

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 SCHOOL DISTRICT

**Notice of Petition  
and Verified Petition**

-----X  
**Notice of Petition:**

**You are hereby required to appear in this appeal and to answer the allegations contained in the Verified Petition. Your answer must conform with the provisions of the regulations of the Commissioner of Education relating to appeals before the Commissioner of Education, copies of which are available at [www.counsel.nysed.gov](http://www.counsel.nysed.gov) or from the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.**

**If an answer is not served and filed in accordance with the provisions of such rules, the statements contained in the petition will be deemed to be true statements, and a decision will be rendered thereon by the commissioner.**

**Please take notice that such rules require that an answer to the petition must be served upon the petitioner, or if the petitioner be represented by counsel, upon the counsel, within 20 days after the service of the appeal, and that a copy of such answer must, within five days after such service, be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234.**

STATE OF NEW YORK  
STATE EDUCATION DEPARTMENT

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

**Petition**

-----X  
**Please take further notice that the within Petition contains an application for a stay order. Affidavits in opposition to the application for a stay must be served on all other parties and filed with the Office of Counsel within three business days after service of the petition.**

**The Petitioner and Parties**

1. Petitioner, a duly elected trustee on the Tuxedo Board of Education and served without incident and with selfless services since 2016. She served as the President of the Board of Education during the 2020-2021 school year. Her current term on the school board ends 6/30/2022. Petitioner has set forth relevant facts and exhibits in an Affidavit, dated October 13, 2021. (Petitioner Affidavit).
2. This Petition seeks a stay of a Board of Education hearing scheduled for October 15, 2021 at 9:00 a.m. and purported to be scheduled pursuant to New York Education Law §1709(18) and Policy 1315, as set forth in the Resolution.
3. Petitioner seeks that the Commissioner adjudicate dismiss the Charges, pursuant to Education Law 306.

**IMPROPER NOTICE OF CHARGES**

4. As described below, the Board of Education voted on Charges against Petitioner on September 24, 2021. The Resolution, as set forth in Exhibit A to Petitioner Affidavit, stated:

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

5. The Charges are legally insufficient and do not provide appropriate notice of any alleged official misconduct. The Charges that the Board initiated and voted on, on September 24, 2021, reference a non-existent District Policy 1315, which has not been adopted by the Board of Education and which does not exist on the District website, Board binder or in BoardDocs.

#### **CHARGES FAIL TO ALLEGE SUFFICIENT GROUNDS FOR REMOVAL**

6. Petitioner received a Notice of Board Charges posted to her door, the afternoon of October 1, 2021. *See Exhibit B, Petitioner Affidavit.*

The Charges state:

#### **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.*

7. As set forth herein, and in the Affidavit of Petitioner, the charges do not meet the standards set forth in New York Education Law §1709(18) or §306.
8. Petitioner answered the charges through counsel on October 12, 2021, and denied each and every charge. *See* Petitioner Affidavit, Exhibit C.
9. Petitioner cannot attend the proposed Board of Education hearing on October 15, 2021 due to a prior and unavoidable obligation and respectfully requested adjournment. Exigent circumstances here necessitated this postponement. Counsel requested this adjournment on October 7, 2021 to counsel and on October 11, 2021, Counsel for the Board indicated the Board was denying the adjournment.
10. Petitioner, though Counsel, requested adjournment from the arbitrator, Ms. Hoffman, but Ms. Hoffman, in a zoom conference on October 12, 2021, indicated that she lacked authority to order such adjournment.
11. Based on the information herein, Petitioner submits that the Board cannot fairly and impartially adjudicate this request and requests that the Commissioner stay such hearing scheduled for October 15, 2021 and hold a hearing pursuant to Education Law §306.

**Requested Recusal of Board President DC from Adjudication**

12. The Charges against Petitioner are inextricably linked to Charges that the Board preferred against the current Board President Mr. Castricone (DC) on June 18 2021 for the release of confidential information. *See* Exhibit D to Petitioner Affidavit.
13. By way of background, at the Board Reorganization meeting on July 8, 2021, Daniel Castricone, Esq was voted in as the new Tuxedo Union Free School District Board President. After the Reorganization Meeting, the Board convened for a scheduled Executive Session meeting for the purpose of obtaining legal advice from counsel on the charges the Board had

filed for misconduct and a confidentiality breach against Mr. Castricone in or about June, 2021. The three new Board Members (who were appointed July 1, 2021) had no prior knowledge of these charges.

14. Petitioner informed DC the topic of the meeting was the charges against him and the Board's discussion with counsel to receive legal advice. Petitioner asked DC to exit the executive session.
15. DC then disclosed confidential information about Petitioner's child (referencing the question on the Safety Net applicable to students, and applicability of it to a failing grade in a course), which he had inappropriately obtained, to the Board, the Superintendent Mr. Jeffrey White, and District Counsel David Shaw, Esq.
16. While DC is a school official, he was not using this information for a legitimate educational purpose, but to intimidate Petitioner and her family. In so doing, he inaccurately depicted information in the records and spread falsehoods and defamatory information about Petitioner.
17. Specifically, DC alleged that Petitioner colluded with the Director of Special Education to ask that the Student's grades be changed. He also threatened to disclose the confidential information and untrue defamatory remarks against Petitioner and the family in his public misconduct hearing scheduled for July 29<sup>th</sup> (which DC requested be held in public), should the Board vote to continue to move forward with the misconduct charges against him.
18. In short, the Board member DC utilized personal and confidential information about Petitioner's child, a student with a disability, for his personal gain by influencing the Board's decision on whether or not to move forward with DC's Board of Education hearing. The Board had scheduled a hearing on charges against DC for July 29<sup>th</sup>, 2021.

19. At the July school board meeting held on July 28<sup>th</sup>, 2021, the Tuxedo Board of Education officially voted to drop the misconduct charges against DC, although the three new Board Members were never provided knowledge of what the charges contained prior to voting to drop the charges.
20. DC, as a Board Trustee, had a fiduciary duty to protect the use of confidential information. His inappropriate use of confidential information and failure to adhere to essential fiduciary obligations as Board Trustee, violated Petitioner's child's rights, the Family Educational Rights and Privacy Act ("FERPA"), and the Individuals with Disabilities Education Act ("IDEA"), as well as Board of Education obligations.
21. On or about July 20, 2021, Petitioner requested an investigation into the release of confidential information by DC. Exhibit E to Petitioner Affidavit. On July 20, 2021, through counsel, Petitioner requested an investigation conducted by an independent third party to determine when and how confidential student information on her child – that was discussed in the context of a Special Education meeting with District special education staff and the Guidance Counselor – was leaked to the current Board President, and by whom.
22. Petitioner also requested to receive a copy of the final report by the independent investigator and to be advised what personnel action (if any) would be undertaken by the District in this matter.
23. In or about August 2021, the Board voted to hire an independent consultant, Margaret Muenkel, to investigate the above-referenced claims.
24. On September 15, 2021, Petitioner and other members of the Board, during executive session, received a copy of the Report by Margaret Muenkel ("Muenkel Report"). Before the Muenkel Report was distributed to the Board, there was no description of what was being distributed,

and Petitioner never agreed to return it. Pursuant to the General Municipal Law § 805-a(1)(b), while school board members may not disclose confidential information acquired by them in the course of their official duties, the law does not require any return of documents. Prior to distribution, Superintendent White did not identify what was being shared.

25. Upon receipt of the report, Petitioner reviewed it. She required retention for further review.
26. Upon Mr. Shaw's request for return of the Muenkel Report on September 23, 2021, counsel for Petitioner responded that she respectfully declined to return the Muenkel Report but would keep it confidential.
27. Counsel submitted that Petitioner's decision to retain the Muenkel Report did not violate her obligations and asked for any contrary information but received no response.
28. On September 24, 2021, the Board of Education held a special meeting to vote to prefer charges on Petitioner. *See Exhibit A to Petitioner Affidavit.*
29. The charge related to the Muenkel report is inextricably linked to Board President's DC's conduct and he has demonstrated retaliation against Petitioner and her family.
30. The Board President is named in the report and there are allegations about his actions in the report.
31. Accordingly, given his history and the personal animus he has shown to Petitioner and her family, he cannot be an objective adjudicator or trustee to vote on the alleged charges against Petitioner.
32. At a minimum, insofar as Charge 2 is involved, the Board President is directly involved and named in the referenced Muenkel Report and, as indicated by past charges, he harbors a certain adverse animus towards Petitioner and he should be disqualified from participating in the

determination of that charge. The record here further indicates that this animus may carry over to consideration of the other charges.

33. In *Komyathy v. Bd. of Ed. of Wappinger Cent. Sch. Dist. No. 1*, 75 Misc. 2d 859, 867, 348 N.Y.S.2d 28 (Sup. Ct. 1973), the Supreme Court disqualified a board member from participating in proceedings based on this animus.

34. Petitioner asks that the Commissioner stay the proceeding until such time as a full deliberation on the Board membership to hear the charges may convene.

35. For the foregoing reasons, Petitioner seeks an order removing DC from the proceedings or at minimum, a stay of the proceeding, pending any further information and investigation.

36. We further request that the Commissioner set ground rules and standards for the hearing.

#### **COMMISSIONER'S STANDARDS REQUIRING WILFUL AND SUBSTANTIAL MISCONDUCT MUST BE APPLIED**

37. Removal of a board member constitutes a "drastic step" and hearings on removal must safeguard "basic constitutional rights" *Komyathy v. Bd. of Ed. of Wappinger Cent. Sch. Dist. No. 1*, 75 Misc. 2d 859, 864, 348 N.Y.S.2d 28 (Sup. Ct. 1973). Indeed, in determining whether a board member is to be removed a mere technical violation of applicable rules is insufficient; the violation must be substantial and wilful. *Komyathy*, 75 Misc. 2d at 869; *See also Appeal of Lamont E. Johnson*, 57 Ed Dept, Decision No. 17263, 2017 WL 6049385 (2017) (Commissioner annulled Board's determination to remove petitioner for official misconduct)

38. Thus, while New York Education Law § 1709(18) permits a Board of Education to remove a member for official misconduct, the Commissioner's requirement that alleged official misconduct must be "substantial and wilful"<sup>1</sup> must control these proceedings.

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<sup>1</sup> The spelling of "wilful" is in conformance with New York Education Law §306, which allows the Commissioner to remove public officers for any "wilful violation or neglect of duties."



39. To be considered wilful, such acts must have been intentionally done with a wrongful purpose to disregard a lawful duty or violate a legal requirement. *See, e.g., Application of Hazel Snader*, Decision No. 12,634 (Jan. 13, 1992); *People v. Skinner*, 37 App. Div. 44 *aff'd* 159 N.Y. 162 [1899]; *Application of Gellatly*, 30 Ed Dept Rep 10. The Charges do not meet this standard.

**CHARGE I DOES NOT ON ITS FACE SHOW WILFUL MISCONDUCT**

40. Petitioner repeats every allegation as though set forth herein.
41. Petitioner has denied each and every allegation in Charge I, except admits that she inadvertently sent an email on August 9, 2021, intended for the Superintendent.
42. On August 9, 2021, Petitioner was intending to draft an email to Mr. White, but inadvertently replied to an email chain that included a union representative.
43. After the email, Petitioner explained that she had not intended to include the union representative nor to release any information on union negotiation.
44. In addition, there was no demonstrated release of any substantive confidential information, upon information and belief. The Board President and the Board were aware that such email was inadvertent and there was no intentional release of confidential information, but just an inadvertent email mistake, which Petitioner explained. Her inadvertent disclosure accordingly does not constitute a wilful violation. *See Exhibit F to Petitioner Affidavit.*

**CHARGE II DOES NOT ON ITS FACE SHOW WILFUL MISCONDUCT**

45. Petitioner repeats each and every allegation above as set forth herein.
46. Petitioner has denied each and every allegation of Charge II.
47. There has been no violation of New York Education Law §1709(18) or Education Law §306.
48. Petitioner has kept the Report by Margaret Muenkel of September 15, 2021 (“Muenkel Report”) confidential.

49. On September 15, 2021, Petitioner and other members of the Board, during executive session, received a copy of the Muenkel Report. Before the Muenkel Report was distributed to the Board, there was no description of what was being distributed, and Petitioner never agreed to return it. Pursuant to the General Municipal Law, while school board members may not disclose confidential information acquired by them in the course of their official duties, Gen. Mun. Law § 805-a(1)(b), the law does not require any return of documents. Prior to distribution, Superintendent White did not identify what was being shared.
50. Upon receipt of the report, Petitioner reviewed it. She required retention for further review. Upon Mr. Shaw's request for return of the Muenkel Report on September 23, 2021, counsel for Petitioner responded that she respectfully declined to return the Muenkel Report but would keep it confidential. There was no response beyond the Charges.
51. Charge II lists purported *privacy rights of those individuals identified in the Report* as a reason that Petitioner must return the Muenkel Report. While the Muenkel Report was discussed in executive session, as noted, Petitioner has not disclosed it and there is no allegation that she has released it. However, it is important to note that the Muenkel Report does not contain invasive private confidential information on District employees, such that any disclosure would constitute an unwarranted invasion of personal privacy. In general, "public officers and employees enjoy a lesser degree of privacy than others, for it has been found in various contexts that those individuals are required to be more accountable than others. The courts have found that, as a general rule, records that are relevant to the duties of those persons are available, for disclosure in such instances would result in a permissible rather than an unwarranted invasion of personal privacy." *See, e.g.,* FOIL-AO-17794. New York Public Officers Law § 89(2)(b).

52. Pursuant to General Obligations Law and Public Officers' Law, Petitioner had no obligation, duty or responsibility to return the Muenkel Report to the Superintendent following the conclusion of the executive session and Charge II fails to identify any valid basis for such an obligation.
53. The District retained Mrs. Muenkel and paid for the report, perhaps, in order to provide each member of the Board with information relevant to the performance of their duties as trustees. The potential value of that information to Board Members does not end after 20 or 30 minutes of discussion in executive session and every trustee may hold on to and retain that information following a closed session so long as they protect the confidentiality of the information and any privacy issues related to District employees. Allowing trustees to depart with the information for later consideration, if they wish to do so, better ensures their ability to conduct duties responsibly and diligently with accurate information.

#### **AFFIRMATIVE DEFENSES**

54. The Charges both fail to state sufficient grounds for official misconduct or removal of a Board Member. There is no allegation that Petitioner released confidential information in violation of General Municipal Law §805-a(1)(b) and indeed she has not done so and any inadvertent disclosure on alleged union issues are not wilful.
55. The Charges represent further discriminatory and retaliatory conduct against Petitioner and compound the Board President's past actions in releasing false information about the Parent. The actions impeded her child's right and access to services, as the Parent was reluctant to share any confidential information with the District. The Board charges only further demonstrate this retaliation and harassment of Petitioner who has been addressing the needs of

her child in a medical crisis, of which, upon information and belief, the Superintendent is aware. This violates her rights and her child's federal civil rights.

#### **REQUEST FOR ADJOURNMENT AND SAY**

56. Petitioner has requested a reasonable adjournment of these proceedings for good cause and multiple reasons and the Board has denied this. Petitioner now requests a stay, pending Commissioner review.

57. Petitioner, a faithful public servant, has demonstrated the need for the stay and adjournment of the proceeding, as well as a meritorious claim. In order to receive due process and any semblance of a fair hearing, Petitioner requires a Stay of the hearing on Friday, October 15, 2021 or she will suffer irreparable harm and a loss of reputation and emotional distress. Counsel for Petitioner reached out to District counsel and the appointed hearing officer on October 13, 2021, on the lack of a fair process or procedures. *See Exhibit G, Petitioner Affidavit*

#### **RESERVATION OF RIGHTS**

58. Based on the foregoing and upon receipt of and all records and information related to this matter, which Petitioner has never received, the Petitioner reserves all rights to provide additional claims, legal arguments or allegations, as well as to respond to Respondent's papers. Petitioners also reserve the right to, and shall, submit a Memorandum of Law.

#### **Relief Requested**

WHEREFORE, Petitioner respectfully requests:

1. That the proceeding be stayed for at least 30 days, to allow the Commissioner to review the matter;
2. That the Commissioner grant consent, pursuant to Education Law §306 to hear the proceeding or,

3. That, in the event, that the Commissioner does not hear the proceeding, that the Commissioner order the recusal and disqualification of the Board President from any proceeding;
4. That the Commissioner provide guidance on the proper hearing standard and procedure to be utilized before the Board.
5. Any such other relief as the Commissioner deems just and proper.

Dated: October 13, 2021  
White Plains NY

Respectfully submitted,  
*/s Marion M. Walsh*

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**Littman Krooks LLP**  
Marion M. Walsh, Esq.  
Attorneys for Petitioner  
399 Knollwood Road, Ste. 115  
White Plains, New York 10603  
(914) 684-2100

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 SCHOOL DISTRICT

**Verification**

-----X  
STATE OF NEW YORK           (  
  ss.:  
COUNTY OF ORANGE         (

Dorothy Ziegelbauer being duly sworn, deposes and says:


1. I am Petitioner DZ herein and am a duly elected trustee of the Board of Education of the Tuxedo Union Free School District.
2. I have read the annexed Petition and supporting papers and personally know the contents thereof and affirm that the same is true to my knowledge based on, *inter alia*, review of the records, attendance at meetings and review of all files with those referenced

Respectfully submitted,

  
Dorothy Ziegelbauer

Subscribed and sworn to before  
me this 13<sup>th</sup> day of October, 2021

VALENTIN A ARROYO SR.  
NOTARY PUBLIC  
STATE OF NEW JERSEY  
ID # 50090801  
MY COMMISSION EXPIRES SEPT. 26, 2023

  
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(Signature of notary public)

