
MATTHEW CHENG

v.

STEVEN RODAS
WEST NEW YORK BOARD OF EDUCATION
HUDSON COUNTY

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BEFORE THE SCHOOL ETHICS COMMISSION

DOCKET NO. C58-14

DECISION

PROCEDURAL HISTORY

This matter arises from a complaint filed on December 17, 2014, by Matthew Cheng, a member of the West New York Board of Education (Board), alleging that Board President, Steven Rodas, violated the School Ethics Act (Act), N.J.S.A. 18A:12-21 et seq. He specifically alleged that the Respondent violated N.J.S.A. 18A:12-24.1(e) and (j) of the Code of Ethics for School Board Members. The School Ethics Commission (Commission) served the Respondent with the Complaint on December 29, 2014 by certified and regular mail, advising him that he had 20 days from receipt of the Complaint to file a responsive pleading.

By letter of February 10, 2015 the Commission again notified the Respondent that he had an additional ten (10) days to respond or he would be deemed to have admitted to all of the allegations in the Complaint and that the matter would be decided in a summary manner, pursuant to N.J.A.C. 6A:28-7.3(b). On February 19, 2015, Respondent's newly retained attorney requested and received a brief extension of time to file a responsive pleading, and on March 20, 2015, the Respondent filed his Answer.

By letter dated April 2, 2015, the parties were notified that the Commission would review this matter at its April 28, 2015 meeting. At its meeting on April 28, 2015, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to retain the Complaint, docketed as C58-14, for a hearing at a later date.

The Commission notified the Complainant and Respondent by letter of June 10, 2015 that, at its meeting on July 28, 2015, it would conduct a plenary proceeding to hear testimony and consider evidence in support of their respective positions. On the day of the meeting, prior to the commencement of the hearing, the Complainant agreed to withdraw the allegations in Paragraphs 9 through 12 of his Complaint. The Commission voted to grant the withdrawal of those claims, and the matter proceeded on Complainant's claims that Respondent violated N.J.S.A. 18A:12-24.1(e) as alleged in Paragraphs 3 through 8.

The Complainant, Matthew Cheng, appeared *pro se*. Respondent Rodas appeared with his attorney, Adam S. Weiss, Esq. After the Complainant testified, was cross-examined and questioned by the Commission, he rested. Respondent's counsel made a Motion to Dismiss the Complaint for failure to state a claim upon which relief could be granted. After deliberation, the

Commission decided to reserve its decision on the Motion until the Respondent presented his case. The Commission heard only Complainant Cheng's testimony on all remaining Counts of the Complaint on direct and cross examination, and the Commission further questioned the Complainant and accepted the documentary evidence he presented, as well as the documentary evidence presented by Respondent Rodas' counsel. Respondent Rodas decided not to testify or call any witnesses after the Complainant rested at which point the Commission advised the parties that it would not render a decision that day and required them to submit a brief explaining their respective positions regarding a Board President's authority to unilaterally issue a *Rice*¹ notice to an employee of the District without Board or Superintendent approval. The parties were advised that upon receipt of the briefs, the matter would be placed on the Commission's August 25, 2015 agenda.

On August 6, 2015, the parties simultaneously transmitted their briefs for review and consideration. Based on the testimony, the evidence summarized below, and the parties' briefs, the Commission determined that the Complainant had established a *prima facie* case and met his burden of proof by a preponderance of the credible, uncontested evidence.

SUMMARY OF THE PLEADINGS

Paragraph 3

Complainant/Board member alleges that between November 3, 2014 and November 10, 2014, the Respondent/Board President, without consulting the other Trustees, instructed the Board Attorney to research and/or prepare memos regarding: a) the non-renewal of the Superintendent, b) replacing an employee after new elections have been held but before the new Board is reorganized, c) whether a school board can take action to bind a future board by replacing an employee's position prior to the end of his contract, and d) addressing personnel actions taken to avoid granting tenure. The Complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(e).

Paragraph 4

The Complainant also asserts that the Respondent personally issued a *Rice* notice to the Business Administrator/Board Secretary (BA) without prior notification to the Board or with the Superintendent's recommendation. The complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(e).

Paragraph 5

The Complainant also asserts that on December 8, 2014, the Respondent directed the Board Attorney to issue a *Rice* notice to the BA without prior notification to the Board or with

¹"Rice" notice refers to the matter entitled, Rice v. Union County Regional High School Bd. of Ed., 155 N.J. Super. 64 (App. Div. 1977), certif. den. 76 N.J. 238 (1978) which established the right of employees to obtain notice when they will be discussed by the Board of Education.

the Superintendent's recommendation. The Complainant avers that such action is outside the scope of the Respondent's duties as a Board member. The Complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(e).

Paragraphs 6—8

The Complainant further alleges that the Respondent took private action in violation of the Act when on December 10, 2014 he surreptitiously met with the Board Attorney and certain Board members to discuss a plan to terminate the Superintendent or place him on leave. The Complainant also alleges that after the BA submitted his irrevocable letter of resignation to the Board prior to Executive Session, the Board did not discuss the Superintendent's employment. The Complainant asserts this was a violation of N.J.S.A. 18A:12-24.1(e).

The Respondent admitted that he composed and delivered the document identified as Exhibit E, the *Rice* notice for the BA, that he consulted with and requested the Board Attorney compose and deliver the notice, but otherwise will let the documents speak for themselves and leave the Complainant to his proofs.

SUMMARY OF THE RECORD

Each party was given the opportunity to make an opening statement. In his opening remarks, Complainant Cheng requested leave to withdraw Paragraphs 9 through 12 of his Complaint and agreed to rely on Respondent's Exhibits 1 through 64 when referring to documentary evidence for identification and admission. The Complainant stated that the central issue in this matter is whether the Board President has the authority to unilaterally or at the direction of the Board Attorney issue a *Rice* notice to an employee. He stated that he recognizes that the Commissioner of Education decided that the Board President may issue a *Rice* notice to the Superintendent, but argues that the Commissioner did not grant that same authority regarding an employee.

Mr. Cheng further explained that he brought this Complaint because he thought that Respondent Rodas' actions in directly serving a *Rice* notice to the BA was an "egregious" misuse of power, which forced the BA to retire or be fired. He stated, "In my opinion, the BA was given an ultimatum due to his contract." He provided that the BA's contract was voted on by the Board before the County Superintendent approved it, instead of first receiving approval by the County. Though a technicality, the County Superintendent approved the BA's contract and never took a position as to the validity of the contract. In the course of this, it was the Complainant's belief that Mr. Rodas or the Board attorney had asked the Superintendent to place on the agenda a notice to terminate the BA if he did not resign; and, when the Superintendent did not put this on the agenda, he too was given a *Rice* notice. The Complainant's major concern and purpose for filing this Complaint is to review the Board President's authority to issue a *Rice* notice to any employee of his or her choosing at any time.

In his opening remarks, counsel for the Respondent stated that after Complainant's withdrawal of the allegations in Paragraphs 9-12, the sole remaining issue is whether or not a

Board president, who relies upon the advice of Board counsel, can issue a *Rice* notice to a BA and whether that issuance or that directive to issue such a *Rice* notice violates the School Ethics Act. He respectfully advised the Commission that it was not going to be able to determine the type and number of employees to whom a Board president may issue a *Rice* notice but that the sole issue before it is whether the Respondent violated the School Ethics Act as a result of his reliance upon Board attorney advice that was given during a public meeting. That advice confirmed the Board attorney's opinion that the issuance or the directive to issue the notice by the Board President, Mr. Rodas, to the BA is appropriate.

COMPLAINANT'S TESTIMONY: Matthew Cheng—Board Member

After being sworn in, Mr. Cheng testified that on June 25, 2014, the Board had passed a resolution to appoint the BA, and on July 9, 2014, the County Superintendent approved this contract. Complainant asserted that sometime between November 3, 2014 and November 10, 2014, the Respondent, without consultation with the Complainant or, to his understanding, other Board members, instructed the Board attorney to research and prepare memos regarding: a) non-renewal of the Superintendent; b) replacing an employee after elections have been held but two months before the Board is reorganized; c) whether a Board can take binding action on a future Board by replacing an employee prior to the end of a contract and before new Board members are seated; and, d) address personnel actions to avoid granting tenure to an employee. Mr. Cheng asserts that Exhibit E documents the conversations counsel had with Mr. Rodas.

According to the BA's contract, he would have received tenure in the middle of contract's duration. The Complainant asserts that Respondent Rodas personally composed and handed the *Rice* notice directly to the BA (Exhibit E), and at the November Board meeting, the members discussed the BA's employment, which was not an item on the Board agenda that evening. Mr. Cheng testified that he did not know that the conversation was going to take place and was surprised that the Board was contemplating terminating the BA. The Complainant stated that, at that time, he inquired of the Superintendent if he was aware of the situation and was informed that the Superintendent was "very surprised" that this matter had come up and that this was the first point where he became aware of the first *Rice* notice.

Mr. Cheng stated that on December 8, 2015, Mr. Rodas directed the Board attorney to issue a second *Rice* notice directly on the BA. Exhibit F. Again, Mr. Cheng states that the Superintendent, as well as the other Board members, had not agreed to place the BA's employment on the agenda for the December meeting. After a long discussion in Executive Session, the BA submitted his resignation letter due to the public discussion that his contract was not valid and that if he did not he would be terminated. The Complainant believes that the BA signed his letter of termination under duress. The Complainant argues that in both instances of these *Rice* notices the Respondent failed to adhere to the principle that authority rests with the Board and that a member, including the Board President, must not take any private action which may compromise the Board in violation of N.J.S.A. 18A:12-24.1(e).

On cross examination, counsel for Respondent Rodas questioned Mr. Cheng as to whether he had any personal knowledge of Mr. Rodas giving any instructions to the Board

attorney to conduct research, prepare memoranda, or giving personal instructions. The Complainant said he did not have any personal knowledge of the interaction between Mr. Rodas and the Board attorney except for Exhibit D, the memo itself. Mr. Cheng testified that the only source of his knowledge concerning allegations that Mr. Rodas directed the Board attorney to either conduct research or prepare memos are the bills that he received from the Board of Education, pursuant to an OPRA request. With the Complainant's consent, Respondent marked these bills for identification as Rodas 28-32. At the same time Mr. Cheng entered his Exhibits A—H into evidence.

Mr. Weiss next inquired about Complainant's Exhibit D (Rodas 28 through 32), the invoice from the law firm of Schwartz, Simon, Edelstein for services rendered to the West New York BOE. Mr. Cheng responded that the items, together with their descriptions, represent the work which the law firm performed. He also stated that there was no indication that Respondent Rodas initiated the request for services. Mr. Cheng further stated that Board members were told that the Board President was the only member who could speak with the attorney, and that the only way for those items to be billed would have to come from the Respondent. Mr. Cheng did admit, however, that the research conducted could have been initiated by the attorney himself on certain areas of law which would then be given as advice to the Board. He also admitted on cross that he had also requested that the Board attorney research the issue regarding whether a Board President can issue a *Rice* notice because the Board attorney stated at a meeting in public that it was possible for the Board President to unilaterally issue a *Rice* notice to the BA. Mr. Cheng stated that he publicly disagreed with the Board attorney at that same public portion of the meeting because he had called the New Jersey School Boards Association and was advised that the Board President could not issue a *Rice* notice to any employee other than the Superintendent.

Mr. Weiss then turned his attention to the *Rice* notice served on the Superintendent. Mr. Cheng testified that the Superintendent, as well as other Board members, was not aware that the BA was to receive a *Rice* notice for discussion at the November meeting. Mr. Cheng also testified that he was unaware whether Mr. Rodas consulted with any member prior to the issuance of a *Rice* notice to the Superintendent or to the BA. He further testified that three of the nine Board members, including him, were not aware of the notices.

Mr. Weiss's final question to the Complainant regarded Mr. Rodas' alleged surreptitious discussion with the Board attorney to place the Superintendent on leave if the BA did not submit a letter of resignation. In response, Mr. Cheng testified that the only knowledge he had resulted from his review of the Board attorney's invoice and his conclusion that the Superintendent received a *Rice* notice subsequent to the BA's submission of his irrevocable letter of resignation. (Complainant's Exhibit D at Rodas 28-32)

At the conclusion of cross examination, members of the Commission and counsel further questioned Mr. Cheng. He testified that the Superintendent's employment was not discussed at the December 10, 2014 meeting and expressed concern that if a Board President is permitted to issue a *Rice* notice to an employee and the Superintendent does not agree, then the Board President could just issue a *Rice* notice to the Superintendent in retaliation. The Complainant

also testified that Mr. Rodas never gave a reason why he issued a *Rice* notice to the BA, and opined that it was because of the technicality in his contract approval.

When asked if the Board attorney gave his reasons in public as to why he thought the Board President could issue a *Rice* notice to an employee, Mr. Cheng responded that the attorney cited the decision in Melindo Persi v. Daniel Woska, Board of Education of the Twp. of Brick, Ocean County, 6/17/14, Commissioner of Education Dkt. #260-14A, SEC #C03-14, in which the Commissioner of Education determined that a Board President could issue a *Rice* notice to a Superintendent, and that the attorney felt, therefore, that a Board President could do it to other employees including the BA. Counsel for Mr. Rodas added that at the meeting the Board attorney gave his opinion as to the abilities of a Board President concerning the issuance of *Rice* notices.

Mr. Cheng was asked about the two meeting dates at the end of 2014. He testified that the sequence of events started in November with a *Rice* notice issued to the BA, at which time his employment was discussed. In December, just before the meeting, the BA received a second *Rice* notice. Right after the BA received the second *Rice* notice, the Superintendent, who had submitted his resignation letter, received a *Rice* notice as well. The dates were very close together—December 8th and December 10th—as stated in his Complaint. In November and December both discussions took place in Executive Session. After discussion in Executive Session where the BA submitted his irrevocable letter of resignation, the item was added to the agenda after members left the room. During the public portion of the meeting in December, a public discussion ensued regarding the BA's resignation, the Board's acceptance of his resignation, and a debate among the Board members and the Board attorney over the authority of a Board President to issue a *Rice* notice to the BA.

After the Complainant rested, counsel for the Respondent made a Motion for Directed Verdict² claiming that Mr. Cheng's submissions were mere speculation concerning conversations that may have happened or may not have happened. In the counsel's view, it was admitted by Mr. Cheng that the Board attorney advised, in public session on December 10, 2014, that it was his opinion that the Board President, Mr. Rodas, was authorized or otherwise empowered to issue a *Rice* notice to the BA.

After a short recess to deliberate, the Commission advised the parties that it would reserve its decision on the Motion for a Directed Verdict until the Respondent presented his case.

At this point, counsel for the Respondent advised the Commission that his client would not testify or call witnesses on his behalf and rested his case.

In summation, Mr. Cheng spoke of the public session discussion of the December meeting in which he and other Board members disagreed with the Board attorney over his advice to the Board that a Board President could issue a *Rice* notice to an employee directly. Again, he

² N.J.A.C. 6A:28-6.9(c) provides that all hearings shall be conducted in accordance with the rules of the OAL. Such rules permit a party to make an oral motion during a hearing and to state the grounds for the motion. N.J.A.C. 1:1-12.1(a)1 and 2.

asserted that this advice was egregious. Although the Board attorney did issue a memo on the subject, he did not cite any cases in support of his position. Mr. Cheng also remarked that he and other Board members argued with the Board attorney about whether or not his opinion was reliable and “confident” legal advice.

Counsel for Respondent Rodas made no closing remarks and relied on his presentation of his Motion for Directed Verdict.

Before adjournment of the hearing, the Deputy Attorney General for the Commission requested on behalf of the Commission that each party submit a brief legal memorandum, specifically addressing the authority or lack of authority of the Board President to issue a *Rice* notice to an employee other than the Superintendent. The briefs were to be submitted by August 10, 2015.

Complainant’s Exhibits

C-1	Complaint and Exhibits A—H (Rodas 1-55 Complaint and Exhibits)
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Respondent’s Exhibits

R-1	Bills for Attorney’s fees Rodas 28-32 (Complainant’s Exhibit D) Entered into evidence by Complainant as Exhibit D.
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FINDINGS OF FACT

As the trier of fact in this matter, the Commission had the opportunity to observe the demeanor of the witness and to judge his credibility. As such, the Commission found Matthew Cheng to be a credible witness, who offered consistent testimony which was unaltered by cross examination. As Respondent Rodas did not offer testimony or documentary evidence in his defense, except for R-1, the testimony of Complainant Cheng stands undisputed and unopposed. The Commission found the Complainant’s testimony to be credible and uncontroverted.

Accordingly, based on the pleadings, documents in the record, and credible, relevant testimony, the Commission makes the following factual findings on the issues of whether the Respondent took private action without Board authority in violation of N.J.S.A. 18A:24.1(e):

1. At all times relevant to this matter, the Complainant Cheng was a member of the West New York Board of Education (Board).
2. At all times relevant to this matter, Respondent Rodas was the President of the West New York Board of Education.
3. The BA was served with a *Rice* notice on November 10, 2014 and again with a second notice on December 8, 2014.
4. Respondent Rodas admitted in his Answer that on November 10, 2014, he composed and delivered the first *Rice* notice to the BA and that he did not inform the Superintendent that he was serving this *Rice* notice on the BA.

5. Respondent Rodas admitted in his Answer that he did not inform Complainant Cheng or any other of the Board members that he was serving this *Rice* notice on the BA.
6. Respondent Rodas admitted in his Answer that on December 8, 2014, he directed the Board attorney to compose and deliver a second *Rice* notice to the BA.
7. Respondent Rodas admitted in his Answer that on December 8, 2014, he did not inform the Superintendent that he was serving a second *Rice* notice on the BA.
8. Respondent Rodas admitted in his Answer that on December 8, 2014, he did not inform the Complainant Cheng or any other of the Board members that he was serving a second *Rice* notice on the BA.
9. During cross examination, Complainant admitted that he had no personal knowledge of the discussions that Respondent had with the Board attorney relative to his issuance of legal advice regarding the non-renewal of the Superintendent, replacing an employee after new elections have been held but before the new Board is reorganized, whether a school board can take action to bind a future board by replacing an employee's position prior to the end of his contract, and addressing personnel actions taken to avoid granting tenure without discussion with the Board as a whole.
10. During cross examination, Complainant Matthew Cheng admitted that he had no knowledge of an alleged surreptitious meeting between the Respondent Steven Rodas and the Board attorney to discuss placing the Superintendent on a leave of absence if the BA did not submit a letter of resignation.
11. The minutes of the December 10, 2014 meeting demonstrate that there was a dispute among some Board members and the Board attorney over his legal opinion, unsupported by legal precedent or statute, regarding the Board President's authority to issue a *Rice* notice to a school employee.

ANALYSIS

MOTION FOR DIRECTED VERDICT

Pursuant to N.J.A.C. 6A:28-8.1(d), upon completion of the Complainant's case, and prior to the Respondent's testimony, counsel for Respondent Rodas moved for a Directed Verdict on behalf of the Respondent on the grounds that the Complainant's case and testimony was based on speculation and that the Board attorney rendered his opinion that a Board President is authorized or otherwise empowered to issue a *Rice* notice to an employee, here the BA. To grant a Directed Verdict, this Commission must determine that the evidence weighs so heavily in favor of one party, and so lightly in favor of the other, that there is only one reasonable result and that no reasonable fact-finder could reach a decision to the contrary. The Respondent would have

this tribunal determine that this is the appropriate matter to so rule. The Commission discerns that it is not.

As N.J.A.C. 1:1-1 et. seq.³ is silent on a Directed Verdict, N.J.A.C. 1:1-1.3(a) permits reference to the New Jersey Court Rules. Under R. 4:37-2(b), a motion for a Directed Verdict is granted only if, accepting the plaintiff's facts and considering the applicable law, "no rational jury could draw from the evidence presented" that the plaintiff is entitled to relief. Pitts v. Newark Bd. of Educ., 337 N.J. Super. 331, 340, 766 A.2d 1206 (App.Div.2001). See also R. 4:37-2(b) ("[A] motion shall be denied if the evidence, together with the legitimate inferences therefrom, could sustain a judgment in plaintiff's favor."). "[I]f reasonable minds could differ, as to whether any negligence has been shown, the motion should be denied." Bozza v. Vornado, Inc., 42 N.J. 355, 357-58, 200 A.2d 777 (1964) (citing Bell v. E. Beef Co., 42 N.J. 126, 199 A.2d 646 (1964)).

The guidance is applicable to the administrative setting as well. In this matter before the Commission, the Complainant asserts that the Respondent took private action when he personally composed and delivered a *Rice* notice to the BA, an employee of the District, and then directed the Board attorney to compose and deliver a second *Rice* notice to the same BA. The Respondent admitted responsibility for both notices, but argues that Board counsel advised him that he had the authority to do so and publicly stated his legal opinion which was without reference to statute, court ruling, or administrative action. The minutes of the December 10, 2014 meeting, submitted with the Complainant's brief, demonstrates that the Board attorney could cite no legal authority to support his opinion that the Board President had this power. When some Board members asked for precedents supporting his position at the December meeting, he offered nothing but his own opinion and rebuffed further inquiry.

Moreover, in review of the parties' legal briefs submitted on August 6, 2015, the Respondent did not provide any legal authority but continued to rely on the decision in Persi v. Woska, *supra*. He argued that because the Board President has the authority to unilaterally issue a *Rice* notice to the Superintendent, it must follow that the he has the power to issue a *Rice* notice to the BA, a school employee.

Under this theory, the Board President should then have the authority to issue a notice to any principal, teacher, coach, nurse, or custodian—any employee of his choosing. The Commission is concerned that extending this unilateral authority to a Board President to interfere with the employment of a BA or a custodian is the grant of unbridled power ripe for abuse, in violation of the School Ethics Act.⁴ Conducting one's office in such a manner would lead to violations of the statute, N.J.S.A. 18A:24.1(c), (e) and (i), for acting beyond the scope of a Board member's authority, taking private action with the potential to compromise the Board or interfering with the proper performance of the employee's duties. It is the Commission's

³ N.J.A.C. 6A:28-6.9(c) provides that all hearings shall be conducted in accordance with the rules of the OAL.

⁴ The School Ethics Commission recommends that the ruling in Persi v. Woska be modified to advise "that authority lies with the president of a district board of education and a majority of the full membership of a district board of education."

considered determination that the entire Board must be consulted as it was when the employee was hired.

The Respondent also argues that the legal advice the Board received insulates him from blame for his conduct. It does not. Each Board member undergoes ethics training and each is responsible for his own ethical conduct. That responsibility cannot be delegated or avoided. Respondent Rodas should have completed his ethics training, and it is his duty as an elected official to act prudently and cautiously, as is properly to be expected by a reasonable person under the particular circumstances so as not to compromise the Board. Here, the Board attorney could not, and the Respondent did not, provide support for the Board President's alleged powers. Further, there was sufficient uncertainty to warrant the Respondent/Board President or Board attorney to have filed a request for an Advisory Opinion with the Commission on the matter.

Consequently, the Commission denies the Respondent's Motion for Directed Verdict as the Respondent's admissions in his Answer that he took the actions that the Complainant alleged and together with the Commission's long held position that each Board member is responsible for his own conduct may be sufficient to sustain a finding for the Complainant.

Accordingly, the question before the Commission is whether the Complainant alleged facts and provided testimony which, if true, could support a finding that the Respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members.

CODE VIOLATIONS

The Commission again notes that the Complainant bears the burden of factually proving any violations of the Code of Ethics for School Board Members in accordance with the standards set forth at N.J.A.C. 6A:28-6.4(a). See also, N.J.S.A. 18A:12-29(b). The Complainant asserts that the Respondent violated N.J.S.A. 18A:12-24.1(e) in Paragraphs 3 through 8 of the Code of Ethics for School Board Members.

The Commission first considers the allegation that the Respondent violated N.J.S.A. 18A:12-24.1(e) as set forth in Paragraph 3 of the Complaint, which 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.

The Commission's regulations require that:

Factual evidence of a violation of N.J.S.A. 18A:12-24.1(e) shall include evidence that the Respondent made personal promises or took action beyond the scope of his or her duties such that, by its nature, had the potential to compromise the board. N.J.A.C. 6A:28-6.4(a)5.

The Complainant alleges that between November 3, 2014 and November 10, 2014, the Respondent/Board President, without consulting the other Trustees, instructed the Board Attorney to research and/or prepare memos regarding, a) the non-renewal of the Superintendent, b) replacing an employee after new elections have been held but before the new Board is reorganized, c) whether a school board can take action to bind a future board by replacing an employee's position prior to the end of his contract, and d) addressing personnel actions taken to avoid granting tenure. The Respondent argues that the Board attorney could have decided to do this research *sua sponte* in preparation for some future issue that may arise before the Board, but a review of the topics indicates that these questions were not of the Board attorney's creation but were most likely urged by someone other than the Board attorney. Nonetheless, when asked on cross examination, the Complainant stated that he had no personal knowledge who prompted these assignments for legal advice nor did he provide any support for his suspicions. Consequently, the Commission finds that the Complainant has not established that the Respondent violated N.J.S.A. 18A:12-24.1(e) as alleged in Paragraph 3 of the Complainant. Accordingly, this allegation is dismissed.

The Commission next considers the allegation that the Respondent violated N.J.S.A. 18A:12-24.1(e) as set forth in Paragraphs 6-8 of the Complaint. Similar to the claim in Paragraph 3, the Complainant asserts that the Respondent took private action in violation of the Act when, on December 10, 2014, he surreptitiously met with the Board Attorney and certain Board members to discuss a plan to terminate the Superintendent or place him on leave. Again, when asked on cross examination, the Complainant stated that he had no personal knowledge of who attended or further information regarding the putative clandestine meeting. Moreover, he did not produce anyone who witnessed or participated in the meeting. Consequently, the Commission finds that the Complainant has not established that the Respondent violated N.J.S.A. 18A:12-24.1(e) as alleged in Paragraphs 6 through 8 of the Complainant. Accordingly, these allegations are dismissed.

The Commission next considers the allegation that the Respondent violated N.J.S.A. 18A:12-24.1(e) as set forth in Paragraphs 4 and 5 of the Complaint. The Complainant asserts in each Paragraph, respectively, that on November 10, 2014, the Respondent personally issued a *Rice* notice to the BA without prior notification to the Board or with the Superintendent's recommendation, and again on December 8, 2014, the Respondent directed the Board Attorney to issue a second *Rice* notice to the BA without prior notification to the Board or with the Superintendent's recommendation. The Complainant further alleges that the Respondent also neglected to consult the other Board members on either notice. Although the Respondent did not testify at the hearing, the Answer he submitted to the Commission in response to the Complaint speaks for him.

Respondent Rodas admitted under a Certification of Oath in his Answer to the Complaint that on November 10, 2014, he composed and delivered the first *Rice* notice to the BA and that he did not inform the Superintendent that he was serving this *Rice* notice on the BA and that he did not inform Complainant Cheng or any other of the Board members of his actions. Respondent Rodas also admitted in his Answer that on December 8, 2014, he directed the Board

attorney to compose and deliver a second *Rice* notice to the BA, and again did not inform the Superintendent or the Board of his actions.

Respondent Rodas elected not to testify nor call witnesses on his behalf. He offers no defense to his actions; however, counsel for the Respondent in his oral argument and brief to the Commission advances the notion that the Respondent was following the opinion of the Board attorney that he was authorized to serve *Rice* notices on the District employee. Yet, as revealed in the minutes of the December 10, 2014 meeting, the Board attorney provided no authority in support of permitting the Board President to take such steps beyond his authority as a Board member, and similarly, the Respondent's brief was also devoid of any. Moreover, reliance on the Commissioner of Education's decision in Persi v. Woska, *supra*, is an overreach. The Commissioner, perhaps mindful that such a broad grant of power to the Board President would further destabilize the equipoise necessary for the Superintendent, Board President and the Board to function in their respective roles, declined to find a Board President's authority to issue a *Rice* notice to employees of a District other than the Superintendent. Given that the Commissioner did not extend the grant of authority to the Board President claimed by the Respondent to issue a *Rice* notice to an employee, neither can this Commission do so in his stead.

Consistent with this foregoing reasoning, the Commission reviewed these actions to determine the manner in which the Respondent violated the Code. In doing so, the Commission finds that the Complainant has met his burden to prove by a preponderance of the credible evidence, that Respondent Rodas violated N.J.S.A. 18A:12-24.1(e) when he took board action beyond the scope of his authority when, without Board authority or consultation, he unilaterally issued a *Rice* notice to an employee of the District so as to compromise the Board.

In finding a violation of N.J.S.A. 18A:12-24.1(e), it is not necessary for the Commission to find that the Respondent's action, in fact, compromised the Board. Rather, it is sufficient that the action was of such a nature that it might have compromised the Board. See, Tony John et al. v. Ken Gordon, Willingboro Bd. of Ed., Burlington County, C34-08 (October 27, 2009), aff'd Commission of Education Decision No. 102-10ASEC, decided March 30, 2010.

Accordingly, the Commission finds that based on the preponderance of the relevant, credible evidence, Respondent Rodas took private action when he unilaterally prepared and had served the *Rice* notice to the Business Administrator, a District employee, without the authority of the Board or Superintendent. These actions were of such a nature that they had the potential to compromise the Board in violation of N.J.S.A. 18A:12-24.1(e).

DECISION

The Commission finds that the Complainant has proven by a preponderance of the relevant, credible evidence that Respondent Steven Rodas violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members as set forth in Paragraphs 4 and 5 of the

Complaint, and the Commission dismisses all other allegations that the Respondent violated N.J.S.A. 18A:12-24.1(e) of the Code.

PENALTY

The Commission recommends a penalty of reprimand of the Respondent, as it did in matters where similar violations of N.J.S.A. 18A:12-24.1(e) were found and a comparable violation occurred. In recommending the penalty, the Commission notes that a reprimand was the appropriate penalty when it found that a Board member violated N.J.S.A. 18A:12-24.1(e). The Commission finds that taking action beyond the scope of a Board member's authority is precisely the type of action which the Code of Ethics for School Board Members was intended to proscribe. (See: Melindo Persi v. Daniel Woska, Board of Education of the Twp. of Brick, Ocean County, 6/17/14, #260-14A, SEC 03-14, supra; G.M.B. v. Cynthia Zirkle, Cumberland Regional Board of Education, Cumberland County, C44-10 (September 27, 2011)(Modified and confirmed by Commissioner of Education Decision No. 113-12ASEC, decided March 29, 2012), where a Board member was found to have violated N.J.S.A. 18A:12-24.1(e) when she telephoned the Board office, spoke to the Business Administrator, and asked what could be done about changing a student's bus pass to the residence of the child's paternal grandfather, rather than the residence of the student's mother, without the knowledge or consent of the student's mother; and, I/M/O Randie Zimmerman, Rocky Hill Bd. of Ed., Somerset County, (C49-02) (July 22, 2003), Commissioner of Education Decision No. 497-03SEC, decided August 21, 2003), where a Board member investigated a complaint and drafted a letter that appeared to have the endorsement of the Board.)

Here, where the Respondent was found to have violated N.J.S.A. 18A:12-24.1(e) for exceeding his authority as a Board member, the Commission finds that the penalty of reprimand is appropriate.

Pursuant to N.J.S.A. 18A:12-29(c), this decision shall be forwarded to the Commissioner of Education for review of the School Ethics Commission's recommended sanction. Parties may either: 1) file exceptions to the recommended sanction; 2) file an appeal of the Commission's finding of violation; or 3) file both exceptions to the recommended sanction together with an appeal of the finding of violation.

Parties taking exception to the recommended sanction of the Commission but *not disputing* the Commission's finding of violation may file, within **13 days** from the date the Commission's decision is forwarded to the Commissioner, written exceptions regarding the recommended penalty to the Commissioner. The forwarding date shall be the mailing date to the parties, indicated below. Such exceptions must be forwarded to: Commissioner of Education, c/o Bureau of Controversies and Disputes, P.O. Box 500, Trenton, NJ 08625, marked "Attention: Comments on Ethics Commission Sanction." A copy of any comments filed must be sent to the School Ethics Commission and all other parties.

Parties seeking to appeal the Commission's finding of violation *must* file an appeal, pursuant to the standards set forth at N.J.A.C. 6A:4, within **30 days** of the filing date of the

decision from which the appeal is taken. The filing date shall be three days after the date of mailing to the parties, as shown below. In such cases, the Commissioner's review of the Commission's recommended sanction will be deferred and incorporated into the Commissioner's review of the finding of violation on appeal. Where a notice of appeal has been filed on or before the due date for exceptions to the Commission's recommended sanction (13 days from the date the decision is mailed by the Commission), exceptions need not be filed by that date, but may be incorporated into the appellant's briefs on appeal.

Robert W. Bender, Chairperson

Mailing Date: September 23, 2015

Resolution Adopting Decision – C58-14

Whereas, the School Ethics Commission has considered the pleadings filed by the parties, the documents submitted in support thereof, and the testimony of the parties from its hearing on July 28, 2015; and

Whereas, at its meeting on July 28, 2015, the Commission consented to the withdrawal of the claims alleged in Paragraphs 9 through 12; and

Whereas, at its meeting on July 28, 2015, the Commission reserved its decision on Respondent's Motion to Dismiss the Complaint; and

Whereas, at its meeting on July 28, 2015, the Commission directed the parties to file a brief in support of their competing positions regarding authority to issue a *Rice* notice; and

Whereas, the parties simultaneously submitted their respective briefs on August 6, 2015; and

Whereas, at its meeting on August 25, 2015, the Commission again reviewed all submissions of the parties and voted to deny Respondent's Motion to Dismiss the Complaint; and

Whereas, at its meeting on August 25, 2015 and September 22, 2015, the Commission found that the Complainant established that the Respondent violated N.J.S.A. 18A:12-24.1(e) of the Code of Ethics for School Board Members set for in Paragraphs 4 and 5 of the Complaint, but dismissed all remaining allegations that the Respondent violated N.J.S.A. 18A:12-24.1(e), as articulated in Paragraphs 3 and 6 through 8, and voted to recommend that the Commissioner of Education issue a penalty of Reprimand to the Respondent; and

Whereas, at its meeting on September 22, 2015, the Commission agreed that the within decision accurately memorializes its findings and recommendations; and

Now Therefore Be It Resolved, that the Commission hereby adopts the within decision and directs its staff to notify all parties to this action of the decision.

Robert W. Bender, Chairperson

I hereby certify that the Resolution was duly adopted by the School Ethics Commission at its public meeting on September 22, 2015.

Joanne M. Restivo
Acting Executive Director
School Ethics Commission