

LEGAL ALERT

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Reversed: Supreme Court Undoes Expanded Requirements for Issuance of Rice Notices

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On June 21, 2018, the Supreme Court of New Jersey reversed an Appellate Division decision which had significantly expanded a public employer's obligation to issue *Rice* notices to its employees.

In *Kean Federation of Teachers v. Morell*, 448 N.J. Super. 520 (App. Div. 2017), the Appellate Division ruled that under the Open Public Meetings Act ("OPMA") a public body is required to send a *Rice* notice advising an employee of a potential executive session discussion **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].'

The Supreme Court reversed this requirement, finding "[t]he Appellate Division's extension of *Rice* as applied here is not logical in light of the express language of the [OPMA], and it intrudes upon the discretion recognized for the Board in the legislative language." Finding the language contained within the OPMA to be "clear and unambiguous," the Supreme Court determined a *Rice* notice must only be issued when a public entity holds a discussion in closed session on an employee whose rights could be adversely affected. In the context of *Rice* notices, OPMA only provides "employees with the right to move a private discussion into the sunshine of a public discussion." Further, the Supreme Court determined when a public entity already intends to take public action on a personnel matter implicating employees who will be adversely affected by that action, a *Rice* notice is superfluous and "imposes a greater burden on public entities than the Legislature envisioned[.]"

The Supreme Court did affirm the Appellate Division's determination that the failure to release meeting minutes for over a year was unreasonable, stating: "minutes should be released within days of their approval, unless truly extraordinary circumstances prevent their availability to the public."

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The Supreme Court's decision is a much-welcomed restoration of balance, and will undoubtedly return the *Rice* notice to its prior significance following its dilution by the routine issuance mandated by the Appellate Division's interpretation.

If you have any questions regarding the effect of this decision, or would like assistance in understanding when a *Rice* notice must be issued, please do not hesitate to contact the school law attorneys at SPSK.

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