



# New Jersey Libertarian Party

Open Government Advocacy Project

*John Paff, Chairman*

*P.O. Box 5424*

*Somerset, NJ 08875-5424*

*Phone: 732-873-1251- Fax: 908-325-0129*

*Email: [lpsmc@pobox.com](mailto:lpsmc@pobox.com)*

October 31, 2007

William S. Donio, Esq.

Cooper Levenson, P.A.

1125 Atlantic Ave

Atlantic City, NJ 08401

(via Email only to [wdonio@cooperlevenson.com](mailto:wdonio@cooperlevenson.com))

RE: Discipline of Jeanine Wenz-Walker, teacher in the Evesham Township school district

Dear Mr. Donio:

I write, both individually and in my capacity as Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project, regarding your responses to my records requests dated October 10, 2007 and October 20, 2007. I have attached, for your ready reference, copies of the substantive parts of my requests and your October 16, 2007 and October 25, 2007 responses.

As you know, the Evesham school board, at its June 26, 2007 meeting, resolved "to ratify and continue the suspension from duty with pay of Jeanine Wenz-Walker from 6/19/07 to 8/31/07 . . . and withhold all adjustment increments and employment increments . . . from the salary of Ms. Wenz-Walker." Those minutes further show that the Board's decision to ratify the suspension was "based upon the existence of good cause because of Ms. Wenz-Walker's **improper interaction with a student** in her charge as determined by the Superintendent of Schools after an appropriate and thorough investigation." (Emphasis added.)

As a member of the public, I am interested in learning the nature of the "improper interaction" that Ms. Wenz-Walker had "with a student in her charge." I believe that other members of the public, including some of the parents and taxpayers in Evesham Township, would also like this information.

Since the resolution directed Ms. Wenz-Walker to "enroll in a program related to discipline of primary/elementary students," it appears—but it is by no means clear—that the "improper interaction, that Ms. Wenz-Walker had "with a student in her charge" involved administering discipline. Did she administer corporal punishment to a child, despite corporal punishment having been outlawed in New Jersey's government schools<sup>1</sup> in 1867? If she did

---

<sup>1</sup> See N.J.S.A. 18A:6-1. According to <http://www.nospank.net/n-h65.htm>, New Jersey was the first state to outlaw corporal punishment in its government schools.

administer corporal punishment, the public might find that the Board's imposition of a paid suspension was too lenient, especially if the punishment inflicted was severe<sup>2</sup>.

Or, on the opposite end of the spectrum, if Ms. Wenz-Walker's conduct was innocuous (e.g. perhaps she simply raised her voice to a student or made him or her write sentences on the blackboard), the public might feel that the Board overreacted by suspending her. In either event, the public needs to know the nature of the "improper action" in order to be in a position to judge whether the Board's imposition of a paid suspension was appropriate.

Despite my repeated requests, however, you have so far refused to provide me with any records or information regarding the nature of Ms. Wenz-Walker's conduct that caused her suspension. My October 10, 2007 request expressly stated that I have no interest in learning the identity of the student who was involved in the incident. And, since the resolution that suspended Ms. Wenz-Walker was passed at a public meeting, the fact that she was punished is *already* part of the public record. Your refusal to provide me with the nature of Ms. Wenz-Walker's conduct does not protect her privacy or that of the student. Rather, the only apparent reason for withholding this information is to protect the Evesham school board and the district administration from public accountability.

I am fully prepared to litigate this issue. Before filing my complaint, however, I wish to inform you that your responses to my records requests do not comply with the Appellate Division's opinion in Paff v. New Jersey Department of Labor, 392 N.J. Super. 334 (App. Div. 2007) which held:

With respect to future requests, however, the agency to which the request is made shall be required to produce sworn statements by agency personnel setting forth in detail the following information:

- (1) the search undertaken to satisfy the request;
- (2) the documents found that are responsive to the request;**
- (3) the determination of whether the document or any part thereof is confidential *and* the source of the confidential information;**
- (4) a statement of the agency's document retention/destruction policy *and* the last date on which documents that may have been responsive to the request were destroyed.

**The sworn statement shall have appended to it an index of all documents deemed by the agency to be confidential in whole or in part, with an accurate description of the**

---

<sup>2</sup> Severe beatings of students by teachers is not unheard of. Travis Morgan of North Carolina came home after receiving a beating "with a backside that was a florid kaleidoscope of plums and lemons and blood oranges." New York Times, "In Many Public Schools, the Paddle Is No Relic" by Rick Lyman, September 30, 2006.

**documents deemed confidential.** Paff maintains that "the indexes [sic] provided by the [DOL] do not state whether the information contained therein was obtained from Garbin or one of her employees." The DOL responds that "[t]he indexes' [sic] description of each document ... is irrelevant." We disagree. The index is essentially a "privilege log" that must provide sufficient information "respecting the basis of the privilege-confidentiality-exception claim *vis a vis* each document." **An accurate index is necessary for substantive review by the requesting party as well as the reviewing court.**

Paff at 341, emphasis supplied, internal citations omitted.

Your October 16, 2007 letter does not identify any of the records that are within the scope of my request but that are claimed to be confidential. Rather, your letter refers to those records generally as "the requested records," "Ms. Wenz-Walker's personnel records" and the like. Your October 20, 2007 does not clearly state whether or not any minutes exist for the Board's June 26, 2007, 9:04 p.m. nonpublic meeting. Accordingly, your responses both fail to meet the requirement set forth in the cited opinion.

I would like for you or your client to again respond to my October 10, 2007 and October 20, 2007 requests. This time, I would like for the responses to provide me a "privilege log" and otherwise comply with Paff v. Department of Labor.

I look forward to your prompt response.

Sincerely,

A handwritten signature in black ink, appearing to read "John Paff", with a large, stylized flourish above the name.

John Paff

cc. Evesham Township Board of Education, with attachments  
(via PDF email to [scavellij@evesham.k12.nj.us](mailto:scavellij@evesham.k12.nj.us))

## **Supplement to John Paff's October 10, 2007 request to the Evesham Township Board of Education**

### Background:

The Board's June 26, 2007 meeting minutes state that teacher Jeanine Wenz-Walker was suspended for "improper interaction with a student in her charge." But, those minutes do not provide any detail regarding the nature of the "improper interaction."

On September 30, 2007, I submitted a records request to the New Jersey Department of Education seeking any records it might have that reveal the nature of the "improper interaction" incident. In its October 9, 2007 response (No. C31609) the Department stated that "The State Board of Examiners has no record of this incident. This issue was handled at the district level."

### Records request:

I wish to purchase the following records pursuant to the Open Public Records Act, the Senator Byron M. Baer Open Public Meetings Act and the common law.

1. Any records that pertain to the "improper interaction" incident involving teacher Jeanine Wenz-Walker that was recorded in the Board's June 26, 2007 meeting minutes. I understand, and fully accept, that the records may have to be heavily redacted to shield confidential matters, including the identities of any students involved. But, I would like to have enough of the records left unredacted so that I can understand at least the nature of accusation against Wenz-Walker, the dates and locations of the alleged improper activity, the quantum of discipline imposed, together with any other non-exempt information contained within those records.
2. Any record that contains Jeanine Wenz-Walker's "name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received," per N.J.S.a. 47:1A-10. (My aim here is to learn whether Ms. Wenz-Walker is still employed by the district.)

**WILLIAM S. DONIO**  
Also Admitted to PA Bar  
EMAIL: wdonio@cooperlevenson.com

---

1125 Atlantic Avenue  
Atlantic City, NJ 08401  
Phone 609-344-3161  
Toll Free 800-529-3161  
Fax 609-344-0939  
www.cooperlevenson.com  
Direct Phone (609) 572-7610  
Direct Fax 609-572-7611  
FILE NO.: 53641.13

October 16, 2007

via Facsimile 908-325-0129 & Regular Mail

John Paff  
P.O. Box 5424  
Somerset, NJ 08875

Re: "Records" Request dated October 10, 2007

Dear Mr. Paff:

As you know, I represent the Evesham Township Board of Education (the "Board"). I am in receipt of your supplemental "records" request dated October 10, 2007. The request included additional meeting minute "details" from the Board's June 26, 2007 meeting, any records related to the alleged incident involving Ms. Wenz-Walker and Ms. Wenz-Walker's personnel records. Please be advised that I am of the opinion that your supplemental request does not fall under the Open Public Records Act (OPRA), *N.J.S.A. 47:1A-1 et seq.*, the Open Public Meetings Act ("OPMA"), *N.J.S.A. 10:4-6 et seq.*, or New Jersey's common law right to access records and therefore I will direct the Board not to release the requested records.

You are not entitled to Ms. Wenz-Walker's personnel records because personnel records are not "government records" under OPRA. *N.J.S.A. 47:1A-1.10*. OPRA provides that "all government records shall be subject to public access unless exempt from such access..." *N.J.S.A. 47:1A-1*. Personnel records, "including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access..." *Id.* Consequently, as personnel records are specifically exempt from disclosure, the records do not have to be released.

In addition, you are not entitled to the information requested because, to the extent the requested "records" are not personnel records or grievance related, the requested information is "inter-agency or intra-agency advisory, consultative or deliberative material" which is specifically excluded from the term "government record." *N.J.S.A. 47:1A-1.1*. Any information related to the allegations discussed, including but not limited to executive session minutes, clearly falls within "advisory, consultative or deliberative material" as the Board was deliberating about the terms and conditions of Ms. Wenz-Walker's employment and possible action thereon. Therefore, the "details" are not public records and do not require disclosure.

John Paff  
October 16, 2007  
Page 2

Furthermore, the Open Public Meetings Act ("OPMA") specifically excludes the public from participating in or discussing the requested information pursuant to *N.J.S.A. 10:4-12b(8)*. This matter involves the terms and conditions of the employment of Ms. Wenz-Walker and possible action thereon. Thus, the information is not available to the public "unless all individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting." *Id.* Because Ms. Wenz-Walker has not expressed such a desire, the information is not available for public disclosure.

Additionally, New Jersey's common law does not require disclosure of any of the requested information. The common law test for access to public records is three prong. *South Jersey Publishing Company, Inc. v. New Jersey Expressway Authority*, 124 N.J. 478, 487-489 (1991). The citizen making the request must establish that they have standing, or an interest in the subject matter of the material and the "right to know," that the record is in fact a "public record" under common law and lastly, the court must "balance the plaintiff's interest in the information against the public interest in confidentiality of the documents." *Id.* Your request fails the common law test, including the threshold requirement of standing. You do not have a valid interest in the subject matter of the material, the material is not a public record, nor can your request withstand the balancing test regarding confidentiality delineated by the Supreme Court.

In summary, the Board must only disclose Ms. Wenz-Walker's "name, title, position, salary, payroll record, length of service, date of separation and the reason therefore" under *N.J.S.A. 47:1A-1.10*. As such, Ms. Wenz-Walker's title is that of a Teacher, she holds the position of Kindergarten Teacher, her salary in the 2007-2008 academic year is \$79,902.00 plus \$805.00 Longevity and her service began on September 1, 1983 and continues through the present. The remainder of your request for records is unsupported by both New Jersey statute and common law and will not be disclosed.

Enclosed please find John Scavelli, Business Administrator's official response to your request which incorporates this letter by reference.

Please do not hesitate to contact our office with any questions or concerns.

Very truly yours,



William S. Donio

WSD/  
Enclosure  
CLAC; 153667.1

Supplement to John Paff's October 20, 2007 records request.

In response to a previous request, you sent me two pages that purport to be minutes of the Board's closed or executive session held between 7:00 p.m. and 7:51 p.m. on June 26, 2007.

However, the Board held another closed or executive session on June 26, 2007 between 9:04 p.m. and 9:10 p.m.

I would like the minutes of the closed or executive session held by the Board on June 26, 2007 between 9:04 p.m. and 9:10 p.m.

**WILLIAM S. DONIO**  
Also Admitted to PA Bar  
EMAIL: wdonio@cooperlevenson.com

Direct Phone (609) 572-7610  
Direct Fax 609-572-7611

FILE NO.: 53641.13

October 25, 2007

via Facsimile 908-325-0129 & Regular Mail

Mr. John Paff  
P.O. Box 5424  
Somerset, New Jersey 08875

Re: Request for Records

Dear Mr. Paff:

As you may be aware, I represent the Evesham Township Board of Education (the "Board"). A copy of your Request for Public Records from the Board of Education, Evesham Township, County of Burlington, with attachment was forwarded to me for my review and response. As you know, the Board previously sent you the minutes of the Board's closed or executive session held on June 26, 2007. Please accept this correspondence as the Board's response to your supplemental request.

In your request you note the Board held another closed or executive session on June 26, 2007 between 9:04 and 9:10 p.m. As you can note from the minutes, the Board went into this executive session to discuss personnel matters. Those personnel matters discussed concerned J.W.W. You have previously been provided with a copy of the resolution which was adopted immediately after this executive session concerning J.W.W. As there is no exception to the Open Public Records Act *N.J.S.A. §47:1A-1* or the Open Public Meetings Act *N.J.S.A. §10:4-12(b)* for you to receive any of the information that was discussed at that time, there is no information to provide you. In addition, the Board has no further minutes to provide you.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



William S. Donio

WSD/nw  
CLAC; 157436.1