



July 25, 2014

**COMMISSIONER RULES THAT ONLY THE BOARD OF EDUCATION OR BOARD PRESIDENT MAY SEND A RICE NOTICE TO THE SUPERINTENDENT**

On June 17, 2014, the Commissioner of Education issued his final decision in the matter of Persi v. Woska, in which he established a “bright-line” rule regarding the circumstances under which a Rice notice may be issued to a Superintendent – that is, the notice that must generally be provided to a school district employee before the Board of Education may discuss that employee in executive session. The Commissioner concluded that the authority to issue a Rice notice lies only with the board president or by action of a majority of the board’s full membership. In doing so, the Commissioner appeared to endorse a prior ruling by the School Ethics Commission (“SEC”) which held that an individual board member who sends a Rice notice to the Superintendent, without board approval, commits an ethics violation.

By way of background, in 2011, the SEC held that a member of the Brick Township Board of Education violated the School Ethics Act when he directed the Board Secretary to send a Rice notice to the Superintendent without consulting the board president or other board members. The SEC ruled that the board member took private action that had the potential to compromise the board and recommended a penalty of a reprimand. The Commissioner accepted the SEC’s recommendation.

The board member appealed the Commissioner’s ruling to the Appellate Division. After review, the Court remanded the matter back to the Commissioner, noting that it was unable to reach a final decision because there was no clear procedure that governed the circumstances for the issuance of a Rice notice to Superintendents.

On remand, the Commissioner noted 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,” and are often serious and time-sensitive. Thus, the Commissioner held that the issuance of a Rice notice to the Superintendent should be governed by N.J.A.C. 6A:32-3.1, the regulation that sets forth the procedure for calling a special meeting of the Board.

Under that regulation, a special meeting may only be called: (1) when requested by the board president; (2) by the Chief School Administrator, under certain circumstances; and (3) by request of a majority of the full membership of the board. The Commissioner then held that, since the regulation does not allow a single board member to call a special meeting of the board,

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it follows that the board member also lacks the authority to issue a Rice notice to the Superintendent. Rather, that authority lies with the board president or a majority of the full membership of the board.

In light of this ruling, school boards should update and/or prepare a policy to address this issue. While the Persi ruling only applies when a Rice notice is issued to the Superintendent, it may also be advisable to prepare a policy governing the issuance of Rice notices to other staff members within a District so that the board has some clear guidelines to follow. If you have any questions regarding the implementation or effect of the Commissioner's ruling, or would like assistance in crafting such a board policy, please do not hesitate to contact the school law attorneys at Schenck, Price, Smith & King, LLP.

**DISCLAIMER:** This Legal Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client. If someone you know would like to receive this Legal Alert, please send a message to Joseph L. Roselle, Esq., at [jlrs@spk.com](mailto:jlrs@spk.com). Mr. Roselle is a member of the School Law Practice Group as well as a member of the Labor and Employment Practice Group at Schenck, Price, Smith & King, LLP.

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