

# LEGAL ALERT

February 13, 2017

## APPELLATE COURT EXPANDS REQUIREMENTS FOR ISSUANCE OF RICE NOTICES

*By John P. Allen, Esq.*

On February 8, 2017, the Appellate Division significantly expanded a public employer's obligation to issue *Rice* notices to its employees. The Court also provided additional guidance on the approval and release of minutes.

In *Kean Federation of Teachers v. Morell*, No. A-5481-14T3 (App. Div. Feb. 8, 2017), Plaintiff claimed that the Board of Trustees violated her rights when it terminated her position without sending her the notice required by the court's decision in *Rice v. Union County Regional Bd. of Ed.* (App. Div. 1977). The *Kean* Court agreed with the Plaintiff and clarified "that a public body is required to send a *Rice* notice **any time** it has placed on its agenda any matters 'involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of, promotion, or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public bod[y].'"

In its decision, the Appellate Division also provided clarity regarding a board's obligation to make meeting minutes "promptly available" to the public. Although the Court rejected a bright-line requirement that minutes be available to the public within 45-days, the Court did order that the Board adopt a meeting schedule that would enable it to "formally consider, approve, and release the meeting minutes within a timeframe of thirty to forty-five days of the last meeting, unless extraordinary circumstances prevent the Board from meeting."

To comply with this recently published opinion, Boards of Education should now send a *Rice* notice to **all** employees listed on an agenda for action regardless of whether the Board intends to actually discuss the employee. This requirement would pertain to any agenda items affecting the employment of any prospective or current employee, including the approval of leaves of absence and the transfer of personnel. District administrators are also advised to discuss this change in the law with their unions' leadership so as to avoid unnecessary concern regarding the increase in *Rice* notices being issued.

It is also recommended that public bodies approve all minutes from a prior meeting, from both open and closed sessions (if possible), at their next monthly meeting to satisfy the OPMA's requirement that meeting minutes be "promptly available" to the public. Of course closed session minutes may only be released when the need for confidentiality no longer exists or if the minutes are properly redacted.

If you have any questions regarding the effect of this new decision, or would like assistance in preparing for the implementation of these regulations in the future, please do not hesitate to contact the school law attorneys at SPSK.

*DISCLAIMER: This 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.*

### Florham Park

220 Park Avenue  
Florham Park, NJ 07932  
(973) 539-1000

### Paramus

115 West Century Road  
Suite 100  
Paramus, NJ 07652  
(201) 262-1600

### Sparta

351 Sparta Avenue  
Sparta, NJ 07871  
(973) 295-3670

### New York

116 West 23rd Street  
Suite 500  
New York, NY 10011  
(212) 386-7628