MARYLAND STATE DEPARTMENT OF EDUCATION

IN THE MATTER OF *
MARYANN JUDY
*
SUPERINTENDENT CASE NO. 1-07
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FINAL AGENCY DECISION

On September 29, 2006, pursuant to Md. Educ. Code Ann. § 3-108, the Talbot County Board of Education (local board) filed charges against Board Member, Maryann Judy, asserting that she had committed misconduct in office. The local board requested the State Superintendent of Schools, Dr. Nancy S. Grasmick, to remove Ms. Judy from office. Upon receiving Ms. Judy's timely request for a hearing, Dr. Grasmick convened the hearing on November 10, 2006 at the Office of the Attorney General, 200 St. Paul Place, Baltimore, Maryland 21202.

Ms. Judy was represented by her sister, Angela Mastandrea-Miller, Esquire. Rochelle S. Eisenberg, Esquire represented the local board.

PROCEDURAL HISTORY

At its closed session meeting on August 30, 2006, the Board of Education of Talbot County voted six to zero to recommend the removal of Maryann Judy from the Board of Education. The recommendation was "based on a pattern of behavior exhibited by Ms. Judy throughout the last two years as a Board of Education Member." (*See* Ex. A, Charging Document attached hereto). The local board viewed her actions as "contrary to the best interests of the students of Talbot County Public Schools." *Id.* They also asserted that the amount of time staff has had to devote "handling these issues has adversely affected the true work of the School Board." *Id.*

On September 29, 2006, the local board issued the following statement of charges:

1. The Board of Education met in Closed Session on June 21, 2006, to evaluate the Superintendent of the Talbot County Public Schools ("TCPS"), Dr. Karen Salmon. This was a planned evaluation. All Board members were required to submit their comments to the Board prior to or at the Closed Session for review and discussion by the Board.

2. Board member Donna Matthews was absent, but sent her evaluation documents to the Board.

3. Board member Maryann Judy was ill at home. Board President Charles E. Carroll, Jr., called Ms. Judy a day before the meeting to ask if she wanted him to pick up her evaluation documents and bring them to the Closed Session, but Ms. Judy declined his offer. (Ms. Judy denied participating in this conversation.) Executive Assistant Judy Haddaway asked Ms. Judy on the day of the Board meeting if she wanted to make arrangements for delivery of the evaluation documents, but Ms. Judy declined her offer.

4. The Board conducted the Superintendent's evaluation and the final evaluation document was prepared by the Board on June 21, 2006, and placed in the Superintendent's personnel file.

5. The regularly scheduled Board meeting was held on July 19, 2006, at which time new officers were elected. Ms. Judy was present at the meeting but not elected as a Board officer.

6. On July 20, 2006, Ms. Judy came to the TCPS to the office of Executive Assistant Haddaway and asked for Board letterhead. As Board elections for new officers had been held the evening before, on July 19, 2006, Ms. Haddaway explained the Board stationary was out-of-date as it had the names of the former officers on it. Ms. Judy directed Ms. Haddaway to give her the stationary anyway and Ms. Haddaway complied.

7. At approximately 4:20 p.m. on July 20, 2006, Ms. Judy returned to the TCPS offices and handed Ms. Haddaway three documents: one letter addressed to Ms. Haddaway, one letter addressed to Dr. Salmon, and Ms. Judy's personal Year-End Performance Assessment of the Superintendent. The letter to Dr. Salmon was backdated to June 21, 2006, and was printed on the Board's outdated letterhead, which showed Ms. Judy as Vice President of the Board. The letter to Ms. Haddaway was dated July 20, 2006, and was also printed on the Board's outdated letterhead, which showed Ms. Judy as Vice President of the Board. Ms. Judy was no longer Vice President as of July 19, 2006.

8. Ms. Judy directed Ms. Haddaway to sign, date, and put her notary seal on a note stating Ms. Haddaway had received the documents. She directed Ms. Haddaway to put Ms. Judy's personal Evaluation and notes regarding Dr. Salmon in Dr. Salmon's personnel file and said she was going the check the file to be sure Ms. Haddaway complied. Ms. Haddaway refused. She explained that she did not work in the Personnel Department and did not have the authority to place documents in personnel files. Ms. Judy advised her she would go to the State if the documents were not placed in Dr. Salmon's file. (Ms. Judy denies threatening to go to the State if Ms. Haddaway did not comply with her demands.) Ms. Judy directed Ms. Haddaway to give the documents to John Masone and left the TCPS offices. Ms. Judy did not give copies of Ms. Judy's evaluation documents and letters to the other Board members.

9. Ms. Judy also directed Ms. Haddaway to average Ms. Judy's ratings of Dr. Salmon in the total rating of the Superintendent. Ms. Haddaway refused. She did not have the authority to engage in such action. Further, such action could not be taken because the Board decided that information and ratings not received at the June 21, 2006, Closed Session, when Dr. Salmon was evaluated, would not be averaged into the Evaluation. Ms. Judy said her ratings of the Superintendent must be averaged in. If a principal or supervisor were found to have made changes to an evaluation after the fact, as did Ms. Judy, then the principal or supervisor would be fired for altering a document.

10. The July 20, 2006, backdated letter from Ms. Judy to Ms. Haddaway erroneously stated Ms. Haddaway told Ms. Judy that her evaluation and comments regarding the Superintendent as the Board Vice President would be placed into Dr. Salmon's personnel file. This conversation never took place.

11. Ms. Judy acknowledged she printed the letters on the outdated Board letterhead on July 20, 2006. This was one month after the Board meeting when the Superintendent was evaluated.

12. Ms. Judy had demonstrated a pattern of acting outside of her authority. In the fall of 2005, she had a disagreement with the Assistant Superintendent and directed Dr. Salmon to terminate him. Ms. Judy did not have the authority to do this. Dr. Salmon refused. In September 2005, after being instructed not to become involved in a disciplinary incident involving a student because of a potential appeal before the Board of Education and the need for Board members to remain neutral, Ms. Judy nevertheless called the Supervisor of Student Services about the case. She then denied the content of her telephone message, in which she attempted to obtain information.

13. Based on the above facts and the continued pattern of behavior, it is the conclusion of the Board of Education that Ms. Judy has engaged in acts of serious misconduct and should be removed from her office. Her attempts to undermine the fair and equitable evaluation process of the Superintendent and to insert backdated documents into the Superintendent's personnel file, which have not been approved by the Board, undermines her credibility, trustworthiness, and effectiveness as a Board member. She deliberately created a document that purported to be a current Board document using out-dated Board letterhead. She deliberately backdated a letter on out-dated Board letterhead. On the day following a Board election for new officers, she deliberately created documents identifying her as the Board's Vice President on a date when she was no longer the Vice President. She deliberately directed an employee to gain access to the Superintendent's personnel file, and without the knowledge of the other Board members, or the Superintendent, insert information into the personnel file of the Superintendent. She deliberately attempted to change the rating of the Superintendent without the knowledge of the other Board members. She had misused her authority as a member of the Board of Education and is no longer trusted.

In concluding, the local board asked for the removal of Maryann Judy as a Board member "due to her acts of serious misconduct." *Id.*

Upon receipt of the charges, Dr. Grasmick issued the charging document and notified Ms. Judy of her right to request a hearing. Ms. Judy requested a hearing by letter of October 20, 2006. Dr. Grasmick conducted the hearing on November 10, 2006.

LEGAL FRAMEWORK

With the approval of the Governor, the State Superintendent may remove any member of the county board appointed by the Governor for, *inter alia*, misconduct in office.[1] Md. Educ. Code Ann. § 3-108(d). What constitutes misconduct in office in Maryland is not defined in the statue at issue. In *Public Service Commission v. Wilson*, 389 Md. 27 (2005), however, the Court

[1] This case was heard during the term of Governor Robert L. Ehrlich, Jr. Governor Ehrlich left office while the request for approval of this removal was pending. The request for approval of removal thereafter was made to Governor Martin O'Malley who has approved this action. *See* Attachment 1.

of Appeals defined the parameters of "misconduct" by reviewing court decisions in employee termination cases and unemployment compensation cases.

They concluded that:

> The term "misconduct," . . . means a transgression of some established rule or policy of the employer, the commission of a forbidden act, a dereliction of duty, or a course of wrongful conduct committed by an employee, within the scope of his employment relationship, during hours of employment, or on the employer's premises.

Id. at 77, *citing Department of Labor, Licensing, and Regulations v. Hider*, 349 Md. 71, 85 (1998).

That definition, I conclude, is applicable in this case. A review of cases involving misconduct in office supports that conclusion. Specifically, the act of wrongdoing that falls within the parameters of misconduct in office has been similarly defined in other jurisdictions. For example, misconduct is "wrongful conduct done under the color of office." *Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Commission*, 798 S.W.2d 531, 538 (1990). It is the act of "doing something which the officer ought not to do, or the failure to do something which he ought to do, in the conduct of his office." *Quinn v. City of Concord*, 233 A.2d 106, 109-110 (N.H. 1967). The act is "something which amounts to a breach of the conditions tacitly annexed to the office, and includes any wrongful official act or omission to perform an official duty." *Yoe v. Hoffman*, 59 P. 351, 355 (Kan. 1899).

Some cases describe misconduct as "unlawful behavior... in relation to the duties of his office, willful in its character." *See, e.g., Kesling v. Moore*, 135 S.E. 246, 248-249 (W. Va. 1926) (citing cases). Those cases require that the act of misconduct violate a statute or rule. *Id.* *See also, Board of Education of Prince George's County v. Waeldner*, 298 Md. 354, 357

(1984)(teacher's action in violation of the rules and policies of the County Board are misconduct); *Williams v. U.S. Dept. of Labor*, 2000 WL 3087895 (4th Cir. 2005)(unpublished) (teacher's violation of the Ethics Law and Codes of Conduct of Baltimore City Public Schools was misconduct).

The unlawful conduct need not rise to the level of criminal conduct. Indeed, the Maryland Court of Appeals in *PSC v. Wilson* made clear that the person's wrongful conduct need not be intentional. 389 Md. at 76-77. Also, in *Bunte v. Mayor of Boston*, 278 N.E. 2d 709 (MA. 1972), the court examined the intent requirement. In that case, the court concluded that "misconduct in office can be found to exist even in the absence of evil motives, moral turpitude, corrupt or criminal conduct, or intentional wrong doing." *Id.* at 711. The court explained that "it would be a disservice to the public interest for us to hold that misconduct can be proved only in terms of intentional wrongdoing, for that would place . . . a burden in some respects equivalent to that of the prosecutor in a criminal prosecution. Public employees are, and must continue to be, held to a higher standard of stewardship than merely that of refraining from criminal actions while in office. The saying, 'Public office is a public trust,' is more than mere rhetoric." *Id.* at 712.

Finally, the rules or duties violated must be of importance in the administration of the public office. Otherwise stated, the rule or duty must be important enough so that its breach renders the officer unfit to continue to hold office." *Miller v. Town of Hull*, 878 F.2d 523, 531 (1st Cir.1989); cert. denied, 493 U.S. 976 (1989); *In Re Sims*, 523 S. E. 2d 273, 281 (W. Va. 1999)

In short, it appears that a finding that Ms. Judy should be removed from office requires affirmative answers to the following questions:

(1) Did Ms. Judy violate a rule or duty of her office about which she knew or should have known?

(2) Was her conduct willful?

(3) Does her conduct demonstrate an unfitness to be a Board member?

FACTUAL FINDINGS

For the most part, the material facts of this case are not in dispute. The material facts involve three scenarios: (1) The Superintendent's Evaluation; (2) Ms. Judy's Request for Action Against an Assistant Superintendent; and (3) Student-related Issues. Each scenario is set forth below.

Superintendent's Evaluation

The Talbot County Board of Education conducts a mid-year evaluation and a final evaluation of the Superintendent. (T.112). For each evaluation, the Superintendent completes a report to the Board and each Board member completes an evaluation form setting forth his/her own personal evaluation and comments. (T. 116-122). For both the mid-year and final evaluation, the entire Board meets with the Superintendent, and each Board member discusses his/her evaluation and point scores. (T. 113, 116, 122).

The Board believes that open process is beneficial because it provides a forum for multiple opinions and concerns. (T.115). A group discussion of these concerns, as the Superintendent testified, is also an opportunity to give her feedback, ask questions, and discuss strategies. She viewed this time as beneficial to her own professional development. (T.377). After a full discussion of each area evaluated, the Board Secretary averages the numeric scores in each area and prepares one final evaluation document for signature by each Board member. (T. 122-123).

On June 20, 2006, the local board met to conduct the Superintendent's final evaluation for the 2005-2006 school year. (Board Ex. 4). Two Board members were absent, Maryann Judy and Donna Matthews. (T. 245). Donna Mathews submitted her evaluation to the Board prior to the meeting. Ms. Judy did not. (T. 245-246).

As Ms. Judy explained, on June 19, 2006, she was the victim of a violent, random assault in a restaurant where she was having coffee with her mother. (T. 445-448). She had been grabbed by the throat. Ms. Judy testified that the assailant was "trying to rip her throat out." "She was trying to kill me." (T. 446). Ms. Judy was bruised and her throat was injured. (Judy Ex. 10).

As a result of the attack, Ms. Judy stayed in bed at home all day on June 20, 2006. (T. 449). She told Ms. Haddaway she could not attend the Board meeting. (T. 36). She testified, "I really was not in good shape." (T. 450). She testified further that in her phone conversation with Ms. Haddaway, she said, "It's really important that my evaluation be included with the others." (T. 453). Mr. Carroll testified that he called Ms. Judy on June 20, 2006 and offered to pick-up the evaluation and bring it to the meeting. (T. 135). Ms. Judy did not recall that conversation. (T. 450).

The Board proceeded with the evaluation of the Superintendent without benefit of Ms. Judy's evaluation. Moreover, at that June 20, 2006 meeting, the Board decided not to accept evaluations submitted after that date. (Bd. Ex. 4; T. 174). No one, however, informed Ms. Judy that her evaluation would not be accepted late. (T. 88-90; 157-158; 457).

On or about July 13, 2006, Ms. Judy asked Ms. Haddaway, the Board Secretary, to bring Board letterhead to the July 19th meeting of the Board. (T. 27; 49). Ms. Haddaway forgot to bring the stationary. (T. 27). Ms. Judy testified that, if Ms. Haddaway had brought the stationary to that

afternoon meeting, she had intended to go home before the dinner meeting, print out the letter and hand it and the evaluation to Ms. Haddaway for the whole Board that evening. (T. 439). She explained that no one had told her that her evaluation would not be accepted. (T. 457).

On July 19, 2006, the Talbot County School Board met to elect officers. (T.15-16). Ms. Judy was present. She was not re-elected as Vice President. (T. 425-426). She commented at the time that both the President and Vice President were good choices (T. 427), but she thought the elections should be postponed until the newly elected Board was seated in January 2007. (T. 426-427).

On July 20, 2006, Ms. Judy went to the Board Secretary's office to again ask for the Board stationary she had requested on July 13, 2006. (T.16). Ms. Haddaway told her the stationary was no longer current because of the election of new officers the previous night. (T. 28). Ms. Judy reiterated her request, and Ms. Haddaway gave her the stationary.[2] (T. 28-29).

Ms. Judy returned to Ms. Haddaway's office around 4:20 p.m. on July 20, 2006. She gave Ms. Haddaway three documents, a letter to Dr. Karen Salmon, Superintendent, (Board Ex. 2) a letter to Ms. Haddaway (Board Ex. 1); and Ms. Judy's evaluation of the Superintendent. (Board Ex. 3). It was marked "Final Evaluation." (T. 455).

Ms. Judy asked Ms. Haddaway to sign and notarize the date and time she received the three documents and, Ms. Haddaway did so. (T. 29-30, 34). The letter to Ms. Haddaway was dated July 20, 2006. The letter stated in full:

Enclosed please find the Superintendent Evaluation for 2005-2006.

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[2]According to Ms. Haddaway, providing Board stationary to Board members was an unusual event, but Ms. Haddaway had given Ms. Judy stationary in the past for the Family Fun Day event. (T. 54).

> As per our phone conversation of June 21, 2006, I was not able to attend the Board Evaluation Meeting, due to health reasons. At that time, I informed you that I would give my evaluation of Dr. Salmon to you at the next meeting, with your assurance that both the evaluation and my comments as the Board Vice President will be put into Dr. Salmon's personnel file. This is a matter of serious professional import; therefore, I appreciate both your cooperation and timely compliance with this request.
>
> As always, it is a pleasure to work with you. I commend your professional work as the board secretary, and look forward to years of positive collaboration with you.

(Bd. Ex. 1)

The letter to Dr. Salmon was back-dated to June 21, 2006. Ms. Judy explained that, because the letter to Dr. Salmon "was already on the computer . . . long done," it was dated June 21, 2006, the date the evaluation had been due. (T. 444). The letter stated in full:

> Enclosed please find the Superintendent Evaluation for 2005-2006. I must laud your tireless effort and the time that you devote to Talbot County Public Schools. I know that you are always seeking to improve both the public schools, and your own professional growth; therefore; I have added some constructive comments about your administrative work for this year. We all have need for improvement, and because you have devoted much time and energy to your position as Superintendent, I want to commend you. It is in this spirit I encourage you to celebrate your successes, and to recognize your weaknesses.
>
> As always, it is a pleasure to work with you. I look forward to years of positive collaboration with you.

(Bd. Ex. 2)

Ms. Judy asked Ms. Haddaway to put the evaluation form in the Superintendent's personnel file. (T. 34). Ms. Haddaway explained that she was not authorized to do so. (T.34). Ms. Judy asked who was so authorized, and Ms. Haddaway responded that Mr. John Masone,

Assistant Superintendent, had such authority. (T.35).

Ms. Haddaway testified that Ms. Judy said "I expect you to average in my ratings." (T. 37). She also made a note that Ms. Judy told her she would "go to the State" if her evaluation was not made part of the process. (Bd. Ex. 4,T.34).

Ms. Judy testified that, when she asked Ms. Haddaway to place the evaluation in Dr. Salmon's file, she did so because she thought "all of the individual Board member's evaluations were placed in the file." (T. 455).

Ms. Judy explained that she wrote "Final Evaluation" on the document as a note to herself to distinguish that evaluation from the mid-year evaluation document. (T. 455).

Ms. Haddaway gave the letter and evaluation to Dr. Salmon (T. 381) who called the President of the local board to discuss the matter. (T. 385). The Board appointed a committee made up of Board members, Joann Asparagus, Mike Cottingham, and Allen Whitley to investigate the occurrence. (T. 176). They did so, reporting to the full Board on August 30, 2006. (T. 187-188).

Recommended Action Against Assistant Superintendent

On October 15, 2005, Ms. Judy attended a meeting of senior staff of the Talbot County School System. At that meeting, there was a discussion about recruiting persons to run for the local board. (T. 346). In that discussion, the witnesses generally agreed that John Masone, Assistant Superintendent, made a comment about the inadvisability of having "right wing evangelical Christians" on the Board. (T. 148; 346-347; 432-433). Ms. Judy explained that she was an evangelical Christian. (T. 347; 433). Mr. Masone replied "there are evangelical Christians and then there are evangelical Christians." (T. 348; 433).

Mr. Masone, in his testimony on cross, explained the context in which those statements were made. He said, "We had just finished reading a case. I think it was Charles County about some inappropriate activity by Board members who were described as right-wing Evangelical Christians." (T. 346-347). On re-direct, he explained further what he referring to when he mentioned the Charles County matter. His concern, he said, was about the litigation that can arise when Board members have a religious agenda. (T. 353-354; Bd. Ex. 11). He testified:

> A. The fact that should we have the similar kind of a problem, it would be very costly. In the sense that there's always a pro and con in the community. It would be costly in a number of ways. One, litigation, which is the financial cost. But the other is the loss of focus of the educational program that's so important for the Board as a whole.

(T. 355-356).

Because she is an evangelical Christian, Mr. Masone's comments at the senior staff meeting upset Ms. Judy a great deal. Dr. Salmon testified that Ms. Judy called her and asked her to fire Mr. Masone. (T. 371-72).

On November 1, 2005, the local board met in special session to discuss the matter. (T. 229). Ms. Joann Asparagus, Board Member, testified that Ms. Judy wanted Mr. Masone fired or some type of "formal action" taken against Mr. Masone. (T. 229-231). By the time the Board met, Ms. Judy decided that she wanted a letter of reprimand placed in Mr. Masone's personnel file. (T. 73; 83-84; 87). The local board declined to do so. (T. 434). There are intimations in the record that Ms. Judy was not satisfied with that result and considered contacting or did contact a third party concerning litigating the issue. (T. 309).

Ms. Judy testified that she never asked that Mr. Masone be fired, and specifically, that she

did not ask Dr. Salmon to fire Mr. Masone. (T. 433-434).

Student-Related Issues

One student issue is mentioned in the charging document. In September 2005, Ms. Judy became involved in a student disciplinary matter. Because such matters are often appealed to the local board to ultimately decide the case, Dr. Salmon advised Ms. Judy not to become involved and thus jeopardize her neutrality. (T.368-369).

On September 27, 2005, Ms. Judy called Lynn Duncan, Supervisor of Student Services (T. 315), and left her messages inquiring about the case. (Bd. Ex. 10). Ms. Duncan testified that, as she listened to the message, she got the feeling that Ms. Judy was "minimizing the situation." Ms. Duncan later learned that Ms. Judy had contacted other Board members to complain that "it was just a kid thing."[3] (T. 322).

CONCLUSIONS OF LAW

To determine whether Ms. Judy actions rise to the level of misconduct in office, I will address the following questions:

(1) Did Ms. Judy violate a rule or a duty of her office about which she knew or should have known?

(2) Was her conduct willful?

(3) As a result, is Ms. Judy unfit to be a Board member?

Violation of Rule or Duty

I find that there are several relevant rules and duties that apply to Ms. Judy's conduct in

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[3]The student had used his diabetic lancet to play a game. He asked students to hold out their hands, so he could tell their fortune. Instead, he stuck them with the lancet. (T.315-316).

this case. They are set forth in the Talbot County Board of Education Handbook. (Bd. Ex. 9).

First, the Rules of Ethics state:

- Support publicly all adopted and approved official actions of the Board of Education.
- Refuse to exercise authority unilaterally on school matters when the Board of Education is not in session and is not sitting as a Board.
- Refer, as appropriate, all complaints and requests to the Superintendent of Schools.

(*Id.* at 5).

The Responsibility of Members section of the Manual states that an effective member of the Board of Education will:

- Recognize fully that the Superintendent is the executive officer and is responsible for implementing and carrying out specific policies in accordance with State laws, bylaws, and local rules and regulations.
- Participate in the decision-making processes of appointing, evaluating, and reappointing the county superintendent.

(*Id.* at 7).

One of the central functions of the Board is the appointment and evaluation of the Superintendent. The Board is responsible to

- Conduct an annual evaluation of the county superintendent's professional performance;
- Share the findings of the evaluation with the county superintendent.

(*Id.* at 19).

Each of those rules is relevant to Ms. Judy's actions in this matter. They define, in part, the role of a Board member. It is the gravamen of the local board's removal request that Ms. Judy repeatedly failed to understand the parameters of her role as a Board member. They assert that

she acted or attempted to act unilaterally outside those parameters on a number of occasions. The three factual scenarios, the Board asserts, are illustrative of Ms. Judy's conduct outside the boundaries of her actual authority as a Board member. These, the local board argues, constitute misconduct. (T. 19).

As to each of the three scenarios, the local board imputes bad intent on the part of Ms. Judy. Ms. Judy, in her testimony, ascribes a more innocent intent to her actions. Determining Ms. Judy's intent and whether misconduct in office occurred in this case depends, in part, on an assessment of the witnesses' credibility.

The events surrounding the Superintendent's evaluation, in my view, are central to this case. One of the important roles of a Board member is to evaluate the Superintendent. The Talbot County Board of Education expects each member to "participate in the decision-making process of . . . evaluating and reappointing the county superintendent. (B*d*. Ex. 9). The decision-making process in Talbot County is a collective, collaborative one. The Board defines one of its Board functions to "[s]hare the findings of the evaluation with the county superintendent." (*Id*. at 19). This "sharing" occurs in the evaluation session itself, openly, with comments and feedback from the Board members. That is the process that Ms. Judy failed to follow.

The local board focused much of their testimony on Ms. Judy's actions and intent to thwart that process by: (1) using out-of-date Board stationary; (2) "back-dating" the letter to Dr. Salmon; (3) writing "Final Evaluation" across the top of the evaluation form; (4) directing Ms. Haddaway to put the Evaluation in Dr. Salmon's personnel file; (5) telling Ms. Haddaway to "average in" Ms. Judy's scores; and (6) saying that she will "go to the State" if her evaluation was not accepted. They assert that these actions were a deliberate attempt "to undermine the fair and

equitable evaluation process of the Superintendent." (Ex. A, Charging Document ¶ 13).

As to using the out-of date Board stationary, the "back-date" on the letter, and writing "Final Evaluation" across the top of the document, I believe Ms. Judy's testimony that those were not nefarious acts. (T. 486, 455, 444). I would note, however, Dr. Talbot's testimony about the "Final Evaluation" notation on Ms. Judy's evaluation form. Dr. Talbot testified that because the official evaluation by the board was not marked "Final," Ms. Judy's evaluation could have easily been mistaken as the local board's "Final" evaluation of her. (T. 383-84). Moreover, if the evaluation form had been placed in her file, as Ms. Judy had requested, Dr. Talbot might not have seen the evaluation, which contained some very negative remarks. (T. 401).

Because of the possibility there could have been confusion about which evaluation document was the final evaluation, I am most troubled by Ms. Judy's directions to Ms. Haddaway to put the evaluation document directly in Dr. Salmon's file, telling her she would check to see if that occurred, that she would go to the State if it did not, and telling her to average in her scores. I have reviewed Ms. Judy's and Ms. Haddaway's testimony very carefully. I observed them as witnesses.

I believe Ms. Judy understood the evaluation process. As set forth previously, the local board had followed a specific evaluation process to sit down together as a Board with the Superintendent and discuss each members comments and point scores, to average them at the meeting, and create one final evaluation document representing the collective evaluation of the Board as a whole. Ms. Judy, a Board member for three years, had participated in that process. (T. 127).

Although, Ms. Judy testified that she understood the collective nature of the evaluation

process (T. 463-464), her actions on their face contradict that understanding. They appear to be an independent action on her part to modify that face-to-face collective process by inserting her written evaluation alone into the file without sharing it face to face, even with the Superintendent. Ms. Judy certainly could have met with Dr. Salmon. She was in frequent communication with Dr. Salmon on a myriad of issues. She called Dr. Salmon often. (T. 389). Indeed, Dr. Salmon was in her office when Ms. Judy dropped off the evaluation form; Dr. Salmon was visible to her through the glass window. (T. 379-380). Dr. Salmon testified that "any Board member is available to come in and give me feedback at any time. And they all know that. . . If Ms. Judy wanted to contact me, she was more than able to seek me out." (T.398). In my view, Ms. Judy's failure to discuss the evaluation with Dr. Salmon or any one else, for that matter, is telling. Ms. Judy was acting unilaterally on a Board matter that she knew was to have been an open and collective Board process.

I am also troubled by the divergence in the testimony about placing the evaluation in Dr. Salmon's file and averaging the scores. Ms. Judy said in her letter to Ms. Haddaway that Ms. Haddaway had promised to put "both the evaluation and comments as Board Vice President . . . into Dr. Salmon's personnel file." (Bd. Ex. 1). Ms. Haddaway disavows ever saying any such thing. (T. 35). Moreover, Ms. Judy testified that she did not ask Ms. Haddaway to average in her scores. (T. 463). Ms. Haddaway states that she did. (T. 37).

In considering this divergence in testimony, I weigh the testimony of Ms. Haddaway as more credible than Ms. Judy's. Ms. Haddaway has been the Board Secretary for 25 years. (T. 21). She knows Board procedure and process. (T. 22). She participates in the evaluation process. (T. 126). Board witnesses testified consistently about her honesty and believability. (T. 189, 176,

192, 291). I believe that Ms. Judy directed Ms. Haddaway to place the evaluation in Dr. Salmon's file and to average in her scores. I believe that Ms. Judy knew that that is not how the evaluation process works.

In reviewing the record, it appears to me that Ms. Judy's intent on placing her individual evaluation in the Superintendent's personnel file was to express her continuing disapproval of the fact that Mr. Masone was not fired or disciplined for his comment. Even seven months after the whole Board decided not to discipline or reprimand Mr. Masone, Ms. Judy's evaluation of Dr. Salmon is vitriolic on that point. She wrote that Dr. Salmon "showed a blatant disregard for the issue," was dismissive and insensitive, showed poor judgment and "disregard for articulated bigotry." (Bd. Ex. 3).

Board members in Talbot County, under their Rules of Ethics, are to "support publically all adopted and approved official actions of the Board of Education." (Bd. Ex. 9 at 5). I recognize that the evaluation document is not a public document, but Ms. Judy's comments are in tacit disregard of that policy. Although she testified that, after the Board voted in November 2005 not to discipline Mr. Masone, "she moved on," that clearly was not the case. Her criticism of Dr. Salmon in June 2006 flies directly in the face of the Board's action and of her own testimony.

Ms. Judy's actions, I conclude, violated the Board rules prohibiting unilateral action, the rules requiring participation in the evaluation of the Superintendent, and the sharing of the findings of the evaluation with the county superintendent. In addition to the prohibition against acting unilaterally (which I believe Ms. Judy did in telling Dr. Salmon to fire Mr. Masone), the local board rules require Board members to recognize the difference between the role of the Superintendent and the role of a Board member. That incident reflects Ms. Judy's inability to

understand that distinction.[4] I conclude that Ms. Judy violated those rules, also

Where Ms. Judy Actions Willful?

I have reviewed all the letters submitted by Ms. Judy's colleagues, and I do not dispute that Ms. Judy is a committed member of her community, an accessible Board member, an advocate for children, and a dedicated worker. (*See* Judy Ex. 11). In determining the willful nature of Ms. Judy's action, I reiterate that it is not necessary to show an evil motive.

Repeated conduct, even with the best intentions, is willful and I conclude that Ms. Judy's actions herein were so. They were a manifestation of her independence which she failed to temper, even after the advice and counsel of the Superintendent and Mr. Carroll that independent, unilateral action is not the hallmark of an ethical, effective Board member. The rules say so, her colleagues told her so. She failed to understand the importance of the lessons they tried to teach her. In short, I find her actions in violation of several Board rules were willful.

Is Ms. Judy Unfit To Be a Board Member?

I understand how delicate the balance is between an active, informed and responsive Board member and one who oversteps boundaries of her role as a Board member. In weighing all the testimony, I have concluded that the evidence supports a finding that Ms. Judy overstepped

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[4] Ms. Judy also repeatedly called staff members about issues that concerned her. (T.366-367). In the testimony, the Board focused on one issue involving the discipline of a student and Ms. Judy's direct phone call to Lynn Duncan, Supervisor of Student Services Ms. Judy's understanding of the role of the Superintendent versus the role of a Board member is flawed. The Board Manual states that a member of the Board will recognize fully that the Superintendent is the executive officer responsible for implementing and carrying out school policies. (Bd. Ex. 9 at 7). Moreover, the Rules of Ethics state that the Board member should refer all complaints and requests to the Superintendent of Schools. It appears that Ms. Judy's understanding of this separation of duties was an on-going issue. (*See* Testimony of Dr. Salmon, T. 365-367).

those boundaries.[5] Not only the Superintendent, but the former President of the Board counseled Ms. Judy about her role. He told her more than once, "we can only act as a Board not individually." (T.142). He testified that he was concerned about Ms. Judy continuing on as Vice President of the Board because "she's quite independent and you really need to bring together all the members of the Board." (T.154). That quality of acting independently and individually echoed through most of the other Board witnesses' testimony. (*See, eg.*, Matthews, T.257; Asparagus, T.188),

The question remains, however, whether Ms. Judy's failure to understand her role as a Board member requires her removal. Such a finding rests on whether I consider Ms. Judy's misconduct "substantial" rather that "trivial. *See, e.g., Miller v. Town of Hull*, 878 F.2d at 531. One way to measure substantiality is to look for harm to the Board or the office or the school system. The local board has stated in its letter requesting Ms. Judy's removal that the amount of time staff has had to devote to "handling those issues adversely affected the true work of the School Board." Moreover, the local board viewed her actions as "contrary to the best interests of the students in Talbot County Public Schools." (Ex. A)

In my view, the local board's assertion of harm is entitled to great weight in this analysis because the board is in the best position to assess the impact of Ms. Judy's conduct on their functioning.

Another way to measure substantiality is to consider the importance of the rule or duties violated. *Id.* Here the substantial nature of Ms. Judy's conduct is clear. In each of the instances

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[5]Although I established at the hearing that I would make a determination based on the preponderance of the evidence, I conclude that the evidence presented meets the "clear and convincing" standard as well.

discussed here, she violated the rule that a Board member not act unilaterally on school matters. That rule is the linchpin of effective Board functioning. A Board, by its nature, functions collectively to make decisions as a group after hearing the views of all members spoken openly. Ms. Judy tried to circumvent that open, collective process by her own unilateral actions.

Ms. Judy also violated the rule that calls for each board member to understand the separation of functions between the Superintendent and the Board member. Ms. Judy, it appears crossed that boundary often. That rule is critical to the efficient operation of a school system. There can be only one executive officer who carries out Board policy, makes day to day decisions, and directs the work of her staff. A Board member who crosses the boundary between policy maker to act like the executive officer impedes the work of the Superintendent and impairs the Board member's own ability to be a neutral decision-maker when disputed issues come before the Board.

In assessing substantiality, I also give great weight to the fact that the Talbot County Board of Education voted unanimously to recommend Ms. Judy's removal. That action, I believe, underscores the substantial nature of Ms. Judy's conduct. It is, of course, not proof of misconduct, but reflects the local board's own view of the impact Ms. Judy's conduct on their proceedings.

I reiterate my view that Ms. Judy has many good qualities, but I find her actions here to be willful misconduct which disqualifies her from being a Board Member.

CONCLUSION

Therefore, for all the reasons stated herein, under the authority of the Education Article § 3-108, with the approval of the Governor, I hereby remove Ms. Judy from office this 30th day of July, 2007.

Nancy S. Grasmick
State Superintendent of Schools

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TTY USERS CALL VIA MD RELAY

July 27, 2007

Dr. Nancy S. Grasmick
State Superintendent of Schools
Maryland State Department of Education
200 W. Baltimore St.
Baltimore, MD 21201

Dear Dr. Grasmick:

Pursuant to Sec. 3-108(d) of the State Education Article, your decision to remove Maryann Judy as a member of the Talbot County School Board is approved.

Sincerely

Governor

ATTACHMENT 1

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