

PROPOSED RESOLUTION NO. 2122-05

RESOLUTION OF THE BOARD OF EDUCATION OF OAK LAWN COMMUNITY HIGH SCHOOL, DISTRICT 229, TO REMOVE MEMBER ROBERT CRUZ FOR WILLFULLY FAILING TO PERFORM HIS OFFICIAL DUTIES

WHEREAS, the Board of Education of Oak Lawn Community High School District 229 (“OLCHS”), is committed to the principles of authority, ethics, and responsibility established in the Board Policy manual, in accordance with the Constitution of the United States, the Constitution of the State of Illinois, and the laws of the State of Illinois;

WHEREAS, under its statutory authority, the Board adopted Policies and Procedures, the “Policy Manual”. The Policy Manual, as amended, is in effect and was in effect at all times pertinent to the provisions of this Resolution;

WHEREAS, the School Code 105 ILCS 5/10-16.5 provides in pertinent part:

“I, (name of member or successful candidate), do solemnly swear (or affirm) that I will faithfully discharge the duties of the office of member of the Board of Education (or Board of School Directors, as the case may be) of (name of school district), in accordance with the Constitution of the United States, the Constitution of the State of Illinois, and the laws of the State of Illinois, to the best of my ability.

I further swear (or affirm) that:

I shall respect taxpayer interests by serving as a faithful protector of the school district's assets;

I shall encourage and respect the free expression of opinion by my fellow board members and others who seek a hearing before the board, while respecting the privacy of students and employees;

I shall recognize that a board member has no legal authority as an individual and that decisions can be made only by a majority vote at a public board meeting;

I shall abide by majority decisions of the board, while retaining the right to seek changes in such decisions through ethical and constructive channels;

As part of the Board of Education (or Board of School Directors, as the case may be), I shall accept the responsibility for my role in the equitable and quality education of every student in the school district;

I shall foster with the board extensive participation of the community, formulate goals, define outcomes, and set the course for (name of school district);

I shall assist in establishing a structure and an environment designed to ensure all students have the opportunity to attain their maximum potential through a sound organizational framework;

I shall strive to ensure a continuous assessment of student achievement and all conditions affecting the education of our children, in compliance with State law;

I shall serve as education's key advocate on behalf of students and our community's school (or schools) to advance the vision for (name of school district); and

I shall strive to work together with the district superintendent to lead the school district toward fulfilling the vision the board has created, fostering excellence for every student in the areas of academic skills, knowledge, citizenship, and personal development.”

WHEREAS, OLCHS District 229 Policy 2:80 Board Member Oath provides in pertinent part:

“I, (name), do solemnly swear (or affirm) that I will faithfully discharge the duties of the office member of the Board of Education of (name of School District), in accordance with the Constitution of the United States, the Constitution of Illinois, and the laws of the state of Illinois, to the best of my ability.

I shall respect taxpayer interests by serving as a faithful protector of the School District’s assets.

I will fully discharge the duties of the office of member of the Board of Education of (name of school district)”, in accordance with the Constitution of the United States, the Constitution of the State of Illinois, and laws of the State of Illinois, to the best of my ability.

I shall recognize that a Board member has no legal authority as an individual and that decisions can be made only by a majority vote at a public Board meeting.

I shall abide by majority decisions of the Board, while retaining the right to seek changes in such decisions through ethical and constructive channels.

WHEREAS, OLCHS District 229 Policy 2:80-E Board Member Code of Conduct provides

in pertinent part:

“I shall avoid any conflict of interest or the appearance of impropriety which could result from my position and shall not use my Board of Education membership for personal gain or publicity.

I shall recognize that a that a Board of Education member has no legal authority as an individual and that decisions can be made only by a majority vote at a Board of Education meeting.

I shall take no private action that might compromise the Board or administration and shall respect the confidentiality of privileged information.

I shall abide by majority decisions of the Board of Education, while retaining the right to seek changes in such decisions through ethical and constructive channels.”

WHEREAS, 720 ILCS 5/2-18 defines a public officer as:

“Public officer means a person who is elected to office pursuant to statute, or who is appointed to an office which is established, and the qualifications and duties of which are prescribed, by statute, to discharge a public duty for the State or any of its political subdivisions.”

WHEREAS, the School Code 105 ILCS 5/10-20 provides in pertinent part:

“The school board has the powers enumerated in the Sections of this Article following this Section. This enumeration of powers is not exclusive, but the board may exercise all other powers not inconsistent with this Act that may be requisite or proper for the maintenance, operation, and development of any school or schools under the jurisdiction of the board. This grant of powers does not release a school board from any duty imposed upon it by this Act or any other law.”

WHEREAS, the School Code 105 ILCS 5-10-20.20 provides in pertinent part:

“Protection from suit.

To indemnify and protect school districts, members of school boards, employers [...] **against civil rights claims and suits**, constitutional rights damage claims and suits and death and bodily injury and property damage claims and suits, including defense thereof, when damages are sought for negligent or wrongful acts alleged to have been committed in the scope of employment or under the direction of the board or related to any mentoring services provided to certified staff of the school district.”

WHEREAS, the School Code 105 ILCS 5/10-9(a) provides in pertinent part:

“Interest of Board Member in Contracts.

No school board member shall be interested, directly or indirectly, in his own name or in the name of any other person, association, trust or corporation, in any contract, work or business of the district or in the sale of any article, whenever the expense, price or consideration of the contract, work, business or sale is paid either from the treasury or by any assessment levied by any statutes or ordinances.”

WHEREAS, the School Code 105 ILCS 5/10-10(g) provides in pertinent part:

“Any school board member who violates this Section is guilty of a class 4 felony and in addition thereto any office held by such person so convicted shall become vacant and shall be so declared as part of the judgement of the court.”

WHEREAS, the purpose of the Public Officers Prohibited Activities Act, 50 ILCS 105/3 states

in pertinent part:

“to deter public officials from placing themselves in positions where their private pecuniary interests conflict or may conflict with their public official duties. *People v. Savaiano*, 66 Ill. 2d 7,15 359 N.EE. 2d 475, 3 Ill. Dec. 836 (1976); [*People ex rel. Madigan v. Bertrand*, 2012 IL App \(1st\) 111419, 978 N.E.2d 681, 2012 Ill. App. LEXIS 808, 365 Ill. Dec. 426, 2012 WL 4498910](#)

WHEREAS, the Public Officers Prohibited Activities Act, 50 ILCS 105/3(a) state in pertinent

part:

“ no person **holding any office**, either by election or appointment under the laws or Constitution of this State, may be in **any manner**

financially interested directly in his own name or indirectly in the name of any other person, association, trust, or corporation, in any contract of the performance of any work in the making or letting of which such officer may be called upon to act or vote...**Nor may any such officer take or receive, or offer to take or receive, either directly or indirectly, any money or other thing of value as a gift or bribe or means of influencing his vote or action of his official character.”**

WHEREAS, “interested, either directly or indirectly” means the interest must be financial and of a personal or private nature as opposed to a general benefit to all persons or propriety. *Panoza v. City of Rockford*, 306 Ill. App. 443, 28 N.E.2d 748 (2nd Dist. 1940).

WHEREAS, 105 ILCS 5/3-15.5 provide in pertinent part:

“If the School Board determines that a Board member has willfully failed to perform his or her official duties, it may request the Regional Superintendent to remove such member from office.”

WHEREAS, OLCCHS District 229 Board Policy 2:60, provide in pertinent part:

“if the School Board determines that a Board member has willfully failed to perform his or her official duties, it may request the Regional Superintendent to remove such member from office.”

WHEREAS, the plain meaning of “willful” means an act done deliberately or intentionally.

See *Merriam-Webster.com Dictionary*, Merriam-Webster.

WHEREAS, the term “willful” is defined as proceeding from a conscious motion of the will; intending the result which actually comes to pass; designed; intentional; See *Black’s Law Dictionary*, 2nd Edition;

WHEREAS, the term “willfulness” is defined as the voluntarily, intentional violation or disregard of a known legal duty”; See *Black’s Law Dictionary*, 9th Edition;

WHEREAS, the term “willful” is a statutory condition of civil liability, it is generally taken to cover not only knowing violations of a standard, but reckless ones as well. See, e.g., [*McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133, 108 S. Ct. 1677, 100 L. Ed. 2d 115;](#)

NOW, THEREFORE, be it resolved by the Board of Education of Oak Lawn Community High School District 229 as follows:

SECTION 1: That this Board has considered the stated Charges and Bill of Particulars, attached as **Exhibit 1**, and made a part of this Resolution; heard the evidence at the hearing on January 12, 2022 and does adopt such charges against Member Robert Cruz.

SECTION 2: That this Board finds that Member Robert Cruz failed to faithfully perform his official duties of a Board Member and violated his Board Member Official Oath of Office, multiple times, as specified in the School Code, 105 ILCS 5/10-16.5 and the Charges and Bill of Particulars.

SECTION 3: That this Board finds that Member Robert Cruz violated OLCHS District 229 Board Policy 2:80, Board Member Oath of Office and 2:80-E Exhibit, Board Member Code of Conduct.

SECTION 4: That this Board finds that Member Robert Cruz became an “interested” member violating the Public Officers Prohibited Activities Act, 50 ILCS 5/3(a) and the School Code, 105 ILCS 5/10-9, and OLCHS District 229 Policy 2:70, when he sued the School District and asked to recover attorney fees and costs against the School District.

SECTION 5: The Board declares, and finds, that Board Member Robert Cruz violated his Official Oath of Office, as set forth above, and request that the Regional Superintendent remove Board Member Cruz for willfully failing to perform his official duties, effective immediately.

SECTION 6: That this resolution shall be in full force and effect upon its adoption.

ADOPTED this ____ day of _____, 2022, by the following roll-call vote:

BOARD MEMBER	AYES	NAYES	ABSENT	ABSTAIN
Robert Loehr, President				
Matthew Egan, Vice President				
Judy Ott, Secretary				
Timothy Burke				
Mark Stanislawek				
Robert Cruz				
Edward Wolf				

APPROVED:

President, Board of Education

ATTEST:

Secretary, Board of Education

Exhibit List

Exhibit 1: Charges and Bill of Particulars