

	:	<b>BEFORE THE SCHOOL</b>
<b>IN THE MATTER OF</b>	:	<b>ETHICS COMMISSION</b>
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<b>CHRISTINA WENZEL</b>	:	<b>Docket No. C46-04</b>
<b>SADDLE BROOK</b>	:	
<b>BOARD OF EDUCATION</b>	:	
<b>BERGEN COUNTY</b>	:	<b>DECISION</b>
	:	

**PROCEDURAL HISTORY**

This matter arises from a complaint filed on July 9, 2004, by Sebastian P. Salierno, a member of the Saddle Brook Board of Education (Board), alleging that Christina Wenzel, also a member of the Board, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. when, on several occasions, she was paid as a substitute school nurse by the District while serving as a member of the Board. Specifically, he alleges that the above conduct was in violation of N.J.S.A. 18A:12-24(b) and (d).

Ms. Wenzel submitted a response by way of counsel, Deborah Gross-Quatrone, Esq., wherein she admitted that, due to an emergency situation in the District, she worked for the Saddle Brook School District (District) as a substitute school nurse on May 5, 2004.

The Commission invited the parties to attend its September 30, 2004 meeting to present witnesses and testimony to aid in the Commission’s investigation, but did not require that they be present. Neither party attended the hearing. Ms. Wenzel submitted a statement from the superintendent on the day of the meeting, but it was not received until after the Commission meeting. The Commission was advised that counsel represented to the executive director that the statement would be forthcoming by the time of the meeting, but the Commission ultimately determined that such a statement would not affect its ruling on probable cause.

At its September 30, 2004 meeting, the Commission voted to find probable cause to credit the allegations that Ms. Wenzel violated N.J.S.A. 18A:12-24(d) of the Act. The Commission did not find probable cause to credit the allegations that Ms. Wenzel violated N.J.S.A. 18A:12-24(b).

The Commission found that the material facts were not in dispute with respect to the issue upon which it found probable cause and, therefore, the Commission advised respondent that it would decide the matter on the basis of written submissions. Ms. Gross-Quatrone was invited to provide a written submission to the Commission within 30 days of the date of the probable cause decision to set forth why the Commission should not find Ms. Wenzel in violation of N.J.S.A. 18A:12-24(d). Ms. Gross-Quatrone was also told that her written submission should include the

respondent's position on an appropriate sanction should the Commission determine that the Act was violated.

Ms. Gross-Quatrone submitted a timely response on November 17, 2004, wherein she contends that since both allegations revolve around the same events that it is clear that the Commission did not believe that Ms. Wenzel acted with intent or probable cause would have been found on both counts of the complaint. She also contends that Ms. Wenzel did not undertake employment, which is defined as a working relationship over the course of time; but that, at best, she was a casual employee. To support her contention that Ms. Wenzel was not an employee, she points out that Ms. Wenzel did not qualify for employment in terms of Workers Compensation or New Jersey State disability benefits. She further contends that Ms. Wenzel's service as a substitute school nurse did not prejudice her independence of judgment in the exercise of her official Board duties. She submits that if the Commission believes that there is a violation of the Act, then Ms. Wenzel should receive a private reprimand.

## **FACTS**

The Commission based its finding of probable cause on the following facts. At all times relevant to this complaint, Ms. Wenzel was a member of the Board having served since 1998. Ms. Wenzel has been a registered nurse since 1994. The Superintendent and Ms. Wenzel had an agreement that she would be available to work as a substitute school nurse in the Saddle Brook School District (District) on an emergent basis since the substitute school nurse list had declined drastically.

Ms. Wenzel admitted to working as a substitute school nurse for the district on May 5, 2004 because the high school nurse was out for one week and there was no other nurse available for that day. Ms. Wenzel was paid by the District for working as a substitute school nurse. She was also paid as a substitute school nurse during the second quarters of 2003 and 2004 and during the fourth quarter of 2004. She indicated that she stands by her decision to serve in the District as a substitute school nurse.

## **ANALYSIS**

The Commission found probable cause that Ms. Wenzel violated N.J.S.A. 18A:12-24(d), which provides:

No school official shall undertake any employment or service, whether compensated or not, which might reasonably be expected to prejudice his independence of judgment in the exercise of his official duties;

In order to find probable cause under N.J.S.A. 18A:12-24(d), the Commission must determine whether Ms. Wenzel's employment by the District as a substitute school nurse might reasonably be expected to prejudice her independence of judgment in the exercise of her official duties as a Board member. Ms. Gross-Quatrone maintains that Ms. Wenzel was, in fact, not employed by the District, but that, at best, she was a casual

employee that was not eligible for Workers' Compensation or disability benefits. Casual employment is defined as "employment at uncertain or irregular times." See Black's Law Dictionary Fifth Edition, West Publishing Company, 1983. The Commission notes that employment is inherent in the definition. Even if Ms. Wenzel was a casual employee, she was still employed by the District on those days that she worked as a substitute school nurse. Even if Ms. Wenzel was ineligible for Workers Compensation or disability benefits as she contends, she was still employed by the District.

The Commission notes that N.J.S.A. 18A:12-24(d) applies to service as well as employment. In this case, Ms. Wenzel provided services to the District for which she was paid.

As an employed substitute school nurse for the District, Ms. Wenzel had significant entanglements with students, staff, and the administration. In working with children who have medical conditions or accident related injuries, she may unwittingly find herself being called as a witness against the Board on which she serves, or worse, a named defendant. She was also paid by the District for her services. When a board member works for and is paid by the District in which she serves, she is, in effect, working for the board. Thus, the Commission finds that anytime a board member is on the payroll of the District for which the board member serves, it is reasonable to expect it will prejudice that board member's independence of judgment in the exercise of official board member duties. Therefore, the Commission finds probable cause to credit the allegations that Ms. Wenzel violated N.J.S.A. 18A:12-24(d) when she worked for the District as a substitute school nurse on May 5, 2004 and prior occasions.

The Commission previously found no probable cause that Ms. Wenzel violated N.J.S.A. 18A:12-24(b), which provides:

No school official shall use or attempt to use his official position to secure unwarranted privileges, advantages or employment for himself, members of his immediate family or others;

Ms. Wenzel had an agreement with the Superintendent to be available to work as a substitute school nurse on an emergent basis since the substitute school nurse list had declined drastically. Ms. Wenzel was offering her services in an attempt to assist the District. There is no evidence to show that Ms. Wenzel used her official position to secure employment with the District. Furthermore, since Ms. Wenzel has been a registered nurse since 1994, her employment as a substitute school nurse was not unwarranted. Therefore, the Commission finds that there is no probable cause to credit the allegation that Ms. Wenzel violated N.J.S.A. 18A:12-24(b).

The Commission notes that Ms. Gross-Quatrone contends that since both allegations revolve around the same events that it is clear that the Commission did not believe that Ms. Wenzel acted with intent or the Commission would have found probable cause on both counts of the complaint. The Commission agrees that that both allegations concern the same event. However, the Commission notes that a different standard is

applied to each of the provisions of the Act that complainant alleges were violated. While intent is relevant to each of those standards, it is not dispositive of the issue raised under each standard. Thus, the same events can trigger a violation of one provision and not another. She may not have intended to use her position to secure the employment, but she intended to take the job.

## **DECISION**

For the reasons discussed above, the Commission finds that Christina Wenzel violated N.J.S.A. 18A:12-24(d) when, on several occasions, she was paid as a substitute school nurse by the District while serving as a member of the Board. The Commission advises Ms. Wenzel that she cannot continue to serve as a Board member and a substitute school nurse for the District. The Commission recommends that the Commissioner of Education impose a penalty of reprimand because Ms. Wenzel was offering her services in an attempt to assist the District.

This decision has been adopted by a formal resolution of the School Ethics Commission. This matter shall now be transmitted to the Commissioner of Education for action on the Commission's recommendation **for sanction only**, pursuant to N.J.S.A. 18A:12-29. Within 13 days from the date on which the Commission's decision was mailed to the parties, Ms. Gross-Quatrone may file written comments on the recommended sanction with the Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

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Mark J. Finkelstein  
Acting Chairperson

## **Resolution Adopting Decision – C46-04**

**Whereas**, the School Ethics Commission has considered the pleadings and the response filed by the parties and the documents submitted in support thereof; and

**Whereas**, at its meeting of September 30, 2004 the Commission found that Christina Wenzel violated N.J.S.A. 18A:12-24(d) of the Act and recommended that the Commissioner of Education impose a sanction of reprimand; and

**Whereas**, at its meeting of December 21, 2004, the Commission reviewed a draft decision prepared by its staff and agrees with the decision;

**Now Therefore Be It Resolved** that the Commission hereby adopts the proposed decision referenced as its decision in this matter and directs its staff to notify all parties to this action of the Commission's decision herein.

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Mark J. Finkelstein  
Acting Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on December 21, 2004. Note: Paul C. Garbarini abstained from this decision.

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Lisa James-Beavers  
Executive Director