

R-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.

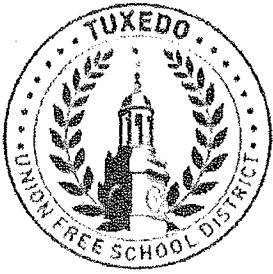
Motion by Gary Heavner, second by Lucy Cerezo Scully.

Final Resolution: Motion Passed

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

No: Joe Rickard, Dorothy Ziegelbauer

R-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.

R-c

**LITTMAN KROOKS**  
LLP

655 Third Avenue  
New York, NY 10017  
P 212.490.2020  
F 212.490.2990

www.littmankrooks.com

*Of Counsel*  
Solokoff Legal  
2605 West Atlantic Avenue  
Delray Beach, FL 33445  
P 561.733.4242  
F 561.733.4232

399 Knollwood Road  
White Plains, NY 10603  
P 914.684.2100  
F 914.684.9865

*Marion M. Walsh*  
*Partner*

**CONFIDENTIAL AND PRIVILEGED**

October 12, 2021

**VIA EMAIL**

David S. Shaw, Esq.  
Shaw, Perelson, May & Lambert, LLP  
21 Van Wagner Road  
Poughkeepsie, NY 12603

**RESPONSE TO TUXEDO UNION FREE SCHOOL DISTRICT (“DISTRICT”) BOARD OF EDUCATION CHARGES AGAINST DOROTHY ZIEGELBAUER**

Dear Mr. Shaw:

As you know, our firm represents Mrs. Dorothy Ziegelbauer as a Board of Education (“Board”) Trustee. This letter shall serve as a Response to the Charges served on October 1, 2021 and I trust you will provide this to the Board.

**PROCEDURAL ISSUES**

Mrs. Ziegelbauer requests an open and public hearing on these issues. We submit that there is no basis under Public Officer’s Law §105 for this hearing to occur in executive session, except for the proposed removal of Ms. Ziegelbauer. As this involves the proposed removal of a duly elected public official, this matter should be transparent and open to the public.

As noted, Mrs. Ziegelbauer has requested a reasonable adjournment of these proceedings for good cause and multiple reasons and the Board has denied this. We now request a reasonable adjournment of a little more than two (2) weeks until at least November 4<sup>th</sup> or 5<sup>th</sup>, when Ms. Hoffman has indicated that she is available. We respectfully view the Board’s refusal as further evidence of unreasonableness and vindictiveness to a trustee who has faithfully served the District since 2016. The charges were served on the evening of October 1, 2021. I received them late in the day on October 4<sup>th</sup> and requested an adjournment on October 7<sup>th</sup>. I learned yesterday on October 11<sup>th</sup>, that the Board refused to grant the adjournment.

Mrs. Ziegelbauer requests recusal of the Board President. At a minimum, insofar as Charge 2 is involved, Board President Daniel Castricone is directly involved and named in the referenced Muenkel Report and, as indicated in past charges, we submit harbors a certain adverse animus

Tuxedo Union Free School District  
October 12, 2021

towards Ms. Ziegelbauer, and we respectfully ask, that 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. 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. Absent any agreement today, we will request that the Commissioner weigh in on recusal and to set ground rules and standards for the hearing.

### **OFFICIAL CHARGES DO NOT MEET STANDARD OF WILFUL AND SUBSTANTIAL MISCONDUCT**

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).

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” must control these proceedings. 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 – ALLEGED 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.*

### **RESPONSE:**

Mrs. Ziegelbauer denies each and every allegation above except admits that on August 9, 2021, Mrs. Ziegelbauer was intending to draft an email to Mr. White, but inadvertently replied to an email chain that included a union representative. After the email, Mrs. Ziegelbauer explained that she had not intended to include the union representative nor to release any information on union negotiation. *See Exhibit A*. In addition, there was no demonstrated release of any substantive confidential information, upon information and belief. Mr. Castricone and the Board were aware that such email was inadvertent and there was no intentional release of confidential information,

---

<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.”

Tuxedo Union Free School District  
October 12, 2021

but just an inadvertent email mistake, which Mrs. Ziegelbauer explained. Her inadvertent disclosure accordingly does not constitute a wilful violation.

## **CHARGE II – ALLEGED 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.*

### **RESPONSE:**

Mrs. Ziegelbauer denies each and every allegation above as so stated. There has been no violation of New York Education Law §1709(18). Mrs. Ziegelbauer has kept the Report by Margaret Muenkel of September 15, 2021 (“Muenkel Report”) confidential.

By way of background, Mrs. Ziegelbauer affirmatively alleges that on July 20, 2021, through counsel, Mr. and Mrs. Ziegelbauer requested an investigation conducted by an independent third party to determine when and how confidential student information on their child MZ -- that was discussed in the context of a Special Education meeting with District special education staff and the Guidance Counsellor -- was leaked to the current Board President, and by whom. *See* Letter, Exhibit B. On July 20, 2021, through counsel, the Parents 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. *See* Exhibit B. The Parents have yet to receive a response.

On September 15, 2021, Mrs. Ziegelbauer 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 Mrs. Ziegelbauer never agreed to return it. Pursuant to the General Municipal Law, 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). However, the law does not require any return of documents. Prior to distribution, Superintendent White did not identify what was being shared.

Upon receipt of the report, Mrs. Ziegelbauer reviewed it. She required retention for further review. Upon Mr. Shaw’s request for return of the Muenkel Report on September 23, 2021, I, as counsel for Mrs. Ziegelbauer, responded that she respectfully declined to return the Muenkel Report but would keep it confidential. I submitted that the failure to return the report did not violate her obligations and asked for any contrary information. There was no response beyond the Charges.

R-F

**From:** [Dorothy Ziegelbauer](#)  
**To:** [Daniel Castricone](#)  
**Cc:** [2021 Board of Education](#); [Jeffrey White](#); [dshaw@shawperelson.com](mailto:dshaw@shawperelson.com); [Kristine DiFrancesco](#); [Marlon Walsh](#)  
**Subject:** Re: TTA-TUFSD meeting  
**Date:** Tuesday, August 10, 2021 7:49:46 AM  
**Attachments:** [Outlook-et51xold.png](#)

---

Dan,

It was 100% not my intention to include Carrie on this email thread. In my defense, I can only tell you that the events over the last 2 months relating to the charges filed against you, David Shaws non-action in that matter literally ignoring multiple verbal and written requests to provide information to the prior board on the status of the charges or the process, your multiple attempts to call illegal meetings to make changes to the board structure and policies, and the current situation involving yet another issue where you blatantly attacked me in executive session and attempted to defame my character and intimidate me, while simultaneously making new board members wonder if the charges against you were warranted have all taken a toll.

I am unable to sleep most nights due to this nonsense, all brought on by your behavior, and found myself in the ridiculous situation of needing to hire an attorney to represent the rights of my family and my daughter. Via our attorney, we made a request for an investigation to determine how you could have possibly learned about a question we asked in a confidential meeting with school staff regarding our daughter's performance in a class in the 2020-2021 school year, which you turned into "me as Board President colluding with Nicole Scariano to change our child's grade". This could not have been further from the truth, but that's what you led people to believe. But in the end, it got you the intended result, the board voted to drop the charges against you without even understanding what the specific charges were or what behaviors you exhibited that led to the charges.

I also asked for copies of the letters that were signed when the charges were dropped to be provided to the current board members and asked how the information and letters would be disseminated to prior board members. No response on that front either.

To date, our family has not received a response from the board or the district via our attorney, or by any other means in regards to our request for an investigation, regardless of the fact that my attorney Marion Walsh has inquired multiple times with David Shaw's office, and I have asked Jeff White directly to provide an update on what the status of the investigation is.

Meanwhile, the school is pushing us to schedule a meeting to discuss pertinent highly confidential information about our daughter., even though no investigation or staff training has taken place. We have no assurance that any confidential information shared with the

district will remain confidential. What a fantastic way to treat someone who has dedicated 5 years to this board and the district. I frankly don't care what your personal motivations are Dan, but the way I have been treated is wrong no matter how you rationalize it.

So I reiterate, it was not my intention to include the union counsel on the email, but unfortunately, the ongoing situation has me under duress, and I made a mistake. So shoot me, I'm human.

The questions I raised in my email below still stand, given that neither you or Jeff has bothered to respond.

I guess that's just par for the course at this point. I should just expect to be ignored going forward, then I won't be surprised when I don't get a response.

Dorothy

---

**From:** Daniel Castricone <dcastricone@tuxedoufsd.org>  
**Sent:** Monday, August 9, 2021 7:54 PM  
**To:** Dorothy Ziegelbauer <dziegelbauer@tuxedoufsd.org>  
**Cc:** 2021 Board of Education <2021boe@tuxedoufsd.org>; Jeffrey White <jwhite@tuxedoufsd.org>; dshaw@shawperelson.com <dshaw@shawperelson.com>  
**Subject:** Re: TTA-TUFSD meeting

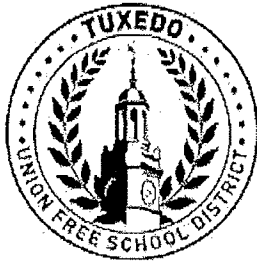
Dear Dorothy, I have no idea why you would email your interpretation of our negotiating position and your impressions of the union position, garnered during our executive session, to Carianne Broderick, the NYSUT rep. I predict your characterizations will further divide the school and complicate our negotiations.

David and Jeff, What do we do with this? Please call me this evening if possible. As we discussed during our executive session, it was our desire to hear the union scheduling position with an unbiased and open mind. Please continue to try to schedule a negotiating session where the union can explain their scheduling position, if they are still willing to do so. If you can schedule it for Thursday night, please do and I will invite the board members to participate as planned.

Thank you,



**Daniel G. Castricone, Esq.**  
President, Tuxedo UFSD Board of Education



**TUXEDO Union Free School District**

Board of Education  
1 Tornado Drive  
Tuxedo, NY 10987  
(845) 659-6419 (cell)  
DCastricone@TuxedoUFSD.org

---

**From:** Dorothy Ziegelbauer <dziegelbauer@tuxedoufsd.org>  
**Sent:** Monday, August 9, 2021 2:44 PM  
**To:** Cairenn Broderick <Cairenn.Broderick@nysut.org>  
**Cc:** 2021 Board of Education <2021boe@tuxedoufsd.org>; Kristine Difrancesco <kdifrancesco@tuxedoufsd.org>  
**Subject:** Re: TTA-TUFSD meeting

Jeff,

Please correct me if this wrong, but I thought where we left off in the last exec was the following.

The union is unwilling to negotiate on the length of the period. We have an 8 period day as an option via the existing contract, and you were going to hire a consultant to draft an 8 period day schedule.

In the interim, David was going to explore mediation with Carrie.

Has anything changed since the last executive session? Until someone actually schedules out the 8 period day frankly whatever they say can't be proven out, it is just them talking.

Has something changed? Have you hired the consultant we discussed?

Please provide an update.

Thanks!

Dorothy

> On Aug 9, 2021, at 12:53 PM, Cairenn Broderick <Cairenn.Broderick@nysut.org> wrote:  
>  
> Ladies & Gentlemen,



>  
> As we had discussed previously, the teachers union wanted an opportunity to address the Board and discuss the "9-Period Day" issue to share their perspective and concerns. We had been hoping to do it right away, but it appears that the soonest time that fits with schedules is this Thursday August 12th @ 5:30. Please confirm with me that you can make it  
>  
> Thank you  
>  
> Jeff  
>  
> -----Original Appointment-----  
> From: Cairenn Broderick <Cairenn.Broderick@nysut.org<mailto:Cairenn.Broderick@nysut.org>>  
> Sent: Monday, August 9, 2021 12:05 PM  
> To: Cairenn Broderick; Jeffrey White; David Shaw; Kristine Difrancesco; Marco Margotta; Christine Oliva; Rene Blume-Meagher; Elizabeth McGowan  
> Subject: TTA-TUFSD meeting  
> When: Thursday, August 12, 2021 5:30 PM-7:00 PM (UTC-05:00) Eastern Time (US & Canada).  
> Where: <https://nysut.zoom.us/j/9062244976>  
>  
>  
> Greetings all –  
>  
> Below is the link for our meeting on Thursday, August 12th at 5:30. I do not know which Board of Ed members will be in attendance, so please forward the link to them. There is no passcode, however, there is a waiting room set up. Please let me know who will be joining us.  
>  
> Thanks!  
>  
> Join Zoom Meeting  
> <https://nysut.zoom.us/j/9062244976>  
>  
> Meeting ID: 906 224 4976  
> One tap mobile  
> +16465588656,,9062244976# US (New York)  
> +13017158592,,9062244976# US (Washington DC)  
>  
> Dial by your location  
> +1 646 558 8656 US (New York)  
> +1 301 715 8592 US (Washington DC)  
> +1 312 626 6799 US (Chicago)  
> +1 669 900 9128 US (San Jose)  
> +1 253 215 8782 US (Tacoma)  
> +1 346 248 7799 US (Houston)  
> Meeting ID: 906 224 4976  
> Find your local number: <https://nysut.zoom.us/u/acFLCnvGQo>  
>

\*\*\*\*\*

This information contained in this message may contain confidential information and is intended only for the designated recipient(s) named above. This message may contain confidential student or personnel data or an attorney-client communication and as such privileged and confidential If you

are not an intended recipient you are not authorized to disseminate, distribute or copy this e-mail. Please notify the sender immediately if you have received this e-mail by mistake and delete this e-mail from your system.

\*\*\*\*\*

This information contained in this message may contain confidential information and is intended only for the designated recipient(s) named above. This message may contain confidential student or personnel data or an attorney-client communication and as such privileged and confidential. If you are not an intended recipient you are not authorized to disseminate, distribute or copy this e-mail. Please notify the sender immediately if you have received this e-mail by mistake and delete this e-mail from your system.

\*\*\*\*\*

This information contained in this message may contain confidential information and is intended only for the designated recipient(s) named above. This message may contain confidential student or personnel data or an attorney-client communication and as such privileged and confidential. If you are not an intended recipient you are not authorized to disseminate, distribute or copy this e-mail. Please notify the sender immediately if you have received this e-mail by mistake and delete this e-mail from your system.