

The
University of the
Education

State of New York
Department

In the Matter

ORDER TO SHOW CAUSE

of the

Application of the Board of Education of the City School District of the City of Buffalo for the removal of Carl Paladino as a member of the Board of Education of the City School District of the City of Buffalo.

The Law Firm of Frank W. Miller, attorneys for petitioner, Frank W. Miller and Christopher M. Militello, Esqs., of counsel

Lippes Mathias Wexler Friedman LLP, attorneys for respondent, Dennis C. Vacco, Esq., of counsel

By application pursuant to Education Law §306, the Board of Education of the City School District of the City of Buffalo ("petitioner" or "board"), seeks an order removing Carl Paladino ("respondent") from office as a member of the board based on his alleged disclosure of confidential information acquired by him in the course of his official duties.

The record indicates that respondent was first elected to the board on May 21, 2013 and was reelected on May 17, 2016. He is currently serving a three-year term that will expire in or about May 2019.

Petitioner alleges that on December 21, 2016, respondent attended a properly convened executive session of the board's regular meeting during which he obtained confidential information regarding pending litigation as well as legal advice from the board's attorneys regarding such litigation which comprised confidential attorney-client privileged communications. Petitioner claims that, on or about December 22, 2016, respondent sent an email to the board president, copying members of the local media, in which he disclosed confidential information regarding the litigation that was discussed during the board's December 21, 2016 executive session.

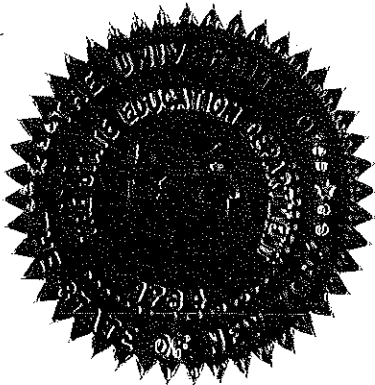
Petitioner further alleges that, on or about January 5, 2017, respondent disclosed confidential information obtained in a properly convened executive session of the board's regular meeting on October 12, 2016, including information regarding a personnel matter, information regarding collective bargaining negotiations, and confidential attorney-client communications. Petitioner claims that the January 5, 2017 disclosure occurred in an article published under respondent's byline in Artvoice magazine. This application ensued. Petitioner's request for interim relief was denied on February 3, 2017.

Petitioner asserts that respondent's conduct constitutes a wilful violation of his duty as a board member to refrain from disclosing confidential information obtained in the course of his duties as a board member. Petitioner also argues that such conduct violates General Municipal Law §805-a.

In his answer, respondent does not dispute that he sent an email on or about December 22, 2016 and that there was an Artvoice article on January 5, 2017, but otherwise generally denies petitioner's allegations, and asserts, inter alia, that the information he disclosed was not subject to confidentiality and/or was a matter of public interest or concern or already made public by third parties. Respondent also contends that his actions were "taken with the intent to prevent crime or fraud"; that petitioner seeks to "improperly disenfranchise and impair the rights" of respondent's constituents; and that the instant proceedings are pretextual, retaliatory and "infringe upon and chill constitutionally protected speech." Respondent also raises several affirmative defenses.

The Commissioner of Education is empowered to remove a school board member from office pursuant to Education Law §306 when it is proven to his or her satisfaction that the board member has engaged in a wilful violation or neglect of duty under the Education Law or has wilfully disobeyed a decision, order, rule or regulation of the Board of Regents or Commissioner of Education. Removal may be ordered only "after a hearing at which the school officer shall have the right of representation by counsel" (Education Law §306[1]). Part 277 of the Regulations of the Commissioner of Education governs the conduct of such hearings and proceedings.

IT IS NOW THEREFORE ORDERED, pursuant to Education Law §§306 and 2559, that the parties appear before the Commissioner of Education at the State Education Building, in the City of Albany, State of New York, on the 18th day of May 2017, at 9:00 a.m., for a hearing and show cause why Carl Paladino should or should not be removed from office as a member of the Board of Education of the City School District of the City of Buffalo on account of the alleged disclosures as cited in the verified petition. Counsel for the parties are requested to submit proposed witness and exhibit lists to the Commissioner and opposing counsel within ten (10) days of the date of this order.



IN WITNESS WHEREOF, I, MaryEllen Elia, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department, at the City of Albany, this 14th day of April 2017.

MaryEllen Elia
Commissioner of Education