

STATE OF NEW YORK
STATE EDUCATION DEPARTMENT

_____x

Appeal of D.Z. from proposed action of the
BOARD OF EDUCATION OF THE TUXEDO
UNION FREE DISTRICT

AFFIDAVIT IN OPPOSITION
TO STAY ORDER

_____x

STATE OF NEW YORK)
) ss:
COUNTY OF DUTCHESS)

GARY LEE HEAVNER, being duly sworn, subject to the penalty of perjury,
deposes and says:

1. I am a member of the Board of Education of the Tuxedo Union Free School District, the Respondent herein, having been elected to this office for a term commencing on July 1, 2021.
2. On September 24, 2021, I, along with four other members of our seven member Board of Education, voted to prefer two charges of Official Misconduct against Board Member, Dorothy Ziegelbauer (as reflected in the minutes of the Board of Education meeting (annexed hereto as Exhibit A) and as set forth in a Notice of Hearing with statement of charges document (see Exhibit B annexed hereto and Exhibit B to the Affidavit of Dorothy Ziegelbauer dated October 13, 2021), that I understand had been served on Ms. Ziegelbauer on October 1, 2021, more than ten days prior to the first day of the hearing called for in the notice document.
3. The hearing at issue is predicated upon Education Law §1709(18) and, as stated

in the Notice of Hearing, also gave notice of Board Policy No. 1301 (annexed hereto as Exhibit C) underscoring that there was a typographical error in the resolution calling for the Education Law §1709(18) hearing.

4. Apart from being a duly elected member of the Respondent, I am also an attorney admitted to the practice of law in New York State, understanding that the vote to bring the charges against D.Z. was similar to that of a probable cause finding to proceed to a hearing.
5. It was my understanding that the charges against Ms. Ziegelbauer regarding disclosing executive session content critical to labor negotiations with the District's teachers' bargaining unit (the Tuxedo Teachers' Association) was very similar to the factual contours in other cases previously adjudicated before the Commissioner of Education in which a board of education member had been removed from office.
6. By seeking a stay of the Respondent's hearing, the Petitioner seeks to shift the fact-finding process from the local school district level to the Commissioner of Education, in derogation of the statutory scheme of the Education Law, that would functionally negate Education Law §1709(18).
7. With regard to Petitioner's objection to Board President Daniel Castricone serving as a decision maker regarding the two charges brought against the Petitioner, she makes allegations of personal animus and retribution against her by Mr. Castricone, focused on events that occurred in an executive session of the Board of Education at a meeting held on July 8, 2021.

8. The Petitioner also relies heavily upon the report issued to the Respondent Board of Education by Margaret Muenkel, that focused in large part on matters stated and discussed in executive session on July 8, 2021 by the board members, including Mr. Castricone, yet failed to call for its production for review by the Commissioner regarding her allegations against Mr. Castricone and its relevance to the import of the second charge against her.
9. Based upon my recollection of the contents of the Muenkel Report, its factual review and conclusions paint a very different picture of Mr. Castricone's words and actions than those in the Petitioner's accusations and whether or not he may rightly serve as an adjudicator in the present Education law §1709(18) hearing. An *in camera* review of the Muenkel Report by the Commissioner would seem to be warranted before any decision should be made to stay the pending proceedings based upon his participation.
10. The Petitioner chose not to present a complete factual account to the Commissioner in demanding the recusal of Board President Castricone from the Education Law §1709(18) proceedings against her.
11. For the reasons stated above, the Commissioner should not issue a stay of the proceedings and should permit the proceedings against the Petitioner to proceed

forward to conclusion.

Dated: Poughkeepsie, New York
October 16, 2021



GARY LEE HEAVNER

Sworn to before me this 16nd
day of October, 2021



Notary Public

David S. Shaw
Notary Public, State of New York
No. 02SH6170095
Qualified in Dutchess County
My Commission Expires 10/13/2019

EXHIBIT A

**Agenda Item Details**

Meeting Sep 24, 2021 - Special Meeting Agenda

Category 3. Executive Session

Subject 3.3 Possible Action from Executive Session

Type Action

Motion & Voting

BE IT RESOLVED that the board hereby appoints Carol M. Hoffman, Esq. to conduct a hearing pursuant to District Policy 1315 and Education Law Section 1709(18) regarding two charges of Official Misconduct against school district officer No. 092421 as presented to the Board at this meeting; and

BE IT FURTHER RESOLVED that the hearing officer shall arrange for a transcript of said proceedings and be paid at the hourly rate of \$250 for her hours of service as hearing officer.

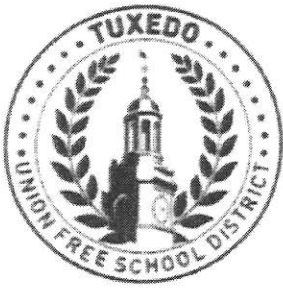
Motion by Gary Heavner, second by Lucy Cerezo Scully.

Final Resolution: Motion Passed

Yes: Daniel Castricone, Lucy Cerezo Scully, Bill Givens, Gary Heavner, Alyssa Horneff

No: Joe Rickard, Dorothy Ziegelbauer

EXHIBIT B



TUXEDO UNION FREE SCHOOL DISTRICT

Ms. Dorothy Ziegelbauer
39 Maple Brook Rd.
Tuxedo, New York 10987

**RE: SECTION 1709(18) EDUCATION LAW CHARGES
Board of Education Member Dorothy Ziegelbauer (District Officer No. 092421)**

Dear Ms. Ziegelbauer:

PLEASE TAKE NOTICE that a hearing will be held by the Board of Education on October 15, 2021 at 9:00 am at the District's Administrative Offices located at 1 Tornado Drive, Tuxedo New York, pursuant to Tuxedo Union Free School District Policy 1301 and Education Law Section 1709(18), for the adjudication of charges of Official Misconduct regarding your actions as a Board Member, that were voted upon by the Board of Education at a meeting held on September 24, 2021. The hearing will be before the Board and conducted by Carol Hoffman, Esq. A transcript of the proceedings will be prepared and you will be furnished with a copy of the same at District expense. You may be represented at the hearing by legal counsel or other representative of your choice and you shall have the right to present witnesses and cross-examine witnesses called by the District.

CHARGE I – OFFICIAL MISCONDUCT

In that on or about August 9, 2021, Dorothy Ziegelbauer revealed, without authorization, by email, confidential information about the District's negotiations position in bargaining with the Tuxedo Teachers' Association ("TTA"), that she learned of in a duly convened Board of Education executive session held on July 28, 2021. Such revelation was made to the TTA's New York State United Teachers bargaining representative Carienn Broderick.

CHARGE II – OFFICIAL MISCONDUCT

In that on or about September 15, 2021, Dorothy Ziegelbauer was issued a confidential report prepared by Board appointed investigator, Margaret Muenkel, regarding an alleged breach of confidential personally identifiable student information that was reviewed in executive session and to be collected back from each member of the Board to protect the privacy rights of those individuals identified in the Report. Ms. Ziegelbauer refused to return the report at the meeting and refuses to return the report to date.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristine DiFrancesco".

Ms. Kristine DiFrancesco,
District Clerk

cc: Board of Education Members
Carol Hoffman, Esq.