

IN THE MATTER OF
REQUEST FOR REMOVAL OF
LOCAL BOARD MEMBER
ARLENE TAYLOR

BEFORE THE
MARYLAND
STATE BOARD
OF EDUCATION

Opinion No. 16-26

OPINION

INTRODUCTION

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

FACTUAL BACKGROUND

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

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

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

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

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

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

The request for removal states, in pertinent part:

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

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

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

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

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

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

LEGAL ANALYSIS

Additional Materials

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

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

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

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

The Removal Statute

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

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

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

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

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

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

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

Who May Request Removal?

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

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

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

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

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

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

Whether to Initiate the Removal Process?

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

Is there probable cause to issue charges?

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

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

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

Factually sufficient

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

Legally sufficient

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

Misconduct in office

In a previous removal case, the State Board defined misconduct in office as encompassing malfeasance, doing an act that is legally wrongful in itself, and misfeasance, doing an otherwise lawful act in a wrongful manner. See *Dyer v. Howard County Bd. of Educ.*, MSBE Op. No. 13-30 (2013) (citing *Resetar v. State Bd. of Educ.*, 284 Md. 537, 560-61 (1979)). It includes “a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, [and] improper or wrong behavior.” *Id.*

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

Immorality

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

Incompetence

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

Willful Neglect of Duty

In the education context, the State Board has defined willful neglect of duty as occurring “when the employee has willfully failed to discharge duties which are regarded as general teaching responsibilities.” *Baylor v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 13-11 (2013). It is an intentional failure to perform some act or function that the person knows is part of his or her job. See *Lasson v. Baltimore City Bd. of Sch. Comm’rs*, MSBE Op. No. 15-21 (2015).

Allegations Against Board Member Taylor

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

- 1 – Violations of the Open Meetings Act, including voting on the superintendent’s contract in a closed session without informing the public and failing to disclose minutes of the meeting
- 2 – Violations of local ethics rules, including using race as the basis for her decision regarding the superintendent’s contract and not paying attention to public comments
- 3 – Behaving improperly during the March 2, 2016 meeting, including using racist language to explain her reasons for not renewing the superintendent’s contract
- 4 – Disregarding public comment and input regarding reasons for renewing the superintendent’s contract during the March 2, 2016 meeting
- 5 – Failing to have significant reasons for not renewing the superintendent’s contract and instead offering only general statements about the lack of diversity in the school system and her belief that change was needed

6 – Making threats against employees who spoke in favor of the local superintendent and suggesting principals and others who spoke in favor of the superintendent will lose their jobs in the school system

Is the complaint factually sufficient?

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

The second allegation involves violations of local ethics rules. Separate complaints have been filed with the Queen Anne’s County Board of Education Ethics Panel. The finding of ethics violations rests in the jurisdiction of the Ethics Panel. To date, we are aware of no findings that Ms. Taylor violated ethics rules. In fact, Ms. Taylor states in her response that the Ethics Panel dismissed all charges against the local board members in May. Accordingly, there is not sufficient factual support for that charge.

The third, fourth, and fifth allegations concern Ms. Taylor’s behavior during the March and April 2016 local board meetings. There is a video of the two meetings, during which she allegedly behaved improperly by using racist language, disregarded public comment, and failed to have significant reasons for not renewing the superintendent’s contract. The videos provide a sufficient factual basis to support the allegations.

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

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

At least one other removal request indicates that the people who heard these threats are afraid of losing their jobs and will not voluntarily come forward. Ms. Taylor denies making any threats.

In our view, in the absence of affidavits or other documentary evidence, a vague allegation about threats, without providing more specific information, is not factually sufficient to support the complaint.

In sum, the State Board concludes that the allegations concerning ethics violations and threats against employees are not sufficient to support the complaint. The remaining allegations are *factually* sufficient to move to the next stage in the process: a determination of whether the allegations are legally sufficient to support a charge.

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

The remaining factual allegations (violations of the Open Meetings Act, improper behavior during meetings and disregard of public comments/improper decision-making), presumed true for our purposes here, in our view do not fit the definitions of immorality, incompetence, or willful neglect of duty, as defined above. Instead, they most closely fit within the category of “misconduct in office.”

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

Open Meetings Act violations

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

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

Ms. Taylor acknowledges that the local board violated the Open Meetings Act. In her response, she argues that the local superintendent was responsible for ensuring public notice of the meetings and posting materials on the Internet. A violation of the Open Meetings Act does not automatically equate to a reasonable belief that misconduct in office occurred. In reviewing the findings of the Compliance Board, there is no indication that Ms. Taylor was individually responsible for these violations. The discussion of the superintendent’s contract was a personnel issue and the local board was permitted to discuss it in closed session. Although these violations are serious, we do not believe that this collective failure on the part of all members of the local board to follow the Open Meetings Act in this instance supports a reasonable belief that Ms. Taylor may have committed misconduct in office.

Conduct during the March 2016 board meeting

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

The requesters accuse Ms. Taylor, the board's lone African American member, of making racist comments. Those comments, in pertinent part, were:

I'm looking over the audience and I don't see many people that look like me. Now if Chris Rock can stand up at the Grammy's and say black lives matter, I'm bold enough to say it. It's important for our children to see men and women that look like them, and help them through their education. Queen Anne's County system, I told Dr. Williamson numerous times, the faith-based community had told us, just get us some Afro-American teachers. We're not asking for much. The board has turned lily white. And it's old, good ol' boys system. If I know you or your daughter then you'll outnumber somebody else and that's not fair. People have feelings and everybody should be treated fairly. Of course you want to hold on to your position. Of course you showed up tonight. But where were you months ago? Just saying that she's doing a wonderful job just because she's Dr. Carol Williamson, it had to have something going on for you to show up. Come on y'all.

Some in Queen Anne's County have interpreted Ms. Taylor's comments to mean that the superintendent's contract was not renewed because she is white. They have accused Ms. Taylor of wanting a superintendent who "looks like" her and argue that her use of the phrase "lily white" was racist.

Ms. Taylor states that she never meant the phrase "lily white" to be a racist comment. In her response, she writes: "It was said because if you were to come to [the] QAC Board Office, there are very few minorities in a position higher than an executive secretary. We have had African Americans in the position of Facilitator and Principals in the school system but they have all left their positions which makes me wonder why." Ms. Taylor explains that her comment was made during a meeting in which the audience "had assembled to call us names, insult our intelligence and be just plain rude."

We believe it was wrong for Ms. Taylor to use the phrase "lily white," regardless of her intentions. That type of language has no place in public discourse and we strongly condemn it. It is one thing for a public official to be concerned about a lack of diversity in the school system, but Ms. Taylor's use of racially divisive language was inappropriate.

Although we sharply criticize Ms. Taylor's language, we cannot conclude from her comments that she decided not to renew the superintendent's contract because the superintendent was white. While her comments can be seen as blaming the local superintendent for a lack of

diversity in the school system, at no point did Ms. Taylor state that the local superintendent needed to be African American or that the superintendent's contract was not renewed because of her race. At least one removal request recognizes this distinction by defending the superintendent's efforts to increase diversity in the school system. Taken as a whole, Ms. Taylor's comments were inappropriate but do not support a reasonable belief that misconduct in office may have occurred.

Disregarding public opinion/improper decision making

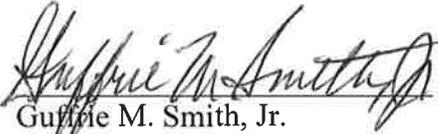
The requesters assert that their views were not considered and the decision not to renew the superintendent's contract was wrong. We point out, however, that by law the board has the power to renew or not renew the local superintendent's contract. There is no statutory requirement that the board consider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

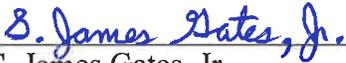
In her response to the State Board, Ms. Taylor explains that she cannot discuss the details of her decision regarding the superintendent because it is a confidential personnel matter. In general, Ms. Taylor stated that she spoke with people in the community before deciding that the school system needed to go in a different direction. Ms. Taylor maintains that she took her job as a board member seriously and that she "will not be swayed in a direction I feel the school system will not benefit."

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

CONCLUSION

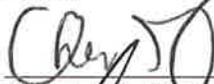
The State Board declines to issue charges because it cannot reasonably find that the removal requests against board member Arlene Taylor are factually and legally sufficient to support a charge of misconduct in office, immorality, incompetence, or willful neglect of duty. We have stated in this opinion, however, that Ms. Taylor's use of the phrase "lily white" had no place in public discourse. We strongly condemn that statement and remind board members that diversity is important but offensive race-based commentary is not appropriate.

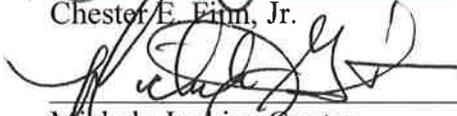

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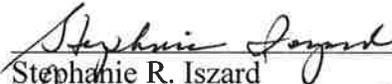
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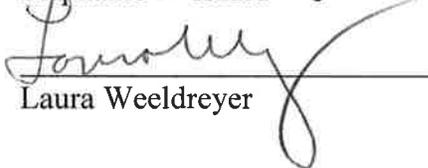

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June 28, 2016