

# Judge dismisses complaint against school nurse

by Frank J. McMahon

A municipal court judge in Waldwick has dismissed the complaint filed against the Indian Hills High School nurse, Nancy Wirkmaa, by an Oakland parent of a student who was suspended from the school in February 2002 as a result of an altercation in class.

The matter was referred to Waldwick by the Bergen County Prosecutor's Office.

Municipal Court Judge Dennis P. Lahiff voiced concern about the standing of the parent, Scott Frank, to file the complaint, since his daughter was 18 years old at the time. He also questioned if there was sufficient evidence to go forward under the statute to which the charge was downgraded by the Bergen County Prosecutor's Office.

Lahiff noted that a parent has the absolute right to bring a charge if the alleged victim is less than 18 years of age, but he questioned if Frank had the standing to make the charge if his daughter was over 18 at the time. He also questioned if the statute used by the prosecutor applies to the facts in this case because his research of case law indicates that the statute refers to people submitting false reports to the

police in sworn or false affidavits. He said his reading of the statute and the case law leads him to conclude that the person submitting the document would be a "layperson" submitting it to a governmental official, not an employee of a government agency.

"I'm not sure that this statute applies to the facts as I know them," he said. "Perhaps the Bergen County Prosecutor erroneously selected this charge, but it's not for me to second guess the Bergen County Prosecutor. In my opinion the facts clearly do not apply to this section (of the statute). I find insufficient facts here to proceed and so I'm going to dismiss the charge."

Frank had filed the complaint in September 2003 based on a medical document which he claims was altered by the school nurse by changing the date on a previous medical report on his daughter, and using it as a report about the February 2002 altercation.

Frank alleges the document was falsified by Wirkmaa under the direction of the school principal, Robert Onorato, to make it appear that his daughter went to the nurse's office after the altercation in class. Frank claims she did not go to the nurse's office after the altercation, so there could be no

medical report relating to it. The school district, however, alleges that she did go to the nurse's office, and the medical report confirms her nose was not broken as Frank claims.

Wirkmaa's attorney, Timothy Smith, told the court the medical records were obtained by Frank in connection with his civil rights lawsuit that he previously filed against the school district concerning this incident.

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## Case dismissed

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He said the document in question was faxed by Wirkmaa to the Oakland Police Department on Jan. 10, 2003 at the behest of Frank.

Smith argued, however, that the Oakland police were not misled or deceived by the document, because the police were not involved in the investigation and they did not file the complaint.

He described the decision as just and proper and he said he believes if a full and fair probable cause hearing were held in this matter it would never have gone to court because the charge was false and malicious. He added that he hopes this decision will result in "full and fair" probable cause hearings in future cases of this type so that people are not "dragged through the system because of frivolous complaints."

Frank had a different reaction to the dismissal. "The Bergen County Prosecutor's office erred in charging her," he said after the court proceeding concluded. "They made a mistake," he said attributing the dismissal specifically to the action by the Bergen County Prosecutor when the charges against Wirkmaa were downgraded to a single charge under the particular statute on which Lahiff based his decision.

"This in no way indicates that Wirkmaa is innocent," Frank said, adding that he is considering going back to the county prosecutor and having her recharged.

The complaint was first heard in Oakland municipal court in September 2003 when Municipal Court Judge Malcolm Blum found probable cause for one of the counts in Frank's complaint and sent it to the Bergen County Prosecutor's Office, where the charge was downgraded to a misdemeanor charge and referred to the Waldwick Municipal Court.

Frank's daughter did not return to school after her suspension because of a disagreement over the school district's demand that she first have a psychiatric examination. Her class has since graduated and she is now being tutored at home.