

EDWARD BURROUGHS,

Appellants

v.

PRINCE GEORGE'S COUNTY BOARD  
OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 11-23

## OPINION

### INTRODUCTION

Edward Burroughs, a member of the Board of Education of Prince George's County (local board), has filed an "Administrative Appeal" of the decision of the local board to censure him for unauthorized and inappropriate conduct. He also filed a Petition for Declaratory Ruling asking this Board to declare that he did not violate the local board's Policy No. 109, Policy No. 8251, Bylaw No. 9270 and ¶ 7 of Dr. Hite's Contract with the board. In response to both filings, the local board has filed a Motion to Dismiss or For Summary Affirmance. Mr. Burroughs has filed an Opposition to the Board's Motion and the local board has replied.

### FACTUAL BACKGROUND

The following material facts are not in dispute and are the facts relevant to this appeal. In November, 2010, Mr. Burrough's was elected to a two year term on the local board. He had been the student board member in the 2008-2010 school years. He was sworn in December 2010. The events surrounding this case arose shortly thereafter. Mr. Burroughs, it appears, had received a complaint in December 2010 from a parent about alleged truancy problems at High Point High School (High Point). During the January 6, 2011 local board's Executive Session, issues related to the administration of High Point were discussed. The Superintendent explained that he was going to address community concerns. (Opposition, Ex.1, ¶¶ 2-5).

Mr. Burroughs discussed the truancy matter in a private conversation with the Superintendent and another board member, Rosalind Johnson, who represents the district in which High Point is located. Both asked Mr. Burroughs to stay out of the conflict and allow them to deal with the community's concerns. (Opposition, Ex. 1, ¶¶ 6-7).

On January 7, 2011, Mr. Burroughs went to High Point at 7:00 a.m., accompanied by David Murray, his friend and an unsuccessful candidate in 2010 for the seat now occupied by Ms. Johnson. Mr. Burroughs states that he went to the high school "to investigate the truancy complaint." He says he "observed students leaving the school" which confirmed to him "the

reports of a truancy problem.” He then left the school grounds and drove to a location “where students were congregated to confirm the parent’s report of students skipping school.” (*Id.* ¶¶ 9, 12, 13).

Mr. Burroughs returned to the school at 7:40 a.m., signed the visitor’s log, exchanged pleasantries with the principal and left. (*Id.* ¶¶ 14-16).

On that same day, Superintendent Hite sent an e-mail to the local board which contained the principal’s account<sup>1</sup> of what occurred that morning :

The new school board member (young man) came to my campus this morning. He drove around the back and waved at me. I was sitting in my car as I do 3 days a week in the back making sure no students leave. I was out back and Mr. Lewis was in his cruiser. He then drove around the front and got out and approached my AP that does bus duty and said to her that students were leaving the building. That was not true. She did not know who he was so she told him he could not be driving in the bus lanes. She told him to go in a certain direction and he did not and she tried to stop him but he drove off. We had students coming to school that were going to the funeral for Bryant Morillo. They came to pick up their registration packets and we called parents to make sure they were going to the funeral. I do not think this is fair to me or my staff for this to be happening. It is getting out of control when we don’t have these mass problems.

On January 12, 2011, the local board met in Executive Session. Dr. Hite raised the issue of Mr. Burroughs’ visit to High Point. The minutes of the Executive Session reflect an inquiry and dialog with Mr. Burroughs about why his conduct on January 7<sup>th</sup> was not appropriate or professional. (Local Board’s Motion, Ex. 6, Confidential Minutes, filed under seal). Board Member, Carolyn M. Boston, made an oral motion to censure Mr. Burroughs for conducting an investigation of the truancy complaint. The board voted to censure at that meeting pending further discussion of the written resolution. (*Id.*, Ex. 6).

On January 20, 2011, the local board discussed the written motion for censure. Mr. Burroughs apparently engaged in discussion with counsel seeking citations of the exact rules, policies, or laws he had violated. (Opposition, Ex. 1 ¶ 26). After deliberation, for which Mr. Burroughs was present and had an opportunity to respond, the board voted unanimously to issue a private censure:

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<sup>1</sup>Mr. Burroughs disputes the principal’s version of events. He asserts that he arrived at the school at approximately 7:00 a.m. and observed students leaving school grounds. He says he did not see the principal until he returned at approximately 7:40 a.m.

THEREFORE, BE IT RESOLVED, that the Board of Education hereby approves the censure of Mr. Burroughs for his unauthorized and inappropriate conduct on January 7, 2011 and takes formal action to direct the Chair to deny appointment of Mr. Burroughs as a Board of Education Liaison to the Education Committee of the Chamber of Commerce through the remainder of School Year 2010/2011 (June 30, 2011), and takes further action to counsel Mr. Burroughs regarding his obligation to comply with his oath of office and all applicable State laws, regulations and Board policies. The Board of Education further admonishes Mr. Burroughs that repeated violations of confidentiality that may impair the Board's ability to function and inhibit free and open discussion at properly-closed executive sessions may constitute grounds for removal from office as determined by the Maryland State Board of Education.

(Appeal, Ex. 1).

Thereafter, this Appeal and Petition for Declaratory Ruling were filed.

#### STANDARD OF REVIEW

As to the appeal of the local board's decision to censure Mr. Burroughs, we consider that decision *prima facie* correct unless the Appellant meets his burden to show that it was arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A. As to the request for declaratory ruling, to the extent that the Appellant is requesting this Board to interpret State education law, we do so using our independent judgment standard. COMAR 13A.01.05.05E.

#### LEGAL ANALYSIS

Mr. Burroughs has filed both an Appeal and a Request For Declaratory Ruling. Because different legal standards govern their resolution, we address each filing separately.

##### **I. The Appeal**

###### *Authority of the Board to Censure*

Mr. Burrough's appeal challenges the legal authority of the local board to censure him by resolution. That authority was recognized over thirty years ago in an Attorney General's Opinion that addressed the conduct of a school board member who disclosed confidential discussions that occurred in Executive Session. The Attorney General noted that, although a local board had no statutory authority to issue fines, suspensions, expulsions or reprimands to its members, it "certainly has the power to adopt a resolution that, while having no formal legal effect as a sanction, criticizes what the Board perceives as improper conduct." 65 Op. Att'y Gen. 347, 350

(1980). We adopt that rule and reasoning here.

The private censure that the local board adopted by resolution fits the criteria set forth in the Attorney General's Opinion. It criticizes Mr. Burrough's conduct, counsels him about his obligation to comply with his oath of office, admonishes him that repeated violations may be grounds for removal, and directs the chair to deny Mr. Burroughs a certain liaison appointment. In our view, each of those actions is consistent with the concept of censure. They were within the purview and authority of the local board.

Mr. Burroughs argues that the local board's decision to censure should be reversed. We have seldom, if ever, been asked to overturn a local board's private censure of one of its members. We can think of few instances in which we would do so. Only if the private censure were an egregious abuse of discretion or were blatantly illegal or discriminatory would we consider such a course of action.

*Egregious Abuse of Discretion?*

When Mr. Burroughs went to High Point on January 7, 2011, he used his board member status to conduct an "investigation" in a unilateral manner contrary to the express directive of the Superintendent and another board member and without the imprimatur of the local board. That conduct is the essence of poor boardsmanship and Mr. Burroughs should have known that, not only from his experience as a student board member and the training he received on boardsmanship, but also because he should have been aware that at least one board member in Maryland has been removed from office for similar, albeit persistent, conduct. Specifically, in 2007, Dr. Grasmick recommended that the Governor remove MaryAnn Judy from the Talbot County Board of Education. In her written decision, Dr. Grasmick stated:

[Ms. Judy] 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 the Matter of Mary Ann Judy, Sup. Case No. 1-07.*

The Governor accepted Dr. Grasmick's recommendation and removed Ms. Judy from office.

The facts before us show that Mr. Burroughs acted unilaterally and failed to understand the separate functions of board member and Superintendent. The local board's censure was reasonable and appropriate and should serve as a learning experience for Mr. Burroughs.

*Illegal?*

Mr. Burroughs makes several arguments concerning the legality of the local board's decision. First, he asserts that the local board violated "public policy" for censuring him for performing his duties. Mr. Burroughs misunderstands the scope of his "duties" as a board member. As a single board member, he is not deputized to investigate and enforce truancy law, as his appeal appears at one point to argue. (*See Appeal at 10*). Indeed, Board Bylaw No. 9270 specifically circumscribes the authority of an individual board member. It states:

DUTIES OF OFFICERS, MEMBERS, AND AUXILIARY  
PERSONNEL

Actions by Individual Board Members

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. Individual Board members do not have any administrative control or rights of command supervision over employees of the Board of Education. The Board shall not be bound in any way by any statement or action on the part of any individual Board member, except when such statement or action is in pursuance of specific instruction by the Board.

(Appeal, Exhibit 7).

In our view, Mr. Burroughs, using his board member status, violated that Bylaw by conducting his own "investigation" into the alleged truancy problem at High Point. The local board did not violate public policy for censuring him for doing so.

Second, Mr. Burroughs argues that the local board violated his procedural due process rights because the board did not provide him with formal written notice that he would be subject to censure at the January 12, 2011 meeting. Further, he asserts he was entitled to a full

evidentiary hearing to dispute the allegations about him.

The procedural due process protections in the Maryland and United State Constitutions expand and contract depending in great part on the significance of the property or liberty interest being protected. *See, e.g., Mathews v. Eldridge*, 425 U.S. 319 (1976). If Mr. Burroughs were being removed from the board, his interest in retaining his political office would be considered significant, and full procedural due process protection would arise, *ie.*, formal notice of the charges and a full evidentiary hearing, if there were factual disputes.

In this case, Mr. Burroughs has not identified the significant interest that merits full procedural due process to protect. The censure was private and had no legal effect. The sole consequence of the censure was the loss of a committee liaison assignment. Certainly, Mr. Burroughs can claim no property interest in a committee assignment. And, as to the censure itself, Mr. Burroughs received notice of the issue at the January 12, 2011 board meeting. He had an opportunity at that meeting to be heard. Indeed, Mr. Burroughs took that opportunity and defended his actions. (*See* Motion, Ex. 6, Minutes). Moreover, he was given a second opportunity to be heard on January 20, 2011 - - the date the board voted on the written censure resolution. In our view, Mr. Burroughs received the procedural due process appropriate to protect the interests at issue.

Third, Mr. Burroughs argues that the decision to censure him violated his free speech and free association rights under the United States and Maryland Constitutions. He says he has a protected right to speak on matters of public concern and that he was "speaking out" on a matter of public concern - - truancy. If we were to adopt Mr. Burroughs' view, any action of a board member related to educational policy, no matter how much it violated board policies, would be a protected First Amendment activity. We decline to adopt that position. In our view, Mr. Burroughs was not censured for speaking out, he was censured for acting unilaterally under the guise of his board member status. He was censured for going outside the parameters of his role as a board member. The censure, in our view, did not violate the First Amendment.

## **II. Declaratory Ruling Request**


Mr. Burroughs requests this Board to declare that he did not violate specific local bylaws, policies, or contractual provisions. In the preceding section of this Opinion, we concluded that the local board's decision that Mr. Burroughs violated Board Bylaw 9270 was reasonable and that Mr. Burroughs demonstrated a lack of understanding of the role of a board member. We need not consider this matter further. We decline to issue the declaratory ruling requested.

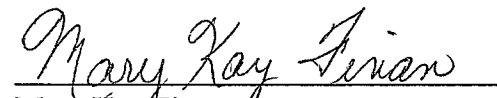
## **CONCLUSION**

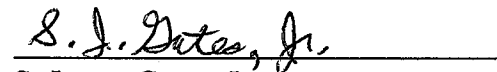
For all those reasons, we grant the local board's Motion for Summary Affirmance and


decline to issue a Declaratory Ruling.

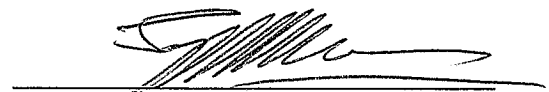
  
James H. DeGraffenreidt, Jr.  
President

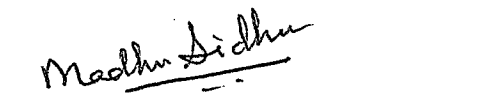
  
Charlene M. Dukes  
Vice President

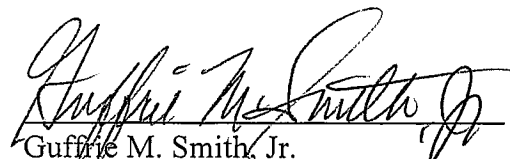
  
Mary Kay Finan

  
S. James Gates, Jr.

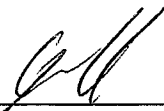
  
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April 26, 2011