

AGENCY DKT. NO. 3-3/12A (48-2/12 ON REMAND)
SEC DKT. NO. C03-14 (C25-08 ON REMAND)
APP. DIV. DKT. NO. A-6038-11T4

MELINDO PERSI, :
COMPLAINANT, :
V. : COMMISSIONER OF EDUCATION
DANIEL WOSKA, TOWNSHIP OF : DECISION
BRICK BOARD OF EDUCATION, :
OCEAN COUNTY, :
RESPONDENT. :

This matter is before the Commissioner pursuant to a remand by the Appellate Division. In its decision, the Court concluded that the Commissioner’s decision lacked sufficient clarity, particularly with respect to the issue of who is authorized to issue a Rice notice to the chief school administrator. The Court further found the lack of clarity on that issue hampered its review on appeal. Accordingly, the Court remanded the matter¹ to the Commissioner to “delineate the respective authority of a board member, board president, and full board in determining how and when a school superintendent’s employment is reviewed.”

Pursuant to the ruling in *Rice v. Union County Reg’l High Sch. Bd. of Educ.*, 155 N.J. Super. 64, 74 (App.Div. 1977), *certif. denied*, 76 N.J. 238 (1978), a board of education must notify an employee of its intention to consider personnel matters related to them. The act of issuing a *Rice* notice serves several purposes. First, it gives the employee notice that some

¹ The Court identified additional issues for determination on remand. Those issues are within the jurisdiction of the School Ethics Commission and, therefore, will not be addressed by the Commissioner here.

aspect of his/her employment will be discussed by the board of education. Second, it gives the employee an opportunity to request that the discussion be held in open forum, pursuant to *N.J.S.A.10:4-2*. And third, since the board of education is precluded from discussing employment-related issues in the absence of a *Rice* notice, it effectively represents a call for the discussion itself.

There is no law or regulation that specifically outlines the procedure for issuance of a *Rice* notice to the chief school administrator of a district board of education. The Commissioner recognizes, however, that employment matters related to the chief school administrator of a district are akin to the type of issues that precipitate a special meeting of the board of education. In that regard, such matters are often of a serious and time-sensitive nature. Thus, the Commissioner finds instructive the regulation delineating the procedure by which a special meeting may be called. That regulation provides, in pertinent part:

- (a) The secretary of the district board of education shall call a special meeting of the district board of education whenever:
 1. Requested by the president of the district board of education to do so;
 2. Requested by the chief school administrator when the district board of education fails to meet within two months during the period in which the schools in the district are in session; or
 3. When presented with a petition signed by a majority of the full membership of the district board of education requesting the special meeting.

(*N.J.A.C. 6A:32-3.1*).

The Commissioner concludes that, like calling a special meeting of the board of education, the issuance of a *Rice* notice to the chief school administrator of a district represents a

significant procedural matter and, thus, a substantially similar² protocol is appropriate. Accordingly, the Commissioner finds that a single board member is without authority to direct issuance of a *Rice* notice to the chief school administrator of a district. Rather, that authority lies with the president of a district board of education or a majority of the full membership of a district board of education.

This matter is hereby transmitted back to the School Ethics Commission for further action in accordance with the Appellate Division's decision.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 17, 2014

Date of Mailing: June 18, 2014

² Subsection (2) is inapposite since the chief school administrator is not responsible for requesting the issuance of a *Rice* notice to him/herself.

³ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.