

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

SYNOPSIS

The respondent in this matter appealed the February 29, 2012 decision of the School Ethics Commission (Commission) finding him in violation of *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members for taking private action that had the potential to compromise the Board; specifically, the Commission determined that respondent took private action when he issued a Rice Notice to Interim Superintendent Melindo Persi (Persi) without Board authorization. The Commission recommended a penalty of reprimand.

The Commissioner found, *inter alia*, that: in unilaterally issuing a Rice Notice to Persi, respondent acted outside the scope of his authority and duties as a board member; respondent's private action compromised the Board because his actions resulted in litigation involving Persi's contract; and respondent has not demonstrated that the Commission's decision was arbitrary, capricious or unreasonable. The Commissioner determined that respondent violated *N.J.S.A. 18A:12-24.1(e)* of the Code of Ethics for School Board Members and accepted the Commission's recommendation that a reprimand is the appropriate penalty in this case. Accordingly, the Commissioner ordered that the above-named respondent be reprimanded as a school official found to have violated the School Ethics Act.

<p>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.</p>

June 22, 2012

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

The record of this matter and the decision of the School Ethics Commission (Commission) have been reviewed. On March 12, 2012, Respondent-Appellant Daniel Woska (respondent) filed an appeal of the Commission’s February 29, 2012 decision with the Commissioner of Education pursuant to *N.J.A.C.* 6A:4-1.3(c). The Commission found that the respondent violated *N.J.S.A.* 18A:12-24.1(e)¹ of the Code of Ethics for School Board Members because he was found to have taken private action that had the potential to compromise the Brick Township Board of Education (Board). The Commission recommended a penalty of reprimand for such violation. In support of his appeal, the respondent filed a letter brief, and Complainant, Melindo Persi (complainant) filed a response thereto. Subsequently, a reply brief was filed by the respondent.

In his appeal to the Commissioner, the respondent argues that the Commission’s application of *N.J.S.A.* 18A:12-24.1(e) to the facts in this matter is contrary to law. The respondent maintains that his issuance of the Rice Notice to the Interim Superintendent Melindo Persi (Persi) was not a private action because the newly appointed Board ratified the prior issuance of the Rice Notice at the reorganization meeting of April 29, 2008. In the alternative, respondent argues that even if the issuance of the Rice Notice to Persi was a private act, the action did nothing to compromise the board in

¹*N.J.S.A.* 18A:12-24.1(e), states “I will recognize that authority rests with the board of education and will make no personal promises nor take any private action that may compromise the board.”

violation of *N.J.S.A.* 18A:12-24.1(e). The respondent points out that the full Board voted on Persi's termination and as such it was the Board's action that resulted in the litigation regarding Persi's contract. Further the respondent argues that none of the cases cited in the Commission's decision compare to the circumstances in this case. Finally the respondent contends that no penalty should be imposed given the unique circumstances in this case. Respondent stresses that there is no legal requirement that a Rice Notice can only be issued at the direction of the board president or after consultation with the other board members.

In his response brief, the complainant argues that respondent's appeal fails to provide any basis to establish that the decision of the Commission is arbitrary, capricious or contrary to law. The complainant maintains that the respondent's series of private actions resulting in a violation of *N.J.S.A.* 18A:12-24.1(e) cannot be absolved by the board's subsequent action. Moreover, the complainant contends that it is irrelevant that there is no requirement that the board president issue the Rice Notice, and the Commission did not ignore that argument as the respondent suggests in his brief. The complainant also points out that the Commission's decision properly cited cases supporting its determination. Finally, the complainant argues that the petitioner fails to cite to any case law that suggests the Commission's decision to impose a reprimand is arbitrary, capricious or contrary to law.

In reply, the respondent emphasizes that it was the vote of the majority of the Board that resulted in Persi's termination, not his alleged private act of issuing a Rice Notice. As a result, he should not be held liable under the School Ethics Act simply because his decision to issue a Rice Notice was a link in the "chain of events" that led to Persi's termination.

Upon full review and consideration, the Commissioner can find no basis on which to disturb the decision of the Commission as to its determination of violation, as the Commission's decision is supported by sufficient credible evidence in the record, and respondent has not demonstrated that such decision is arbitrary, capricious or contrary to law. *N.J.A.C.* 6A:4-4.1(a). The record has demonstrated that when the respondent determined to unilaterally issue the Rice Notice to Persi, he

acted outside the scope of his authority and duties as a board member as described in *N.J.A.C.* 6A:28-6.4(a)5 of the School Ethics Commission's regulations. Moreover, respondent's conduct compromised the board because his actions resulted in litigation involving Persi's contract. The Commissioner is not persuaded by the arguments advanced by respondent in his appeal, namely his contention that the board effectively ratified his decision to issue the Rice Notice, and that it was the action of the majority of the full board that resulted in Persi's termination and ultimately the contract litigation. As a result, the Commissioner finds that Commission's determination that the respondent violated *N.J.S.A.* 18A:12-24.1(e) was not arbitrary, capricious or contrary to law.

The Commissioner also accepts the Commission's recommendation that reprimand is the appropriate penalty in this matter for the reasons expressed in the Commission's decision. In so ruling, the Commissioner is satisfied that in recommending a penalty for the violation it found, the Commission fully considered the nature of the offense and weighed the effects of aggravating and mitigating circumstances. Therefore, the Commission's recommended penalty in this matter will not be disturbed.

Accordingly, IT IS hereby ORDERED that Daniel Woska be reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 22, 2012

Date of Mailing: June 26, 2012

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