

## **Appellate Division Decision Marks Significant Change to Rice Notice Requirement**

On February 8, 2017, the Appellate Division of the Superior Court of New Jersey rendered a decision in Kean Federation of Teachers v. Morell, holding that a public body must issue a Rice notice to any employee identified on its agenda. Specifically, a public body must send a Rice notice when it intends to discuss *or act* on any matter “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 body.” The ruling represents a significant change in the law regarding the obligations of public bodies pursuant to the Open Public Meetings Act (“OPMA”).

The decision requires that a school board issue a Rice notice to an employee prior to the meeting in which the school board intends to act with respect to his or her employment, even if the school board does not engage in a discussion about the employee and simply takes a vote on his or her employment. As the OPMA grants a public employee the right to have any discussions involving his or her employment to be held in public, the employee must first be notified that such discussions may occur, by way of a Rice notice, in order to properly consider whether to invoke or waive that right.

According to the Appellate Division, this approach will permit public employees the opportunity to: (1) decide whether he/she desires a public discussion and (2) prepare and present an appropriate request in writing. The court reasoned that “sending a Rice notice to all employees whose employment status may be adversely affected is the only means of creating an environment in which the members of public bodies are free to carry out their responsibilities in a manner that guarantees to the public that their ultimate decisions are the product of a thoughtful and deliberative process.”

School boards must ensure that prior to every meeting, all staff members receive a notification enclosing or linking to the personnel agenda or some other list that identifies every individual whose employment may be impacted in any way by school board action. Although there is no prohibition on this being accomplished by email or other electronic means, we recommend that school boards ensure that they confirm or otherwise retain proof of distribution to each employee – including those who may not have access to e-mail – to establish compliance with the OPMA and the Rice notice requirement.

Should boards decide to notify their employees electronically, it appears that separate Rice notices to individual employees may not be necessary. Rather, the district-wide notice to all employees may be sufficient. However, separate Rice notices are still required for employees



whose names do not appear on the agenda/list but whose employment may still be discussed by the school board in executive session.

A school board may not discuss or take action regarding an employee who did not receive a Rice notice prior to the meeting.

If a school board wishes to implement a district-wide notice to all employees, the following language may be sufficient to satisfy the Rice notice requirement in accordance with the Kean decision:

***“The following is a link to the personnel agenda/list for the Board meeting scheduled for [Date], which identifies each individual upon whose employment the Board may take action during that meeting. The Board may discuss each individual identified on the agenda/list in executive session. This correspondence constitutes a “Rice notice.” No other notification will be issued to the employees identified in the agenda/list. Names may be added to or removed from the agenda prior to the meeting.”***

Should you have any questions or concerns with respect to any issues regarding the application of the Kean decision, the attorneys at The Busch Law Group are available to assist you.

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