

JEAN M. LANING, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
TOWNSHIP OF UPPER DEERFIELD, :
CUMBERLAND COUNTY, :
RESPONDENT. :

SYNOPSIS

This matter arose when the respondent Board denied petitioner a medical leave of absence prior to her retirement in December 2013, charged her sick leave bank for 59 sick days from September to December 2013, and subsequently stopped paying the petitioner's salary from October 15, 2013 until her retirement on December 1, 2013. Petitioner challenged the Board's authority to make inquiries into her illness beyond the scope of the medical notes she provided in support of her request for a medical leave of absence, and demanded back pay for sick leave charged and for the period when her pay was docked prior to the date of her retirement. The Board contended that sick leave requests are tentative and subject to reasonable verification before approval. The parties filed cross motions for summary decision, which were denied because there were genuine issues of fact in dispute. Thereafter, the parties ultimately reached an amicable monetary settlement following the submission – for *in camera* review by the ALJ and respondent's counsel – of more detailed information about the medical condition that precipitated petitioner's request for sick leave.

The ALJ's Initial Decision recited the procedural history of this matter, stated that the issues transmitted to the OAL had been resolved amicably, but opined that there might be remaining policy issues for the Commissioner's consideration.

Upon review, the Commissioner concluded, *inter alia*, that – in light of the settlement entered into by the parties – there are no issues necessitating the Commissioner's review. Accordingly, the case was closed.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

March 12, 2015

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The instant controversy began when – shortly before she retired in December 2013 – petitioner requested extended sick leave. Her requests were denied as insufficiently supported because petitioner did not comply with respondent’s demands that she 1) provide specific information about her condition, and 2) submit to an examination by the school physician. Respondent stopped petitioner’s pay in October 2013, the petition was filed on November 15, 2013, and the matter was transmitted to the Office of Administrative Law on December 3, 2013 – two days after petitioner officially retired.

The parties moved and cross moved for summary disposition, both of which motions were denied on September 25, 2014. Two months later, on November 17, 2014, petitioner’s counsel submitted for *in camera* review – by the Administrative Law Judge (ALJ) and respondent’s counsel – more detailed information about the medical conditions which had precipitated her requests for sick leave. Said information led to an amicable monetary settlement between the parties.

In their “Settlement Stipulations” dated November 25, 2014, aside from declaring that they had entered into a confidential agreement, the parties wrote:

Neither Petitioner nor Respondent shall file any exceptions to the opinion of Judge Todd Miller in the underlying case with the full understanding that Judge Miller will be forwarding the decision to the Commissioner for review with a notation that no exceptions were filed by either party[.]

ALJ Miller did indeed forward an Initial Decision to the Commissioner, which appears to approve of the settlement and contemplates the possibility that there might be further issues of policy amenable to consideration by the Commissioner. The Commissioner finds none.

Before the parties settled their differences, the threshold questions in the instant case were 1) what may comprise adequate support for an application for disability leave, and 2) what are the parameters of a Board’s right to obtain specific information about the disability underlying an application for disability leave and compensation. These issues were rendered moot by petitioner’s *in camera* submission of medical information. Simply stated, the *in camera* discovery was apparently deemed by respondent and the ALJ to constitute an adequate foundation for petitioner’s application for leave, and respondent was allowed – *via* the *in camera* review – access to a greater amount of information than had been provided in the doctor’s notes that petitioner had originally submitted with her leave request. Further, the parties’ settlement rendered academic any ancillary issues, such as petitioner’s contention that withholding her payment for sick leave was a tenure violation.

It is well settled that controversies which have become moot or academic prior to judicial scrutiny are deemed improper subjects for judicial review. *See, e.g., Cinque v. Dept. of Corrections*, 261 N.J. Super. 242, 243 (App. Div. 1993); *Anderson v. Sills*, 143 N.J. Super. 432, 437 (Ch. Div. 1976). In other words, courts will not usually decide cases in which the issue is hypothetical, a judgment cannot grant effective relief, or the parties do not have concrete

adversity of interest, *Anderson v. Sills, supra*, 143 N.J. Super. 432, 437 (Ch. Div. 1976). An exception to this principle occurs when issues raised in the course of a technically moot controversy are of great public importance, such as procedural requirements relating to involuntary civil commitment (*In re Geraghty*, 68 N.J. 209, 212), or the validity of a rule adopted by the New Jersey Supreme Court (*Busick v. Levine*, 63 N.J. 351, 364, *appeal dismissed* 414 U.S. 1106 (1973)). However, the issues framed by the pleadings in this matter do not rise to that level.

Accordingly, the Commissioner concludes that – in light of the settlement entered into by the parties – there are no issues necessitating the Commissioner’s review, and the case is closed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: March 12, 2015

Date of Mailing: March 13, 2015

*This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*