

GAIL BILSE, :
 :
 PETITIONER, :
 :
 V. :
 :
 BOARD OF EDUCATION OF : COMMISSIONER OF EDUCATION
 THE TOWNSHIP OF FRANKLIN, :
 SOMERSET COUNTY, : DECISION
 :
 RESPONDENT, :
 :
 AND
 :
 MAXINE INGRAM, :
 :
 PETITIONER, :
 :
 V. :
 :
 BOARD OF EDUCATION OF :
 THE TOWNSHIP OF FRANKLIN, :
 SOMERSET COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioning teachers in these two consolidated cases challenged their transfer from respondent Board's high school to its middle school effective September 1, 2009, alleging violation of *N.J.S.A.* 18A:25-1 and failure to comply with the Open Public Meetings Act, *N.J.S.A.* 10:4-12(b)(8), by not providing notice of the Board meeting so that the affected employees could exercise their right to request in writing a public discussion of the matter. Petitioners contend that if the Board failed to provide this "Rice" notice, the Board violated the law in transferring them, and therefore acted outside its general authority to transfer by roll call vote.

The ALJ found, *inter alia*, that: the matter was ripe for summary judgment as there are no issues of material fact in dispute; petitioner Bilse suffered no alteration in pay as a result of her transfer and was transferred back to the high school for the 2010-2011 school year; petitioner Ingram's transfer was approved as part of a public roll call vote of the Board on June 11, 2009, in compliance with *N.J.S.A.* 18A:25-1; the meeting during which the Board voted on the transfer was advertised and conducted in compliance with *N.J.S.A.* 10:4-12(b)(8); and the courts have held that a transfer without loss of salary and without impacting tenure rights is not an adverse action warranting a "Rice" notice. Accordingly, the ALJ dismissed the appeal of petitioner Bilse as moot since the relief sought has occurred, and dismissed the appeal of petitioner Ingram with prejudice.

Upon careful and independent review, the Acting Commissioner adopted the Initial Decision of the OAL as the final decision in this matter for the reasons stated therein.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

June 24, 2011

OAL DKT. NOS. EDU 6462-09 and EDU 6611-09 (CONSOLIDATED)
AGENCY DKT. NOS. 193-8/09 and 201-8/09

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The petitioning teachers challenged their transfer from respondent's high school to its middle school. As petitioner Bilse has been transferred back to the high school and has suffered no monetary loss, her appeal is dismissed as moot.

The Commissioner has reviewed the record and Initial Decision for petitioner Ingram's appeal and finds it to be without merit. First, at its regular public meeting on

June 11, 2009, respondent implemented the required roll-call vote approving the transfer. Second, as the Administrative Law Judge (ALJ) found, a transfer of teaching assignment from one school to another within a district – without loss of salary or impact on tenure rights – is not an adverse action warranting a Rice notice. *See, e.g., Carpenito v. Bd. of Educ. of Borough of Rumson, Monmouth County, 322 N.J. Super. 522, 529-530 (App. Div. 1999); Guy Ciarcia v. Board of Education of the City of Trenton, Mercer County, Commissioner Decision 155-91 (September 3, 1991), at 2.*¹

Accordingly, petitioner Ingram’s appeal is also dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2011

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¹ The record supports the ALJ’s determination that, with respect to its June 11, 2009 meeting, respondent generally complied with the applicable requirements of the Open Public Meeting Act (OPMA). Further, in the absence of school law violations to which an OPMA claim might be pendent, the Commissioner has no jurisdiction to adjudicate such a claim – which is reviewable by the Superior Court of New Jersey. *N.J.S.A. 10:4-15.*

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*