



prevail as a matter of law. When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue, which can only be determined in an evidentiary proceeding. N.J.A.C. 1:1-12.5(b).

Upon careful and independent review, the Commission finds that the record supports the ALJ's conclusion that the complaint is ripe for summary dismissal.<sup>1</sup> In so finding, the Commission concurs that the papers and discovery, together with the affidavits in this matter, show that there is no genuine issue as to any material fact and the respondent is entitled to prevail as a matter of law inasmuch as the facts fail to demonstrate that: (1) respondent's public comment, which disagreed with the Superintendent's position violated N.J.S.A. 18A:12-24.1(e) (see, N.J.A.C. 6A:28-6.4(a)5); (2) respondent's involvement comprised activities or functions that were the responsibility of school personnel so as to violate N.J.S.A. 18A:12-24.1(d) (see, N.J.A.C. 6A:28-6.4(a)4); or (3) respondent's convening of the Personnel Committee to investigate the certain allegations of theft violated N.J.S.A. 18A:12-24.1(d) (see, N.J.A.C. 6A:28-6.4(a)4).

## **DECISION**

The Commission determines to adopt the ALJ's Initial Decision, granting summary decision to the respondent and dismissing both Counts of the complaint. This decision is a final decision of an administrative agency. Therefore, it is appealable only to the Superior Court--Appellate Division. See, New Jersey Court Rule 2:2-3(a).

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Robert W. Bender, Chairperson

Mailing Date: July 31, 2013

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<sup>1</sup> The School Ethics Commission has recognized that the Commission lacks jurisdiction to consider *Rice* notice violations. To the extent that this issue arose during the pendency of this matter at the OAL, the Commission concurs with the ALJ that same is dismissed.

**Resolution Adopting Decision – C29-11**

**Whereas**, pursuant to N.J.A.C. 6A:28-10.8(a), the Commission voted to transmit this matter to the Office of Administrative Law for hearing; and

**Whereas**, the Administrative Law Judge concluded in his Initial Decision that summary decision should be granted to the respondent and the complaint should be dismissed; and

**Whereas**, neither party filed exceptions in response to the ALJ’s decision; and

**Whereas**, at its meeting of June 25, 2013, the Commission determined to adopt the Initial Decision of the ALJ as the Final Decision; and

**Whereas**, the Commission finds that the within decision accurately memorializes its adoption of the Initial Decision;

**Now Therefore Be It Resolved**, the Commission hereby adopts the within decision as a Final Decision and directs it staff to notify all parties to this action of the decision.

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Robert W. Bender, Chairperson

I hereby certify that this Resolution was duly adopted by the School Ethics Commission at it public meeting on July 30, 2013.

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Joanne M. Restivo  
Interim Executive Director  
School Ethics Commission