



ALAN WILSON  
ATTORNEY GENERAL

December 10, 2019

The Honorable Tom Davis, Member  
South Carolina Senate  
District No. 46  
604 Gressettee Bldg.  
Columbia, SC 29201

Dear Senator Davis:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter forwards an email from Beaufort County Board of Education member JoAnn Orischak which states the following:

The Beaufort County Board of Education recently encountered an unusual situation where one of our Board members was the recipient of four district staff grievances. ... The [Board] is without a written policy which would guide us should this scenario occur again in the future. An AG Opinion would assist the Board in crafting an appropriate policy which would address district employees' grievances toward individual, elected, Board representatives.

Based on our subsequent discussion, it is my understanding that this request is not meant to broadly address whether school district employees may present claims arising out of their employment against a board of education member in a court of law. Rather, the request asks whether the Beaufort County School District Employee Grievances policy, Admin. Reg. HRS-15 April, 2017 ("Grievance policy"), is an appropriate method to resolve employee complaints against a member of the board of education.

#### Law/Analysis

Initially, it should be noted that this Office's September 30, 2019 opinion addressed the parameters of the Beaufort County Board of Education's (the "Board") authority to discipline its members. Op. S.C. Att'y Gen., 2019 WL 5089742 (September 30, 2019). Therein, we concluded as follows:

It remains this Office's opinion that the Beaufort County Board of Education does not have the authority to remove its members from office, but it may take action to express its disapproval of a member who is in violation of its standards, rules, or bylaws. See Op. S.C. Att'y Gen., 2016 WL 963697 (February 11, 2016). This Office's February 11, 2016 opinion found a county board of education does not have the authority to remove its members; it ultimately concluded that “a county board of education would not be powerless to express its disapproval of actions of a member in violation of the board's standards, rules, or bylaws.” Id. at 11. This conclusion appears to be generally consistent with the policies of the selected school districts included in Exhibit A. These policies list removal from leadership or committee positions, issuance of a warning, or censure as possible penalties for member violations. While it is this Office's opinion that the Board does not have the power to remove its members from office, members who commit certain criminal acts are subject to removal by the Governor. This Office's August 20, 1973 opinion to Governor West advised that the Governor may order the suspension of a county board of education member upon the member being indicted and may remove him from office after conviction. See 1973 S.C. Op. Att'y Gen. 270 (1973).

Id. at 5. With this explanation in mind, this opinion will examine the Grievance policy to advise whether it can be used to resolve employee complaints against a member of the Board.

The Grievance policy's stated purpose is to “resolves staff grievances as defined below at the lowest possible administrative level when an informal resolution of the situation is not possible. The BCSD shall keep all grievance proceedings as informal and confidential as is appropriate.” The policy defines grievance as:

[A] claim by one (1) or more employee(s) of a violation, misinterpretation, or misapplication of a provision of federal or state law and/or BCSD policy or Administrative Regulation as they affect the employment or work of an employee or any problem or concern an employee may have regarding employment based upon a claim of race, sex, age, or other discriminatory action.

Id. The Grievance policy directs the employee to begin the process at Level I by filing a form with the employee's immediate supervisor. Id. at 2. However, if the employee believes the grievance requires a resolution beyond the supervisor's authority, the process proceeds to Level II. Id. At Level II, the school district superintendent or his designee holds a hearing to address the grievance. Id. The Grievance policy pronounces that the superintendent's or his designee's

decision “shall be final and binding on all grievances.” Id. Finally, the Policy notes that its procedures are “not a prerequisite to the pursuit of other remedies.” Id. at 3.

There is an apparent difficulty in resolving a grievance about a board member’s conduct under the Grievance policy. The problem is that the policy places final authority for resolving the grievance with the district superintendent. The Level I procedure recognizes that some grievances may not be capable of resolution due to limitations of the supervisor’s authority. To address such a scenario, Level II elevates the grievance adjudication to the district superintendent. Such a system can undoubtedly address most grievances filed as the superintendent “serves as the executive officer of the board of trustees and the professional leader of the school district.” S.C. Code Ann. Regs. 43-161. However, a superintendent does not have authority over members of the school district board of trustees or a county board of education. The Grievance policy does not appear to anticipate grievances against board members or the superintendent because it rests final authority below the level necessary to address complaints about such persons.

To clarify, this opinion should not be interpreted to say that a school district employee cannot file a grievance against a member of the Board. The Grievance policy’s stated purpose is to resolve grievances which are defined as complaints regarding violations of law and district policy that “affect the employment or work of an employee.” Admin. Reg. HRS-15 at 1. While board members are not employees of the district themselves, they may interact with employees in a way that affects the employees’ work. For instance, school district boards of trustees are regularly required to approve or disapprove of a superintendent’s or other supervisor’s decisions regarding termination of district employees. See Toney v. Lee Cty. Sch. Dist., 419 S.C. 210, 797 S.E.2d 55 (Ct. App. 2017), reh’g denied (Mar. 23, 2017) (school district board voted to accept superintendent recommendation to terminate teacher’s employment and made findings regarding teacher’s conduct). Moreover, such approval may otherwise be imputed to the board even when it does not take official action. See Ludlam v. Sch. Dist. of Greenville Cty., 317 S.C. 509, 455 S.E.2d 177 (Ct. App. 1995) (imputing retaliatory firing by assistant superintendent to school district board of trustees). It is foreseeable that, as a result of the Board’s authority over the termination of school district employees, a Board member’s interactions with employees could lead to a grievance. The Board may seek to clarify whether it intends for the Grievance policy to apply to grievances about its members in order to provide a less expensive and time consuming procedure compared to litigation in state or federal courts. However, whether the Grievance policy is amended and, if so, what procedures are adopted is a legislative decision reserved to the Board. See State v. Blackmon, 304 S.C. 270, 274, 403 S.E.2d 660, 662 (1991) (stating that decisions regarding whether and how to amend a law are left to the discretion of legislative bodies).

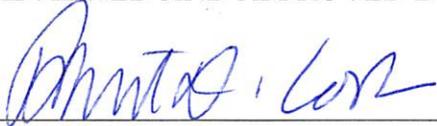
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Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew Houck", with a long horizontal flourish extending to the right.

Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook  
Solicitor General