

TUXEDO UNION FREE SCHOOL DISTRICT

**In the Matter of Proceedings Brought Pursuant
to Education Law §1709(18) by the**

**BOARD OF EDUCATION OF THE TUXEDO
UNION FREE SCHOOL DISTRICT,**

The Board,

-against-

DOROTHY ZIEGELBAUER,

Respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Two (2) charges of Official Misconduct have been brought against Board of Education member Dorothy Ziegelbauer in proceedings that were authorized to be conducted pursuant to Education Law §1709(18), as set forth in Joint Exhibit 2 as follows:

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 (“NYSUT”) bargaining representative Cairenn 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 has refused to return the report to date.

The hearing was conducted by Hearing Officer Carol M. Hoffman, Esq., who was appointed by Board of Education Resolution, dated September 24, 2021. In conducting the hearing, the Hearing Officer made rulings regarding the admissibility of evidence and objections to witness testimony. She, alone, was the decision maker with respect to such rulings. Each party was given a full opportunity to present witnesses and cross-examine witnesses. A transcript of the proceedings was prepared by a court-stenographer. The evidentiary standard under which the charges have been adjudicated is proof by a preponderance of the credible evidence.

CHARGE I

**REVEALING CONFIDENTIAL LABOR RELATIONS
INFORMATION TO THE CHIEF NEGOTIATOR FOR THE
TUXEDO TEACHERS’ ASSOCIATION**

FINDINGS OF FACT

The Respondent is guilty of Charge I as written, based upon the preponderance of the credible evidence presented at the hearing held on October 15, 2021 and November 4, 2021. The documentary evidence and testimony of Superintendent of Schools Jeffrey White, Consultant Tony Olivo, Board members, Alyssa Horneff and Joe Rickard all provided credible evidence that the Respondent prepared and sent an email dated August 9, 2021 to NYSUT Labor Relations Specialist Cairenn Broderick. The email in question contained confidential labor relations strategy

information that Respondent received in a duly constituted executive session and related to the Tuxedo Teachers' Association negotiations. Said information was obtained by the Respondent in a duly convened executive session of the Board of Education held on July 28, 2021. (Exhibit D-6 and R-F). The issuance of the email at issue could not have been sent by a simple mistake, but required the Respondent to willfully enter addresses, in addition to that of Cairenn Broderick, whose name appeared above those addressees which the Respondent added to the email prior to sending it. This circumstantial evidence has led the Board to find the Respondent to lack credibility in her assertion that this was an inadvertent error and/or that she did not notice Ms. Broderick's email address on the email as the primary intended recipient. As a result of the willful nature of the Respondent's action, such conduct constituted official misconduct pursuant to the decisional law under Education Law §1709(18) and in violation of Board Policy No. 1301.

A finding of guilt on Charge I, standing alone, could justify the removal of the Respondent as a member of the Board of Education of the Tuxedo Union Free School District, however based upon the facts and circumstances presented the Board finds that the Respondent's actions warrant the criticism of this Board, but do not rise to the level of misconduct that merits her removal from the Board of Education. Instead, the Board criticizes Respondent's actions as explained in the Findings of Fact on Charge I to be demonstrative of exhibiting poor judgment.

CHARGE II

FAILURE TO RETURN A CONFIDENTIAL REPORT

FINDINGS OF FACT

The Board hereby finds that the Respondent is guilty of Charge II as written, based upon the preponderance of credible evidence presented at the hearing held on October 15, 2021 and November 4, 2021, in the nature of the testimony of Superintendent of Schools Jeffrey White, Board Member Alyssa Horneff and Board Member Joe Rickard, as well as the admission made by the Respondent herself regarding the retention of the Muenkel Report and/or her admission that she retained the report document on September 15, 2021 in her capacity and in self-interest as a parent, when she knew that her access to the document at that time was given to her solely to fulfill her role as a member of the Board of Education. Respondent's actions were in violation of Board Policy 1301 that prohibits the use of information received as a board member for use to further a board members personal interest. While Respondent asserts that she has maintained the report's confidentiality, it is her admission that she retained the document provided to her in executive session as a parent, that is demonstrative of the willful nature and misconduct in her action(s). Although General Obligations Law and/or Public Officers Law do not themselves impose an affirmative obligation to return copies of reports provided to Board members in Executive Session, the protocols agreed upon at the September 15, 2021 were implemented in conjunction with Board Policy 1301 which prohibited the use of information received as a board member for use to further a board member's personal interest. Respondent again willfully disregarded the established protocol aimed at preventing her use of this information to further her personal interests in

obtaining a copy of the unredacted report on 9/15/21. Although, Respondent alleges she acted on advice of counsel with regard to her right to access the document as a parent, she does not allege, nor is there evidence that counsel's advice included an opinion that Board Policy 1301 permitted Respondent's access to personnel information for use in her private capacity as a parent.

A finding of guilt on Charge II, standing alone, justifies the removal of the Respondent as a member of the Board of Education of the Tuxedo Union Free School District.

CONCLUSIONS OF LAW

CHARGE I: A preponderance of credible evidence established that Respondent engaged in official misconduct under §1709(18) of the Education Law on or about August 9, 2021, when 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 during a duly convened Board of Education executive session held on July 28, 2021. Such disclosure was made to the TTA's New York State United Teachers ("NYSUT") bargaining representative Cairenn Broderick. To constitute grounds for removal pursuant to Education Law §1709(18), the "official misconduct" must clearly relate to a board member's official duties, either because of the allegedly unauthorized exercise of the member's powers (*Application of Balen*, 40 Ed. Dept. Rep. 479 [2002]); or the intentional failure to exercise those powers to the detriment of the school district (Education Law Section 1709(18); *Appeal of Nelson*, 49 Ed. Dept. Rep. 82 (2009); *Appeal of Taber*, 42 Ed. Dept. Rep. 251 (2003); *Appeal of Jones-White*, 44 Ed. Dept. Rep. 347, Decision No. 15,194; *Appeals of Gill and Burnett*, 42 Ed. Dept. Rep. 89 (2002); Decision No. 14,785; *Appeal of Cox*, 27 Ed. Dept. Rep. 353 (1988), Decision No. 11,973).

The Board finds that the Respondent engaged in official misconduct on August 9, 2021 when she willfully disclosed confidential collective bargaining information that she had received during Executive Session on July 28, 2021 to TTA representative Cairenn Broderick. Revealing sensitive labor negotiations information of the nature revealed by the Respondent warrants the removal of Respondent. Revealing executive session content, including negotiations related content, is actionable under Education Law §1709[18] and constitutes a violation of General Municipal Law §805-a. See *Appeal of Hoefler*, 45 Ed. Dept. Rep. 66,77 Decision No. 15,263 [2005], *Application of Board of Education of the City School District of the City of Buffalo*, Decision No.17,1749. Based on the Board's review of the record, including all documents and testimony and legal argument, the Board finds sufficient proof to establish grounds for Respondent's removal, however the conduct explained in Charge I is instead determined to merit the Board's criticism because Respondent's actions exhibited poor judgment. *Appeal of L.S.* citing *Appeal of Silano*, Decision No. 15,126.

CHARGE II: A preponderance of the credible evidence established that the Muenkel Report contained personally identifiable information about the Respondent's child, as well as

information regarding staff members and Board members that was of a nature that, if disclosed, could lead to legal proceedings in the nature of defending their professional and personal reputations. The contents of the report contained information that could create a liability to the District from multiple sources, one of which was a potential action Respondent as the parent of the student whose privacy rights were at issue (See *Appeal of Hoefler*, 45 Ed. Dept. Rep. 66, Decision No. 66,777 [2005] – where the Commissioner found that exposing the Board to potential litigation outside the scope of a Board member’s duties and obligations as a Board member is actionable under Education Law §1709[18]).

The Family Educational Rights and Privacy Act, 20 USC §1232-g and federal regulations at 34 CFR Part 99 provide only the right to review and inspect educational records of their children, but do not extend to a parent’s receipt of a report which contains other confidential personnel information. Only when circumstances present a barrier to such review must copies be made available. (34 CFR §99.10[d]) A parent would have the right to make a Freedom of Information Law request for a copy of the child’s educational records and, to the extent the document contains information that would constitute an unwarranted invasion of personal privacy regarding others who are written about in the record, those portions would be redacted pursuant to Public Officers Law §87([2][b]). The preponderance of credible evidence and reasonable inference demonstrated that the Respondent’s retention of the Muenkel Report was solely for her purposes as a parent and, as a parent, its retention was in her personal interest and in violation of Board Policy 1301, General Municipal Law §805-a, and the decisional law of the Commissioner of Education of the State of New York.

RESOLUTION NO.

BE IT RESOLVED, that the Board hereby adopts Findings of Fact and Conclusions of Law in regard to proceedings that were authorized to be conducted on September 24, 2021 pursuant to Education Law §1709(18) against Board Member Dorothy Ziegelbauer, finding her guilty of Charge I of Official Misconduct and criticizes such actions of demonstrative of exhibiting poor judgment

RESOLUTION NO.

BE IT RESOLVED, that the Board hereby adopts Findings of Fact and Conclusions of Law in regard to proceedings that were authorized to be conducted on September 24, 2021 pursuant to Education Law §1709(18) against Board Member Dorothy Ziegelbauer, finding her guilty of Charge II of Official Misconduct

RESOLUTION NO.

BE IT RESOLVED that the Board determines that the appropriate sanction for her official misconduct on Charge II is Board Member Ziegelbauer's removal from the office of member of the Board of Education of the Tuxedo Union Free School District and hereby effectuates such removal.

RESOLUTION NO.

BE IT RESOLVED, that the Board hereby directs the Board Clerk to mail a copy of the three aforementioned Resolutions to Dorothy Ziegelbauer and her legal counsel, together with a copy of the Board's Findings of Fact and Conclusions of Law.