

AGENCY DOCKET NO. 4-10/15A
SEC DOCKET NO. C58-14

MATTHEW CHENG, :
COMPLAINANT, :
V. : COMMISSIONER OF EDUCATION
STEVEN RODAS, WEST NEW YORK : DECISION
BOARD OF EDUCATION, HUDSON :
COUNTY, :
RESPONDENT. :

This matter involves an appeal of the School Ethics Commission's September 22, 2015 determination that respondent Steven Rodas, Board President, West New York Board of Education (the Board), violated *N.J.S.A.* 18A:12-24.1(e) of the Code of Ethics for School Board Members when he personally issued a *Rice*¹ notice to the Board Secretary/Business Administrator (B.A.) and when he directed the Board attorney to issue a second *Rice* notice to the B.A., both without prior notification to the Board nor the superintendent's recommendation.² The Commission recommended a penalty of reprimand for the violation. Having carefully reviewed the Commission's decision and the record in its entirety, the Commissioner finds that the Commission's decision is supported by sufficient, credible evidence, and that respondent failed to establish that the decision is arbitrary, capricious

¹ *Rice v. Union County Regional High School Board of Education*, 155 *N.J. Super.* 64 (App. Div. 1977), *certif. denied*, 76 *N.J.* 238 (1978).

² At the hearing, complainant withdrew the allegations set forth in Paragraphs 9 through 12 of the Complaint that respondent violated *N.J.S.A.* 18A:12-24.1(e) and (j) of the Code of Ethics for School Board Members. The matter proceeded on claims that respondent violated *N.J.S.A.* 18A:12-24.1(e) as alleged in Paragraphs 3 through 8 of the Complaint. Upon review, the Commission dismissed the allegations in Paragraphs 3 and 6 through 8 of the Complaint, but found that respondent violated *N.J.S.A.* 18A:12-24.1(e) as to Paragraphs 4 and 5 of the Complaint.

or contrary to law. *N.J.A.C.* 6A:4-1.1(a). Additionally, the Commissioner finds that a penalty of reprimand is appropriate.

In his appeal to the Commissioner, respondent maintains that he did not violate *N.J.S.A.* 18A:12-24.1(e) because he was advised by the Board attorney that – according to his interpretation of *Melindo Persi v. Daniel Woska, Township of Brick Board of Education, Ocean County*, Commissioner’s Decision No. 260-14A, decided June 17, 2014 – the Board president had authority to issue a *Rice* notice to the B.A., and respondent relied upon that advice. Specifically, the Board attorney reasoned that since the Commissioner found in *Persi* that a Board president was permitted to issue a *Rice* notice to the superintendent, one could draw the conclusion that the Board president should also be permitted to issue a *Rice* notice to the B.A. Respondent also argues that he did not violate *N.J.S.A.* 18A:12-24.1(e) because he did not make personal promises or take private action to compromise the Board; while his action may have been individual action, it was taken on behalf of the board and not himself.

Respondent contends that he should not be penalized for conduct that was not a clear violation of the School Ethics Act. He points out that the School Ethics Commission’s September 22, 2015 decision recommends a change to the *Persi* decision so that authority to issue a *Rice* notice would lie with the Board president *and* a majority of the Board, rather than the Board president *or* the full majority of the Board. (*SEC Decision* at 9 n. 4) Respondent argues that there was no way he could have known about this change of interpretation at the time of his actions.

Alternatively, respondent argues that even if the Board attorney was incorrect in his interpretation of *Persi*, respondent should not be penalized because he relied upon the good faith advice of counsel, and “relying upon the advice of counsel insulates board members from

blame.” (Respondent’s brief at 15) Respondent relies upon three Commission decisions – *In the Matter of Lorraine Perrino, Little Egg Harbor Township Board of Education, Ocean County*, SEC Dkt. No. C30-14, July 29, 2015; *In the Matter of Carmine Cimino, Little Egg Harbor Township Board of Education, Ocean County*, SEC Dkt. No. C31-14, July 29, 2015; and *In the Matter of Martha “June” Palan, Little Egg Harbor Township Board of Education, Ocean County*, SEC Dkt. No. C32-14, July 29, 2015 – in which board members did not suffer a penalty when they relied upon the advice of counsel that their actions would not likely result in an ethical violation.

Finally, respondent contends that at the ethics training for board members, he was instructed to consult with a board attorney for specific advice. He argues that he should not be penalized for relying upon the advice of board counsel when he was told by the New Jersey School Board Association to seek such advice. Respondent further points out that the cases cited by the Commission in support of a reprimand are not similar to this matter, as his actions do not rise to the same level of the misuse of power as the respondents in those cases. As such, respondent maintains that he did not violate *N.J.S.A. 18A:12-24.1(e)*, and – even if he did – he should not suffer a penalty.

Upon a comprehensive review of the record, the Commissioner finds that the decision of the Commission as to a determination of a violation of *N.J.S.A. 18A:12-24.1(e)* is supported by sufficient credible evidence, and the respondent has not established that the Commission’s decision is arbitrary, capricious or contrary to law.³ *N.J.A.C. 6A:4-4.1(a)*. The evidence in the record fully supports the Commission’s determination that respondent took action beyond the scope of his authority when he unilaterally issued a *Rice* notice to the B.A. and

³ The Commissioner is also in accord with the Commission’s determination that the respondent did not violate *N.J.S.A. 18A:12-24.1(e)* based on the allegations in Paragraphs 3 and 6 through 8 of the Complaint, but rather only for the allegations in Paragraphs 4 and 5 of the Complaint.

when he directed the Board attorney to issue a second *Rice* notice to the B.A., both without notice to the Board or the superintendent's recommendation. The respondent – in his Answer – admitted to issuing the *Rice* notice and directing the Board attorney to issue a *Rice* notice, without any advance notice or discussion. Such action can only be construed as private action, as it was taken independently and without the recommendation of the Board. Issuing a *Rice* notice, and directing another to issue said notice – without either notification to the Board or the recommendation of the superintendent – compromised the Board because it implied that respondent was acting on behalf of that body, when in fact no one authorized the *Rice* notice to be issued – resulting in the B.A.'s resignation. For the reasons expressed in the Commission's comprehensive decision, the respondent's conduct violated *N.J.S.A.* 18A:12-24.1(e).

The Commissioner does not find respondent's arguments to be persuasive. With respect to respondent's argument that he relied on the advice of Board counsel, the Commissioner notes – at the outset – that there is no evidence in the record that respondent actually relied upon the advice of Board counsel. Respondent did not testify to set forth the facts upon which he relies for this argument. Nevertheless, the Board attorney's advice – upon which respondent claims to have relied – was incorrect.

In *Persi*, the Commissioner was charged with determining who has the authority to issue a *Rice* notice to a school superintendent. *Persi*, Commissioner's Decision No. 260-14A, decided June 17, 2014. The Commissioner found 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.”⁴ *Id.* at 3. The testimony in the *Persi* matter indicated that “ordinarily, a *Rice* notice would be signed by the Business Administrator, the Superintendent or Assistant Superintendent, in this instance, the Interim Superintendent was to be the subject of the discussion.” *Persi*, SEC Docket No. C25-08, dated February 28, 2012, at 7. Thus, as the chief school administrator could not issue a *Rice* notice to himself or herself, the procedure changed and the Commissioner found that a Board president or majority of the board had the authority to issue the *Rice* notice to the superintendent in that unique circumstance. It does not follow that a Board president would have the authority to issue a *Rice* notice to any other employee, because there would be no need for an exception to the standard procedure. Accordingly, the Board president here was required to consult with the superintendent rather than unilaterally issuing a *Rice* notice to the B.A.

Although respondent argues that the *Perrino*, *Cimino*, and *Palan* decisions demonstrate that his reliance on the advice of counsel insulates him from blame, such a conclusion is without basis. In those matters, the complainant alleged that the respondents violated the Code of Ethics for School Board Members when they participated in the hiring process for the new superintendent, even though they each had an immediate family member who was a district employee. *Perrino*, *Cimino*, and *Palan*, *supra*, at 2. Specifically, the Board attorney had advised them that although they need to be recused from the search and selection process and from voting on the candidate, it would not likely violate the School Ethics Act if they participated in the process of selecting and appointing the consulting firm to conduct the search for the superintendent. *Ibid.* After the Commission issued an advisory opinion indicating that Board members may not participate in any aspect of the superintendent’s search, the Board

⁴ The Commission recommended that the ruling in *Persi* be modified to require that the authority to issue a *Rice* notice to the chief school administrator lies with the president *and* a majority of a district board of education. (SEC Decision, at p. 9, n. 4) As that is not an issue in this matter, the Commissioner need not reach that issue.

voted to rescind the vote to select the consulting firm and allow only the non-conflicted Board members to vote on a new firm. *Id.* at 3.

The respondents in the above-cited cases argued that they should not be held accountable for their actions because they “followed advice of counsel and there was not prevailing authority to prohibit [their] voting for the firm to conduct the search.” *Id.* at 5. The Commission found that “[t]he respondent[s] also argue[] that the legal advice the Board received insulates [them] from blame for [their] conduct. It does not. Each Board member undergoes ethics training as each is responsible for [his or her] own ethical conduct. That responsibility cannot be delegated or avoided.” *Id.* at 6. As such, the Commission found that the respondents were in violation of the School Ethics Act. *Id.* at 7. Nevertheless, the Commission declined to issue a penalty because “the non-conflicted Board members summarily took remedial action to rescind the vote of June 10, 2014, corrected the minutes and voted to select a different consulting firm to lead the search without the Respondent[s]’ involvement.” *Ibid.*

As such, those decisions make clear that respondent is not “insulated from blame” by relying upon the advice of counsel. To the contrary, the Commission reiterated that respondents are responsible for their own actions. Here, as noted in the Commission’s decision, respondent should have completed his ethics training and has a duty to act prudently and cautiously. In this matter, the Board attorney did not provide legal support for his finding that the Board president could issue a *Rice* notice to the B.A. Given the sufficient uncertainty, respondent should have filed a request for an Advisory Opinion with the Commission on the matter, rather than taking action on his own. Although the Commission chose not to impose a penalty on the respondents in *Perrino*, *Cimino*, and *Palan* since their actions had been remediated and the vote had been rescinded, such circumstances do not exist here. No remedial

action was taken; instead, the B.A. resigned based on the *Rice* notice. Respondent's actions resulted in a permanent outcome.

As such, the Commissioner accepts the Commission's recommendation – for the reasons expressed in the Commission's decision – that a reprimand is the appropriate penalty in this matter. In so ruling, the Commissioner finds that issuance of a reprimand here is consistent with penalties in prior cases involving violations of *N.J.S.A.* 18A:12-24.1(e). Therefore, the Commission's recommended penalty will not be disturbed.

Accordingly, IT IS ORDERED that Steven Rodas is hereby reprimanded as a school official found to have violated the School Ethics Act.

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 20, 2017

Date of Mailing: January 20, 2017

⁵ This decision may be appealed to the Superior Court, Appellate Division, pursuant to P.L. 2008, c. 36. (*N.J.S.A.* 18A:6-9.1)