

AGENCY DKT. NO. 3-3/12A
SEC DKT. NO. C03-14 (C25-08 on remand)

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 November 25, 2014, Respondent-Appellant Daniel Woska (respondent) filed an appeal of the Commission’s October 28, 2014 decision with the Commissioner of Education pursuant to *N.J.A.C.* 6A:4-1.3(c).¹ The Commission found that the respondent violated *N.J.S.A.* 18A:12-24.1(e)² 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), and recommended a penalty of reprimand.

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 or complainant) 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. It is not the act of the *Rice* notice being sent which Persi objects to; rather, it is his termination by the majority of the Board. The respondent also

¹ This matter includes a protracted procedural history that was fully outlined in the Commission’s October 29, 2014 decision and will not be repeated here.

² *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.”

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 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.

Additionally, the respondent contends that no penalty should be imposed given the unique circumstances in this case. The respondent stresses that the Commissioner's June 17, 2014 decision expressly acknowledged that no statute or regulation defined the power of who may issue a *Rice* notice to a superintendent.³ The respondent reasonably believed in 2008 that he possessed the authority to request that a *Rice* notice be issued so that he would be in a position to voice his views on the subject of Persi's employment at the Board meeting. Up until the Commissioner issued the June 17, 2014 decision, there was no authority that required a *Rice* notice to a superintendent be issued by either the Board president or the full board. Therefore, that decision constitutes new law that should be applied prospectively and not retroactively to the respondent.

In reply, the complainant argues that the Commission's decision is supported by sufficient credible evidence in the record and is consistent with previous long standing decisions. The complainant maintains that the respondent failed to provide any basis to establish that the Commission's decision is arbitrary, capricious or contrary to law, and in fact the respondent's brief in support of the current appeal is duplicative of the brief filed by the respondent in April of 2013. The complainant also points out that the respondent did not appeal the Commissioner's June 17, 2014 decision with regard to who is able to request a *Rice* notice. As such, any arguments that challenge the legal issues determined in the June 17, 2014 decision should be deemed moot and irrelevant. With respect to the penalty, the complainant contends that this matter does not consist of unique circumstances as alleged by the

³ Pursuant to the Appellate Division's instructions on remand, the Commissioner considered the issue and 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. *Melindo Persi v. Daniel Woska, Township of Brick Board of Education, Ocean County*, Commissioner Decision No. 260-14A, decided June 17, 2014.

respondent. Rather, the penalty of a reprimand is consistent with other cases cited in the Commission's October 29, 2014 decision which related to a violation of *N.J.S.A. 18A:12-24.1(e)*, and should be upheld.

Upon a comprehensive review of the record, the Commissioner finds that the decision of the Commission as to the 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.⁴ *N.J.A.C. 6A:4-4.1(a)*. The evidence in the record fully supports the Commission's determination that the respondent's private action which involved discussions with three members-elect resulting in the respondent becoming the new Board President – coupled with his plan to terminate Persi's employment contract and to appoint Assistant Superintendent Ceres to Persi's position as Superintendent without the Board's knowledge – were beyond the scope of duties and responsibilities of a board member, and constituted a violation of *N.J.S.A. 18A:12-24.1(e)*.⁵ Moreover, the respondent's private action compromised the Board because it resulted in significant litigation over Persi's contract. As a result, the Commissioner finds that the Commission's determination that respondent violated *N.J.S.A. 18A:12-24.1(e)* was not arbitrary, capricious or contrary to law.⁶

The Commissioner also 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 is satisfied that, in recommending a penalty for the violation it found, the

⁴ 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(c)* and (d).

⁵ The Commissioner is mindful that in a footnote in the Commission's February 29, 2012 decision the Commission noted that it "does not find respondent's actions relative to Ms. Ceres, as set forth in the factual findings herein, are sufficient to base a finding of a violation of the Code of Ethics for School Board Members." The Commissioner can only surmise that that finding was limited to the discussions with Ms. Ceres, not the combination of private action by the respondent that amounted to a violation of *N.J.S.A. 18A:12-24.1(e)*.

⁶ In the Commission's February 29, 2012 decision, the Commission found that the respondent violated *N.J.S.A. 18A:12-24.1(e)* when he took private action which had the potential to compromise the Board by unilaterally directing that a *Rice* notice be issued to Mr. Persi without consulting the Board President or the Board as a whole. The Commission determined that the remand did not direct a review of that finding and as such the Commission did not further discuss that finding in the October 29, 2014 decision. The Commission instead noted that its prior ruling on that issue remains undisturbed. The Commissioner is also in accord with the Commission's determination that the respondent violated *N.J.S.A. 18A:12-24.1(e)* for the reasons stated in the Commission's February 29, 2012 decision.

Commission fully considered the nature of the offense and weighed the effects of aggravating and mitigating circumstances. Contrary to the respondent's assertion that there should be no penalty because the Commissioner's June 17, 2014 decision with respect to who has the authority to issue a *Rice* notice to a superintendent is being retroactively applied to him, the Commissioner emphasizes that it was not just the respondent's unilateral issuance of the *Rice* notice in 2008 that was a violation of *N.J.S.A.* 18A:12-24.1(e). The respondent's private action that involved private discussions with newly elected board members, and his plan to have Persi terminated and Ms. Ceres take over without the full Board's knowledge also constituted a violation of *N.J.S.A.* 18A:12-24.1(e). Therefore, the Commission's recommended penalty of a reprimand in this matter is fully supported by the record and will not be disturbed.

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

IT IS SO ORDERED.⁷

COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2015

Date of Mailing: March 27, 2015

⁷ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36.