 4-205(d) as applied to a local board contract to retain counsel in *In Re: Bd. of Educ. of Howard Cnty. v. Renee Foose*, MSBE Opinion #17-13 (2017).

Mr. Stewart testified that Local Board Policy No. 3323 governs PGCPs purchasing. That document (Resp. Ex. 31)<sup>13</sup> makes no distinction between procurement by the Local Board and by PGCPs administration. It defines “professional services” as including legal services provided by a qualified professional. Section IV.A.1 of the policy authorizes the CEO or her designee, when purchasing equipment, materials, services, or supplies costing less than \$25,000.00, to “contract for its purchase at a price consistent with good quality without the need for a formal bid.” Resp. Ex. 31. In other words, the CEO or her designee could sign a contract for legal services for up to \$24,999.99 without going through the request for proposal and bid process.

Both Mr. Stewart and Dr. Goldson testified that Mr. Stewart was the CEO’s designee to sign contracts for less than \$25,000.00. Mr. Stewart may authorize all purchases under that amount; he testified that he does not need the Local Board’s approval to do so.

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<sup>13</sup> The version offered as evidence is the policy as amended on August 18, 2022. This document makes distinctions between goods and services costing above and below \$50,000.00. Mr. Stewart, Dr. Goldson, Ms. Williams, and the Respondent testified that, at the times relevant to this decision, the cut-off point was \$25,000.00; Mr. Stewart stated that the 2022 amendment raised that limit to \$50,000.00. Relying on the witnesses’ testimony, I shall use the \$25,000.00 standard as applicable to this decision.

Dr. Goldson expressed the opinion that the Respondent had authority to sign a contract for legal services if the value of the contract was less than \$25,000.00. This opinion is not supported by Mr. Stewart's testimony, Local Board Policy No. 3323, or the PGCPs Purchasing and Supply Services Procedure Manual. The Respondent was not a designee of the CEO and had no independent authority to sign a contract, other than the directive of Local Board Bylaw No. 9210: "The Chair shall . . . sign authorized or approved contracts." Looking at the procurement scheme as a whole, the Respondent was required to sign Board-approved contracts, but her signature would have been essentially meaningless because the required signatories to a valid contract are the CEO or her designee and a representative of the entity providing the service.

The Local Board voted on April 28, 2021 to require the Respondent to sign the Pugh contract by April 30, 2021. It then did not provide the contract for the Respondent's signature. The Respondent's signature would not have validated the contract because Mr. Stewart would have had to sign on behalf of PGCPs. The Local Board's actions concerning the Pugh contract were geared more toward harassing the Respondent and generating a complaint against her than executing an enforceable contract for interim legal services. I find no merit to the charge that the Respondent improperly failed to sign the Pugh contract.

## **2. The Karpinski Contract**

The Petitioners contend that the Respondent improperly engaged Karpinski to provide interim legal services to the Local Board without Board approval. Their argument for this charge is premised on Local Board Bylaw No. 9270, which, in pertinent part, 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." Pet. Ex. 10. The complaint is that the Respondent unilaterally engaged Karpinski without seeking or obtaining Board approval. The



situation with this contract is considerably different from that with the Pugh contract, but again the evidence does not establish that the Respondent violated law or policy.

According to the testimony of several witnesses, including Mr. Karpinski, the contract with his firm came about as follows: County Attorney Rhonda L. Weaver knew that the Local Board desired to hire interim counsel and asked Mr. Karpinski if his firm would be interested in undertaking that assignment. Mr. Karpinski responded affirmatively and was put in touch with vice-chair Ms. Williams and Mr. Stewart. Ms. Williams had extensive experience in procurement procedures from her previous employment with Charles County and private enterprise and knew the process necessary to develop a contract.

To avoid unnecessary delay, Mr. Stewart needed a written justification for an immediate contract, which the Respondent provided on May 21, 2021. The contract was then prepared in a few days, Mr. Karpinski signed on May 24, 2021, and Mr. Stewart signed on May 26, 2021.

There is no doubt that the Respondent supported and assisted with the contract with Karpinski, but her involvement was minimal. She did not solicit Karpinski as interim legal counsel, nor did she sign the contract, which was prepared and executed according to PGCPD procurement policies.

Mr. Stewart testified that he was called before a special Local Board meeting on May 26, 2021 and questioned by Mr. Burroughs and Ms. Ahmed about his authority to sign the contract. The minutes of the meeting (Resp. Ex. 8) indicate that Mr. Burroughs expressed his belief that Karpinski's remuneration was capped at \$24,999.00 to avoid the Local Board's involvement.

Much of the previous discussion about the procurement process relating to the Pugh contract applies equally to the Karpinski contract. The primary difference is that the individuals preparing the Karpinski contract knew how to follow proper procurement procedures.

Both Mr. Stewart and Dr. Goldson testified that the Local Board need not act on contracts for less than \$25,000.00. This testimony is supported by Local Board Policy No. 3323, which requires Board approval of contracts of \$25,000.00<sup>14</sup> or more. The Purchasing and Supply Services Procedure Manual contains the same provisions. Mr. Stewart advised the Respondent that the Karpinski contract did not need Board approval because it was for less than \$25,000.00.

The Petitioners were incensed that the Respondent, Ms. Williams, and the purchasing office contracted with Karpinski without their input. But other than Local Board Bylaw No. 9270, which prohibits individual members from acting on behalf of the Board, they have offered no support for their arguments on this issue. The Respondent, as an individual member, did not act of behalf of the Board because the Karpinski contract did not require Board approval. The Respondent did not sign the contract, and therefore did not bind the Local Board to honor it. The Respondent testified that she was trying to fulfill her duties as Board chair by engaging someone to help provide order, as interim counsel, to the chaotic and unruly Board meetings that were then common.

In summary, on the issue of the Karpinski contract, the Respondent did nothing improper. The development of the contract followed established procedures, and there is no evidence that the Respondent herself engaged Karpinski, although she cooperated in the process. Board approval was not required for the Karpinski contract, so neither the Respondent nor anyone else acted contrary to Local Board Bylaw No. 9270.

### **3. The Shelton Contract for Legal Services**

The State Board's charges allege that the Respondent also improperly engaged Bill Shelton Attorney at Law LLC to provide legal services to the Local Board without Local Board approval. The Petitioners presented no evidence that the Respondent contracted with or

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<sup>14</sup> Now \$50,000.00.

otherwise engaged Bill Shelton Attorney at Law LLC. The Respondent hired Shelton Enterprises, LLC, to provide parliamentary services at Local Board meetings.

The exhibits include a Professional Services Agreement between the Local Board and Shelton Enterprises, LLC, dated July 28, 2021 (Pet. Ex. 60). It is signed by Mr. Shelton and has a space for the Respondent's signature but not her signature. For a fee of \$150.00 per hour, Shelton Enterprises' duties were to attend and serve as parliamentarian at Board meetings, facilitate training, and provide written opinions on questions of parliamentary procedure. The agreement does not mention legal services.

The State Board's charges do not allege that the Respondent committed any misconduct by hiring Shelton Enterprises, LLC, to provide parliamentary services for Local Board meetings. There is, therefore, no need to discuss that arrangement except as it relates to the meeting of February 24, 2022, which I shall address below. Neither Mr. Shelton, Bill Shelton Attorney at Law LLC, nor Shelton Enterprises, LLC, provided any legal services to the Local Board. This allegation against the Respondent is completely unsupported and is not sustained.

#### **4. The Meeting on June 24, 2021**

Local Board Bylaw No. 9360, which governs meetings of the Board, states: "The Board may conduct closed meetings (Executive Sessions) in accordance with the law."<sup>15</sup> Pet. Ex. 12.

The bylaw does not specifically state that executive sessions are confidential, but the overall scheme of the document implies strongly that they are. Additionally, Local Board Policy No. 0108 provides: "Members shall maintain the confidentiality appropriate to sensitive issues and information that otherwise may tend to compromise the integrity or legal positions of the Board or the school system, especially those matters discussed in Executive Session." Pet. Ex. 8. Taken together, Bylaw No. 9360, Policy No. 0108, and section 4-107(d)(2) leave no doubt that

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<sup>15</sup> The law referred to may be section 4-107(d)(2) of the Education Article, which states: "A county board may meet and deliberate in executive session if the matter under consideration is: (i) Land and site acquisitions; or (ii) Personnel and labor relations."

executive sessions of the Local Board are confidential and that board members are expected to maintain that confidentiality.

No statute, regulation, policy, or bylaw was produced at the hearing that governs who may attend Board executive sessions. Obviously, they are closed meetings and thus open only to Board members. It is also certain that, from time to time, other individuals would need to attend by invitation to assist the Local Board in conducting its business. The parties did not present any authority regulating whom the Board may invite to attend, or, if such invitations are tendered, how it should be done. To establish a policy violation, the Petitioners again rely on Local Board Bylaw No. 9270, which, as quoted previously, 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.”

The Local Board meeting on June 24, 2021, was planned as an executive session at 5:00 p.m. followed by a public session at 7:00 p.m. The meeting was held by video, apparently on Zoom. When the members convened at 5:00 p.m., Mr. Karpinski was present.

At the hearing, the Respondent testified that she invited Mr. Karpinski to the meeting to act as parliamentarian. This seems untrue; the video of the hearing shows the Respondent introducing Mr. Karpinski to the attendees as “legal counsel.” Pet. Ex. 26. Mr. Burroughs, Mr. Murray, and Ms. Ahmed vigorously questioned Mr. Karpinski about why he was present, in light of the fact that the Board had disapproved his contract on June 4, 2021. Mr. Karpinski expressed the belief that he had a valid contract with the Local Board based on the Respondent’s authority to sign contracts under \$25,000.00 without the Board’s involvement.

As discussed previously, the Respondent had no such authority; it belonged to the CEO and to Mr. Stewart as the CEO's designee. Nevertheless, Mr. Karpinski had a valid point: PGCPs had executed a contract with Karpinski to provide interim legal services to the Local Board, and that contract did not need approval by the Board.

The video recording of the June 24 meeting shows that none of the participants, with the exception of Ms. Williams, understood the process by which the Karpinski contract had been executed, the PGCPs procurement procedures, the Respondent's authority to sign contracts, or the statutes governing retaining counsel and signing contracts. At the end of a forty-five-minute discussion, the Local Board did not vote to go into executive session.<sup>16</sup> The inference is that a majority of the Local Board did not want Mr. Karpinski included in the closed meeting.

The State Board's charge on this issue is that the Respondent invited Mr. Karpinski as an "unauthorized guest" to attend the confidential Local Board session on June 24, 2021. Mr. Karpinski did not attend an executive session or have access to confidential information.

Both the Respondent and Mr. Karpinski knew that the Local Board had voted on June 4, 2021 to void the Karpinski contract. Although the contract had been properly approved through the PGCPs process, section 4-104(a)(1) of the Education Article gives the Local Board the authority to retain counsel. Once that body voted to reject the contract, it was unreasonable for the Respondent and Mr. Karpinski to believe that the Local Board's action was of no consequence and that the contract was still in force.

I conclude that the Respondent improperly invited Mr. Karpinski to the June 24 executive session because the Local Board had voided the Karpinski contract and Mr. Karpinski had no reason to be present. The Respondent was aware of this but issued the invitation with the intention of presenting Mr. Karpinski as legal counsel whether the Board liked it or not.

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<sup>16</sup> The "no" votes and abstentions outnumbered the "yes" votes.

Whether the Respondent violated Local Board Bylaw No. 9270 is a more difficult question to answer. In other words, did the Respondent's invitation attempt to "compel action in the name of the Board of Education" without Board approval?

It is important to understand that the matter complained of here is merely the invitation to Mr. Karpinski; the issue of his contract has been addressed previously. The only thing the Respondent may have been trying to compel the Local Board to do was to admit Mr. Karpinski to the executive session. The evidence shows that the Respondent could not compel the Board to admit Mr. Karpinski, and the Board did not allow him to attend the closed session. Mr. Karpinski gained no access to the Board's confidential information.

Although the Respondent's invitation to Mr. Karpinski was an ill-considered attempt to revive his contract after the Board cancelled it, I find that it did not violate Local Board policy. The simple facts are that the invitation was extended, Mr. Karpinski appeared in response to it, and the Board cancelled the invitation.

The Respondent did not try to compel the Board to do anything – she had no power to bring Mr. Karpinski into the meeting without the Local Board's approval. Once the Local Board voted not to go into executive session the matter was ended. In summary, I do not find that the Respondent's inviting Mr. Karpinski to the Local Board's executive session, without more, violates Local Board Bylaw No. 9270 because it was not an attempt to compel action in the name of the Board of Education. I believe that phrase applies more properly to some action by an individual Board member who attempts to act in the name of the Board without authority, rather than to a disagreement over who may attend a closed Local Board meeting.

## **5. The Meeting on February 24, 2022**

The State Board's charge is that the Respondent invited Mr. Shelton to attend an executive session of the Local Board without the Board's authorization. The only Petitioners' witness who testified about this event was Ms. Berkely, the former administrative secretary of the Local Board.<sup>17</sup> She stated that she was at the February 24, 2022 meeting and was surprised to see Mr. Shelton there, since the Board had voted to terminate his services in October 2021. Ms. Berkely further testified that Mr. Shelton provided no services at the meeting, but sent an invoice, which she took to the Respondent. Ms. Berkely said that the Respondent directed her to submit the invoice for payment. When Ms. Berkely reminded the Respondent that Mr. Shelton provided no services, the Respondent replied, "Well, he showed up."

Despite the dearth of testimonial evidence, certain documents in the record offer a clearer picture of what happened. By February 2022, Mr. Nussbaum was in place as either interim or permanent legal counsel to the Local Board.

The Local Board was scheduled to meet in executive session at 5:00 p.m. on February 24, 2022, followed by a regular meeting at 7:00 p.m. Mr. Nussbaum was unable to attend the meeting on that date.

Mr. Cooper, whose title, according to the email, was Board Interim Chief of Staff, sent an email on February 9, 2022 to Dr. Goldson and others stating that the Local Board "would like to secure Mr. Bill Shelton for this one specific meeting" because "the Board would need parliamentary services" and asking for assistance in navigating the procurement process. Resp. Ex. 35. Howard Burnett of PGCPs administration passed the request on to Mr. Stewart, who emailed Mr. Cooper with instructions the following day.

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<sup>17</sup> Mr. Burroughs and Ms. Ahmed had resigned before this meeting took place, and Dr. Harris testified that he was not present.

Mr. Cooper's email to Dr. Goldson indicated that he was making the request for Mr. Shelton's services after a "weekly meeting with Board Leadership," which would mean the Respondent and Ms. Williams. It is likely that the Respondent initiated the request, or at least concurred in it.

Ultimately, the Board retained Mr. Shelton to serve as parliamentarian at the February 24 meeting, although it is unclear whether this was for both sessions or just the executive session. The minutes of that meeting and the testimony of several witnesses establish that the executive session did not occur because a quorum of Board members was not present. The minutes of the 7:00 p.m. public meeting make no mention of Mr. Shelton being present, so it is likely that he was excused before the public session.

It appears, therefore, that Ms. Berkely's testimony that Mr. Shelton provided no services on February 24, 2022 was correct. Nevertheless, he submitted an invoice requesting payment for three hours of work, and the Respondent approved payment.

The issue, though, is not whether Mr. Shelton was properly paid; it is whether the Respondent violated Local Board policy by improperly inviting Mr. Shelton to a confidential Board meeting.

The evidence does not establish that the Respondent issued any invitation to Mr. Shelton. The initial request for Mr. Shelton's services came from Mr. Cooper on behalf of the Board, and the arrangements for Mr. Shelton to attend the meeting were made through the PGCPD procurement process. I find that the Respondent did not invite Mr. Shelton to attend an executive session of the Local Board on February 24, 2022 without the Board's authorization.



## **6. Withholding Seven Ethics Complaints from the Local Board**

The State Board's charges on this issue are written very simply: "Withholding from the local board seven ethics complaints." The parties' presentations concerning the ethics complaints have made it somewhat difficult to understand the specifics of the complaints themselves but present no obstacle to analysis of the issues. The parties were understandably reluctant to name the persons against whom the complaints were filed, and there was no need to discuss the substance of the complaints because it is not relevant to this decision.

The impetus for this charge seems to have arisen on December 9, 2021, when Mr. Morton, chairman of the Ethics Panel, gave an annual report to the Local Board. His PowerPoint indicated that the Ethics Panel had recommended dismissal of seven ethics complaints during the year. I assume that these are the seven complaints mentioned in the State Board's charges. The record contains no information about the complaints themselves or when the Ethics Panel recommended the dismissals. One recommendation for dismissal, dated September 1, 2021, is in evidence as Respondent's Exhibit 54.

Mr. Morton's presentation generated concerns among some Local Board members. Ms. Ahmed said that the Board members had not seen the seven complaints and questioned Mr. Morton about them. Mr. Morton responded that he had sent them to the Respondent. Prior to this meeting, on November 19, 2021, Ms. Queen had inquired of the Respondent concerning the whereabouts of four "dismissed" ethics complaints that the Local Board had discussed in executive session. The Respondent replied that those reports had not been sent to the Board members "primarily because the complaints were dismissed." Pet. Ex. 36.

The meeting on December 9 generated a series of contentious emails among Ms. Queen, Ms. Ahmed, Ms. Adams-Stafford, Mr. Morton, and the Respondent. Ms. Ahmed asked Mr. Cooper to again request copies of the seven reports from the Respondent, which he did. The

Respondent replied, “I have already responded to the Board members on this issue.” Pet. Ex. 39. Ms. Ahmed then asked Mr. Morton, Mr. Nussbaum, and Tammy Turner<sup>18</sup> for copies of the reports.

On December 16, 2021, Ms. Adams-Stafford emailed everyone involved with this issue expressing concern and frustration that the seven reports had not been provided. She demanded that the Ethics Panel forward them to all Local Board members. Mr. Morton responded the next day, stating his belief that the Ethics Panel lacks authority to deliver its reports to each member of the Board and defending his action of sending them only to the Respondent and to the person who was the subject of the ethics complaint.

The record does not show any substantive response to the several requests for copies of the seven reports. Dr. Harris testified that he received them by email in March 2022. Ms. Ahmed testified that she had not received them before she resigned in February 2022. Ms. Adams-Stafford, in her testimony, stated that the Board tried for three months to get the reports before finally receiving them in March 2022. In her opinion, the Local Board had violated policy by not voting on the Ethics Panel’s recommendation in a timely manner. Ms. Adams-Stafford also strongly implied that the Respondent treated the reports concerning her (the Respondent’s) allies differently from those relating to her perceived enemies on the Board. Mr. Burroughs echoed this sentiment in his testimony.

Several members of the Local Board were upset by Mr. Morton’s PowerPoint at the December 9, 2021, meeting indicating that seven complaints had been dismissed. This caused much discussion and annoyance, because the members knew that the Ethics Panel could not dismiss complaints – it could only make recommendations to the Local Board for further action.

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<sup>18</sup> According to her email address, Ms. Turner was a PGCPs employee.

During the question-and-answer portion of Mr. Morton’s presentation, he clarified that the Ethics Panel had not dismissed any complaints and had sent the recommendations for dismissal to the Respondent. The Petitioners’ (and Ms. Queen’s) main point was that the Respondent had a duty to bring the Ethics Panel’s reports before the Board and had not done so.

The Respondent offered somewhat of an explanation in her testimony, stating that she “was not really aware” that the Local Board had to act on the Ethics Panel’s reports. The Respondent testified that after Mr. Morton told her she had to share the reports with the Board for its approval or disapproval, she planned to bring up the seven complaints recommended for dismissal at a November Board meeting. But then the Respondent became ill and gave the reports to Ms. Williams. Her testimony about what happened after that was somewhat muddled, but the Respondent acknowledged that presenting the reports to the Local Board was “not a priority” because there were “many more pressing issues” such as re-opening schools and the PGCPs budget.

Board of Education Policy No. 0107 includes ethics regulations applicable to members of and candidates for the Local Board, school officials, and PGCPs employees. The policy authorizes the Ethics Panel to investigate complaints, hold hearings, and make recommendations to the Local Board. The Ethics Panel may recommend dismissal, enforcement action, or acceptance of a settlement. The policy is clear that the Local Board, not the Ethics Panel, has final decision-making authority.

Not included in Policy No. 0107 is any timeline for the Board’s action on an Ethics Panel’s report. In a Findings of Fact, Conclusions of Law, and Recommendations for Action issued July 23, 2021, the Ethics Panel expressed its opinion that the Local Board was required to act on the recommendation by August 31, 2021 to comply with its statutory duty.

The Ethics Panel cited section 5-820(a) of the General Provisions Article as authority for this deadline. That section provides:

(a) If the Ethics Commission determines that a school board, as required under § 5-816(a)(2) of this subtitle, has not complied with and has not made good-faith efforts toward compliance with the requirements of this Part III, the Ethics Commission:

- (1) may issue a public notice concerning the failure of compliance with this part, including a listing of specific areas of noncompliance;
- (2) may issue an order providing that officials and employees of the school board are subject to the local ethics laws in the county in which the school board is located; and
- (3) may petition a circuit court with venue over the proceeding for appropriate relief to compel compliance.

Md. Code Ann., Gen. Provisions, § 5-820(a) (2019).

But section 5-816(a)(2), referred to in the above statute, requires local school boards to adopt conflict of interest regulations applicable to members of the school board. *Id.* § 5-816(a)(2). It has nothing to do with any time frame for a local board to act on an ethics complaint report.

Essentially, the Ethics Panel's deadline of August 31, 2021, was merely made up. The two other recommendations from the Ethics Panel that are in evidence contain no similar deadline. Resp. Ex. 15 and 54.

To simplify all the foregoing, Local Board Policy No. 0107 controls the functions of the Ethics Panel and the Local Board's duties concerning the Ethic's Panels reports. The policy contains no time frame for the Board's action on the reports. Neither the Maryland Public Ethics Law (Title 5 of the General Provisions Article) nor the Education Article provide any deadlines for a county board's action on an ethics report. The parties have not identified, nor have I found, any State Board opinions on the issue. The Petitioners have not demonstrated that any person was prejudiced by the Respondent's dilatory action on the requests for the reports.

The Respondent unreasonably delayed providing the Ethics Panel's reports to the Local Board members. Her reasons for doing so are unknown, and I do not find her explanations convincing. However, no policy requires the Local Board's chairperson to distribute the reports to Board members within any particular time frame. The individuals who were the subjects of the ethics complaints received the reports when they were completed, so no secrecy was involved.

Based upon the established facts, I cannot conclude that the Respondent withheld the seven ethics reports from Local Board members. She was reluctant to turn them over but ultimately did so. The Respondent did not violate any policy or statute by delaying the distribution of the recommendations for dismissal, and there is no evidence that anyone was harmed by the delay. I find no merit to this allegation.

**7. Local Board Policy No. 0107**

The State Board's charges allege that the Respondent failed to "timely present to the local board the findings and recommendations of the Ethics Panel on the complaints so the Local Board could fulfill its responsibility to make a final decision under Board Policy 0107."

Local Board Policy No. 0107 is a long document that includes the ethics requirements and conflicts of interest prohibitions that apply to Board Members, candidates for the Local Board, school officials, and PGCPS employees. After the Ethics Panel investigates a complaint (and possibly holds a hearing), its responsibilities and those of the Local Board are as follows:

5. The Panel shall report its findings and recommendations for action to the Board. If the Board concurs with the findings of a violation and recommendations of the Panel, the Board may take enforcement action as provided in this policy.
6. The Board may dismiss a complaint:
  - a. On the recommendation of the Panel; or
  - b. If the Board disagrees with a finding of a violation of the Panel.

Pet. Ex. 33.

As discussed in the previous section, Policy No. 0107 contains no time frames for the Ethics Panel's reports to the Local Board or the Board's action on those recommendations. The evidence shows that the Ethics Panel provided a report to the Board on five complaints on July 23, 2021. The Board acted on the Panel's recommendations on July 28, 2021, by upholding the Ethics Panel's findings and censuring the member who was the subject of the complaints. Two other reports are in evidence: a recommendation of dismissal on September 1, 2021, and a finding of violations on November 8, 2021. The September 1 report may have been one of the seven dismissals finalized in March 2022; the record contains no information about the final action on the November 8 report.

Much of the previous discussion about the alleged withholding of seven ethics complaints applies equally to this allegation that the Respondent prevented the Local Board from fulfilling its duties under Policy No. 0107. Unquestionably, the Local Board did complete the requirements of the policy, although not until March 2022.<sup>19</sup> I do not find that the Respondent prevented the Local Board from fulfilling its duties under Local Board Policy No. 0107.

Having concluded that the Respondent did not commit any of the violations alleged in the State Board's charges, I shall consider only briefly the allegations of misconduct in office, willful neglect of duty, and incompetence.

In *Dyer v. Howard Cnty. Bd. of Educ.*, MSBE Opinion 13-30 (2012), the State Board agreed that a fundamental question regarding misconduct in office is "Did the Board member violate a rule or duty about which he knew or should have known?" *Id.* at 5. *Black's Law Dictionary* (11th ed. 2019) defines misconduct as "a dereliction of duty; unlawful, dishonest, or

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<sup>19</sup> The Respondent may have presented the ethics reports to the Local Board after the Petitioners filed their complaint with the State Board, but the Local Board dealt with the ethics complaint more than two months before the State Board issued charges on May 31, 2022.

improper behavior, esp. by someone in a position of authority or trust.” Neither party presented a Local Board or PGCPS policy defining misconduct in office.<sup>20</sup>

Having carefully reviewed the evidence, I have found that the Respondent did not violate any statute, policy, or bylaw. Her behavior in two instances may have been slightly improper, i.e., by inviting Mr. Karpinski to the June 24, 2021 executive session and delaying providing the Ethics Panel’s reports to the Local Board, but it was not unlawful, dishonest, or a dereliction of duty. The Respondent did not commit the offense of misconduct in office.

Neglect of duty means a “public officer’s failure to perform one or more duties imposed by law.” *Black’s Law Dictionary* (11th ed. 2019). The evidence does not support a finding that the Respondent failed to perform any duty imposed by law. The Respondent did not commit the offense of willful neglect of duty.

The final charge against the Respondent is incompetence. This term is generally recognized as the inability to do something that is required by one’s position. The Supreme Court of Maryland in *Bd. of Educ. of Charles Cnty. v. Crawford*, 284 Md. 245, 259 (1979) applied employment contract law, as follows: “Implicit in any employment contract is an implied promise on the part of an employee to perform his duties in a workmanlike manner.”

I am convinced by the evidence that the Appellant performed her duties competently in a distinctly hostile environment. She attempted to hold the Local Board to its duties as outlined in section 4-401 of the Education Article. The Petitioners, and sometimes other Board members, made the Respondent’s task exceedingly difficult, and she was not reluctant to battle her detractors or use the power of her position to gain outcomes she felt were desirable. The Respondent understood Local Board policies as well as or better than most of the other Board members. The Respondent did not commit the offense of incompetence.

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<sup>20</sup> Nor were definitions of willful neglect of duty or incompetence offered.

### **CONCLUSIONS OF LAW**

I conclude as a matter of law that the Respondent did not commit the offense of misconduct in office. Md. Code Ann., Educ. § 3-1002(i)(1)(ii) (2022).

I further conclude as a matter of law that the Respondent did not commit the offense of willful neglect of duty. Md. Code Ann., Educ. § 3-1002(i)(1)(iv) (2022).

I further conclude as a matter of law that the Respondent did not commit the offense of incompetence. Md. Code Ann., Educ. § 3-1002(i)(1)(iii) (2022).

I further conclude as a matter of law that the Respondent committed no offense requiring her removal from the Board of Education of Prince George's County. Md. Code Ann., § 3-1002(i)(1) (2022).

### **RECOMMENDATION**

I **RECOMMEND** that the Maryland State Board of Education dismiss the charges against the Respondent and that the Maryland State Board of Education not remove the Respondent from her position as a member of the Board of Education of Prince George's County.

March 6, 2023  
Date Proposed Decision Issued

ROC/sh  
#203037

*Richard O'Connor*

Richard O'Connor  
Administrative Law Judge

### **NOTICE OF RIGHT TO FILE EXCEPTIONS**

Any party adversely affected by this Proposed Decision has the right to file written exceptions within 15 days of receipt of the decision; parties may file written responses to the exceptions within 15 days of receipt of the exceptions. Exceptions and responses shall be filed with the Maryland State Department of Education, Maryland State Board of Education, 200 West Baltimore Street, Baltimore, Maryland 21201-2595, with a copy to the other party or parties. COMAR 13A.01.05.12K. The Office of Administrative Hearings is not a party to any review process.



**Copies Mailed To:**

Edward Burroughs

David Murray  
Prince George's County Board of Education  
14201 School Lane  
Upper Marlboro, MD 20772

Joshua Thomas  
Prince George's County Board of Education  
14201 School Lane  
Upper Marlboro, MD 20772

Kenneth Harris  
Prince George's County Board of Education  
14201 School Lane  
Upper Marlboro, MD 20772

Raaheela Ahmed

Shayla Adams-Stafford  
Prince George's County Board of Education  
14201 School Lane  
Upper Marlboro, MD 20772

Brandon F. Cooper, Esquire  
14605 Elm Street, Unit 1144  
Upper Marlboro, MD 20772

Juanita Miller  
Prince George's County Board of Education  
14201 School Lane  
Upper Marlboro, MD 20772

Sydney M. Patterson, Esquire  
MarcusBonsib, LLC  
6411 Ivy Lane, Suite 116  
Greenbelt, MD 20770

Bruce L. Marcus, Esquire  
MarcusBonsib, LLC  
6411 Ivy Lane, Suite 116  
Greenbelt, MD 20770

MarcusBonsib, LLC  
6411 Ivy Lane, Suite 116  
Greenbelt, MD 20770

Charlene Necessary  
Maryland State Department of Education  
Office of the Attorney General  
200 West Baltimore Street  
Baltimore, MD 21201

Elliott M. Schoen, Esquire  
Maryland State Department of Education  
Office of the Attorney General  
200 Saint Paul Place, 19th Floor  
Baltimore, MD 21202

Michelle L. Phillips, Administrative Officer  
(Emailed)  
Office of the Attorney General  
Maryland State Department of Education  
200 Saint Paul Place  
Baltimore, Maryland 21202  
[mphillips@oag.state.md.us](mailto:mphillips@oag.state.md.us)

<b>EDWARD BURROUGHS, et al.,</b>	*	<b>BEFORE RICHARD O’CONNOR,</b>
<b>PETITIONERS</b>	*	<b>ADMINISTRATIVE LAW JUDGE,</b>
<b>v.</b>	*	<b>THE MARYLAND OFFICE OF</b>
<b>JUANITA MILLER,</b>	*	<b>ADMINISTRATIVE HEARINGS</b>
<b>RESPONDENT</b>	*	<b>OAH No.: MSDE-BE-17-22-13962</b>
* * * * *		

**FILE EXHIBIT LIST**

The Petitioners submitted the following exhibits<sup>1</sup>, which I admitted into evidence except as noted:

- Pet. Ex. 1. Page 15 of the Maryland School Law Deskbook.
- Pet. Ex. 2. Special Board Meeting Minutes, April 28, 2021.
- Pet. Ex. 3. Removed.<sup>2</sup>
- Pet. Ex. 4. Video of Local Board meeting, April 28, 2021.<sup>3</sup>
- Pet. Ex. 5. Not admitted.
- Pet. Ex. 6. Not admitted.
- Pet. Ex. 7. Board of Education Handbook, revised November 2017.
- Pet. Ex. 8. Board of Education Policy No. 0108, amended March 21, 2017.
- Pet. Ex. 9. Board of Education Bylaw No. 9210, amended March 21, 2017.
- Pet. Ex. 10. Board of Education Bylaw No. 9270, amended September 28, 2000.
- Pet. Ex. 11. Board of Education Bylaw No. 9250, amended September 28, 2000.
- Pet. Ex. 12. Board of Education Bylaw No. 9360, amended March 21, 2017.

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<sup>1</sup> Exhibit numbers that have been omitted from these lists indicate that no exhibits with those numbers were marked for identification, offered as evidence, or admitted into evidence. The notation “not admitted” means that the exhibit was marked and either not offered as evidence or offered and not admitted. All the listed exhibits remain with the file as part of the administrative record.

<sup>2</sup> The Petitioners listed Exhibit 3 as the Special Board Meeting Minutes of June 4, 2021. However, those Minutes were admitted into evidence as Petitioners’ Exhibit 18.

<sup>3</sup> The Petitioners’ video exhibits are contained on a single USB drive.

- Pet. Ex. 13. Emails between David Murray and Roger Thomas, April 21, 2021.
- Pet. Ex. 14. Not admitted.
- Pet. Ex. 15. Emails among Edward Burroughs, Joshua Thomas, and the Respondent, April 29 to May 5, 2021.
- Pet. Ex. 16. Emails between Mr. Murray and Diana Wyles, April 23 and 24, 2021.
- Pet. Ex. 17. Email from Rosalyn Pugh to the Respondent, May 28, 2021.
- Pet. Ex. 18. Special Board Meeting Minutes, June 4, 2021.
- Pet. Ex. 19. Board Meeting Minutes, May 12, 2021.
- Pet. Ex. 20. Professional Legal Services Agreement, May 26, 2021.
- Pet. Ex. 21. Video of Local Board meeting, May 26, 2021.
- Pet. Ex. 22. Memorandum from Monica Goldson to the Respondent, undated.
- Pet. Ex. 23. Cancellation of Special Board Meeting, June 1, 2021.
- Pet. Ex. 24. Emails among Curtis Valentine, Joshua Thomas, the Respondent, and Dr. Goldson, June 1 and 2, 2021.
- Pet. Ex. 25. Video of Local Board meeting, June 4, 2021.
- Pet. Ex. 26. Video of Local Board meeting, June 24, 2021.
- Pet. Ex. 27. Board Meeting Minutes, June 24, 2021.
- Pet. Ex. 28. Not admitted.
- Pet. Ex. 29. Not admitted.
- Pet. Ex. 30. Not admitted.
- Pet. Ex. 31. Invoice, February 26, 2022.
- Pet. Ex. 32. Email from the Respondent to Aisha Berkeley, February 27, 2022.
- Pet. Ex. 33. Board of Education Policy No. 0107, amended March 21, 2017.
- Pet. Ex. 34. Not admitted.
- Pet. Ex. 35. Video of Local Board meeting, July 28, 2021.
- Pet. Ex. 36. Emails between the Respondent and Belinda Queen, November 19 and 20, 2021.

- Pet. Ex. 37. Report to the Board of Education of Prince George's County from the Ethics Panel, December 9, 2021.<sup>4</sup>
- Pet. Ex. 38. Video of Local Board meeting, December 9, 2021.
- Pet. Ex. 39. Emails among Raaheela Ahmed, Mr. Cooper, the Respondent, Ms. Queen, Shayla Adams-Stafford, and Gregory Morton, December 14 to 17, 2021.
- Pet. Ex. 40. Email from the Respondent to Andrew Nussbaum, January 6, 2022.
- Pet. Ex. 41. Not admitted.
- Pet. Ex. 42. WUSA9 article, '*Dysfunctional*' Prince George's County School Board at a Standstill, June 25, 2021.
- Pet. Ex. 43. Letter from Sarah Benson Brantley, Counsel to the General Assembly, to The Honorable Julian Ivey, March 3, 2021.
- Pet. Ex. 44. Not admitted.
- Pet. Ex. 45. Not admitted.
- Pet. Ex. 46. Email from Ms. Williams to Mr. Stewart, June 16, 2021.
- Pet. Ex. 47. Prince George's County Public Schools Purchasing and Supply Services Procedure Manual, pages 1-2 and 10-14, May 2, 2017.
- Pet. Ex 47A. Prince George's County Public Schools Purchasing and Supply Services Procedure Manual, pages 1-39 (entire document), undated.
- Pet. Ex. 48. Email from Dr. Goldson to the Respondent and Sonya Williams, September 13, 2021.
- Pet. Ex. 49. Purchase Order, June 29, 2021.
- Pet. Ex. 50. Not admitted.
- Pet. Ex. 51. Not admitted.
- Pet. Ex. 52. Emails among Mr. Morton, the Respondent, and Pamela Boozer-Strother, June 16, 2021.
- Pet. Ex. 53. Not admitted.
- Pet. Ex. 54. Not admitted.

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<sup>4</sup> The right-hand edges of most pages of this exhibit, including some text, are cut off.

- Pet. Ex. 59. Email from Bill Shelton to the Respondent, September 5, 2021.
- Pet. Ex. 60. Professional Services Contract, July 28, 2021.
- Pet. Ex. 61. Not admitted.
- Pet. Ex. 62. Emails between Mr. Burroughs and Ms. Williams, May 3, 2021.
- Pet. Ex. 63. Board Meeting Minutes, August 12, 2021.
- Pet. Ex. 66. Not admitted.
- Pet. Ex. 67. Not admitted.
- Pet. Ex. 68. Not admitted.

The Respondent submitted the following exhibits, which I admitted into evidence except as noted:

- Resp. Ex. 1. The Respondent's résumé.
- Resp. Ex. 2. Emails among the Respondent, Michele Winston, Roger Thomas, and Ms. Adams-Stafford, January 19 and 27, 2021.
- Resp. Ex. 3. Board Meeting Minutes, May 12, 2021.
- Resp. Ex. 4. Emails between the Respondent and Ms. Pugh, May 17, 2021.
- Resp. Ex. 5. Emails between the Respondent and Mr. Burroughs, May 17, 2021.
- Resp. Ex. 6. Email from the Respondent to Ms. Pugh, May 18, 2021.
- Resp. Ex. 7. Email from Ms. Pugh to the Respondent, May 21, 2021.
- Resp. Ex. 8. Special Board Meeting Minutes, May 26, 2021.
- Resp. Ex. 9. Video of part of a Local Board meeting, May 26, 2021.<sup>5</sup>
- Resp. Ex. 10. Emails among Trina Young, Dr. Goldson, the Respondent, Ms. Williams, and Mr. Cooper, June 14 and 24, 2021.
- Resp. Ex. 11. Video of part of a Local Board meeting, June 24, 2021.
- Resp. Ex. 12. Board Meeting Minutes, July 28, 2021.

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<sup>5</sup> The Respondent's video exhibits are contained on a single USB drive.

- Resp. Ex. 13. Video of part of a Local Board meeting, July 28, 2021.
- Resp. Ex. 14. Emails among Mr. Morton, the Respondent, and Ms. Adams-Stafford, September 1, 2021 and October 29, 2021.
- Resp. Ex. 15. Ethics Panel Findings of Fact, redacted,<sup>6</sup> Conclusions of Law, and Recommendations for Action, November 8, 2021.
- Resp. Ex. 19. Not admitted.
- Resp. Ex. 21. Executive Session minutes, November 18, 2021.
- Resp. Ex. 22. Board Meeting Minutes, February 24, 2022.
- Resp. Ex. 23. Board Work Session Minutes, March 10, 2022.
- Resp. Ex. 24. Local Board executive session notes, March 10, 2022.
- Resp. Ex. 25. Emails between the Respondent and Ms. Ahmed, January 11, 2021.
- Resp. Ex. 29. Video of part of a Local Board meeting, April 28, 2021.
- Resp. Ex. 30. Email from the Respondent to Mr. Cooper, July 20, 2021; letter with Billing Statement from Roger Thomas to the Respondent, July 20, 2021.
- Resp. Ex. 31. Board of Education Policy No. 3323, amended August 18, 2022.
- Resp. Ex. 33. Prince George's County Public Schools Purchasing and Supply Services Procedure Manual, pages 1-2 and 10-14, May 2, 2017.
- Resp. Ex. 35. Emails among Mr. Cooper, Dr. Goldson, and Keith Stewart, February 8, 9, and 10, 2022.
- Resp. Ex. 36. Emails between Mr. Cooper and Mr. Stewart, February 10, 2022.
- Resp. Ex. 37. Instructions for Completing Prince George's County Public Schools Consultant Contract Template.
- Resp. Ex. 39. Memorandum from Mr. Stewart to Dr. Goldson, June 21, 2022.
- Resp. Ex. 40. Procurement Selection Process Robertson's Law Group.docx, June 21, 2022.
- Resp. Ex. 42. Appendix A, covering March 18, 2021, to November 19, 2021.
- Resp. Ex. 43. Board of Education Policy No. 0109, amended November 10, 2022.

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<sup>6</sup> The names of the subjects of the ethics complaints have been redacted from all Ethics Panel reports (Respondent's Exhibits 15, 54, and 55).

- Resp. Ex. 44. Emails among Mr. Stewart, Ms. Williams, and the Respondent, May 25, 2021.
- Resp. Ex. 45. Memorandum from the Respondent and Ms. Williams to Mr. Stewart, May 21, 2021.
- Resp. Ex. 47. Email from the Respondent to Mr. Morton and Mr. Stellman, June 8, 2021; email from Ms. Pugh to the Local Board, June 7, 2021; email from Mr. Morton to the Respondent, June 8, 2021; email from Ms. Queen to the Respondent, June 8, 2021.
- Resp. Ex. 49. Emails among Tonya Wingfield, Dr. Goldson, Mr. Stewart, Ms. Williams, and the Respondent, June 7 to 15, 2021.
- Resp. Ex. 52. Purchase Requisitions for parliamentary services, August 13, 2021; September 12, 2021; October 29, 2021; and November 15, 2021.
- Resp. Ex. 54. Recommendation of Dismissal of Ethics Complaint, September 1, 2021.
- Resp. Ex. 55. Ethics Panel Findings of Fact, Conclusions of Law, and Recommendations for Action, July 23, 2021.
- Resp. Ex. 56. Email from the Respondent to Local Board members, May 21, 2021.
- Resp. Ex. 57. Board Work Session Minutes, June 10, 2021.