

**New Jersey Commissioner of Education**  
**Final Decision**

Valerie Mattes,

Petitioner,

v.

Board of Education of the Township of  
Washington, Warren County,

Respondent.

**Synopsis**

Petitioner – an administrator formerly employed by the respondent Washington Township Board of Education – alleged that the Board wrongfully denied her request for payment for unused sick leave upon her retirement. The Board contended that petitioner did not retire, but rather resigned and pursued employment elsewhere; accordingly, petitioner is not entitled to the payment she sought.

The ALJ found, *inter alia*, that: although it is well established that contractual claims generally do not require an interpretation of the school laws and fall outside of the Commissioner’s jurisdiction, the Commissioner does have jurisdiction here, as petitioner’s appeal must be examined within the procedural context of this matter; Mattes filed an application for Deferred Retirement Benefits with the Division of Pensions and Benefits, with a deferred retirement date of March 1, 2018; in May 2015, petitioner notified the Board of her retirement, effective June 30, 2015; the Board treated her separation as a resignation, advising her that she was ineligible for payment of accrued sick leave; petitioner appealed in Superior Court in 2016; the Board argued both that petitioner was not entitled to the sick leave payment and, alternatively, that jurisdiction properly lay with the Commissioner; Superior Court dismissed this first appeal and directed that the matter be transferred to the Commissioner; Mattes appealed to the Commissioner in 2017; the ALJ dismissed this appeal as untimely, but found that sick leave entitlement could not be enforced until after the March 2018 deferred retirement date; the instant appeal was filed when the Board again declined to make the sick leave payment after petitioner’s deferred retirement date in March 2018. The ALJ concluded that: Mattes relied on past proceedings in filing the within petition; it would be inequitable to dismiss and send her back to a forum that earlier declined jurisdiction; the Commissioner has subject matter jurisdiction here, as the dispute requires analysis of the parties’ rights and obligations both under contract and school laws; petitioner’s separation from employment constituted retirement because it is the last place Mattes worked as a TPAF member; petitioner is entitled to the sick leave payment promised in her contract because *N.J.S.A.* 18A:66-113 allows for deferred retirement, her application for which was indisputably approved by the Board of Trustees of TPAF; and the petitioner’s appeal was timely, as her cause of action was triggered by her retirement date of March 1, 2018. Accordingly, the ALJ ordered the Board to pay petitioner \$15,000 for unused sick leave days, per her contract with the District.

The Commissioner concurred with the findings and determination of the ALJ herein; accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter.

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.

February 27, 2019

**New Jersey Commissioner of Education**

**Final Decision**

Valerie Mattes,

Petitioner,

v.

Board of Education of the Township of  
Washington, Warren County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Respondent's exceptions have also been reviewed and considered by the Commissioner.<sup>1</sup>

Upon such review, the Commissioner concurs with the ALJ's determination – for the reasons thoroughly set forth in the Initial Decision – that petitioner is entitled to payment of \$15,000 as compensation for her accrued, unused sick leave. Accordingly, the Initial Decision is hereby adopted as the final decision in this matter.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: February 27, 2019

Date of Mailing: February 27, 2019

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<sup>1</sup> The exceptions – while reflecting the Board's obvious disagreement with the findings and conclusions contained within the Initial Decision – are unpersuasive, and, substantially recast and reiterate the arguments made below, which have been exhaustively addressed by the Administrative Law Judge (ALJ) in the Initial Decision.

<sup>2</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 06936-18

AGENCY DKT. NO. 97-4/18

**VALERIE MATTES,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE TOWNSHIP  
OF WASHINGTON, WARREN COUNTY,**

Respondent.

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**Sandford R. Oxfeld**, Esq., for petitioner (Oxfeld Cohen, attorneys)

**Nathanya Simon**, Esq., for respondent (Scarinci Hollenbeck, attorneys)

Record Closed: October 31, 2018

Decided: November 29, 2018

BEFORE **ELLEN S. BASS**, ALJ:

**STATEMENT OF THE CASE**

Valerie Mattes, an Administrator formerly employed by the Washington Township Board of Education (the Board), alleges that the Board wrongfully denied her request for payment for unused sick leave upon her retirement. The Board replies that she did not retire, but rather resigned and pursued employment elsewhere; accordingly, Mattes has no entitlement to the payment she seeks.

## **PROCEDURAL HISTORY**

The petition of appeal was filed with the Commissioner of Education (the Commissioner) on April 19, 2018. The Board filed an answer on May 10, 2018. The contested case was transmitted to the Office of Administrative Law (OAL) on May 11, 2018.

The parties agreed that this case presented a purely legal question; accordingly, they filed a comprehensive Joint Stipulation of Fact on October 25, 2018. I received a brief from the Board on October 22, 2018, and from Mattes on October 26, 2018. The Board filed a reply brief on October 30, 2018. Mattes filed a reply brief on October 31, 2018, at which time the record closed.

This appeal comes in the aftermath of an earlier petition, filed in or about January 2017, through which Mattes sought the identical relief. The earlier petition was dismissed as untimely, although both the Administrative Law Judge and the Commissioner left open to Mattes the opportunity to refile her claims, as will be more fully explained below.

## **FINDINGS OF FACT**

The parties stipulated to the salient facts and I **FIND** as follows:

### **Mattes' First Request for Sick Leave Payment**

Mattes was employed by the Board as a "Principal/Child Study Team Director," pursuant to a contract dated February 27, 2015. That contract had a term of one year, from July 1, 2014 until June 30, 2015. Article 3, Clause B read as follows:

The Principal/Child Study Team Director shall be allowed twelve (12) days sick leave per year for the term on [sic] this Contract. Unused sick leave days

shall be cumulative in accordance with the provisions of Title 18A. Upon retirement from the Washington Township School District, 30 days of unused sick days will be reimbursed, at the rate of \$500 per day. Reimbursement for sick days shall be consistent with the law in effect at the time this Contract is signed. Such payment shall not exceed \$15,000. Accumulated unused sick leave compensation shall not be paid to the Principal/Child study Team Director's estate or beneficiaries in the event of death prior to retirement.

This sick leave clause was not included in a prior contract between Mattes and the Board. On February 15, 2013, prior to executing this contract, Mattes had submitted an application for Deferred Retirement Benefits to the Division of Pensions and Benefits, with a deferred retirement date of March 1, 2018.

By letter dated May 26, 2015, Mattes submitted "a notification of retirement from [the] Washington Township School District" to Superintendent of Schools Keith Neuhs, effective June 30, 2015. The Board formally accepted her "resignation" on June 8, 2015. On June 12, 2015, Mattes entered into an employment contract with the Five Town Community School District in Camden, Maine, for a position as Director of Special Education for a one-year term, from July 1, 2015 through June 30, 2016. Mattes continues to be so employed, to date.

Prior to June 29, 2015, Neuhs advised Mattes via text message that the Board did not consider her resignation to be a retirement; he advised via text message on July 8, 2015, that the Board would not be releasing the payment for unused sick leave described in her contract. Mattes asked that he so advise her formally, and in writing. Via letter dated July 15, 2015, Board President Karen Graf explained that the sick leave provision was intended "strictly to entice [Mattes] to stay in the district until she reached age sixty," or until she had accrued twenty-five years of pensionable public service. Since Mattes had resigned outside these parameters, Graf explained that she was not entitled to the payment she sought. Indeed, Graf pointed out that although Mattes was

leaving the State, she could return to New Jersey, and re-enroll in the pension system at any time.

By letter dated July 17, 2015, Neuhs again formally denied Mattes' request for the sick leave payment described in her contract.

### The First Litigation

On or about April 5, 2016, Mattes filed a Complaint in the Superior Court of New Jersey, Warren County. She sought payment for unused sick leave in the amount of \$15,000, contending that she had retired within the meaning of N.J.S.A. 18A: 66-36. In an answer filed on May 13, 2016, the Board raised several defenses, to include lack of subject matter jurisdiction. Via a Motion for Summary Decision filed on July 15, 2016, the Board urged both that Mattes was unentitled to the payment she sought, and alternatively, that jurisdiction properly lay with the Commissioner of Education. Via Order dated August 26, 2016, the Superior Court dismissed Mattes' complaint without prejudice, and directed that the matter be transferred to the Commissioner. Mattes unsuccessfully filed a Motion for Reconsideration on September 2, 2016. She filed a petition before the Commissioner on or about January 25, 2017.

Mattes' January 25, 2017, petition was dismissed by the Honorable Lisa James-Beavers, A.L.J., as untimely under N.J.A.C. 6A:3-1.3 (i). (Docket Number EDU 02729-17). Judge James-Beavers expressly noted in her June 19, 2017, opinion that the petition had been filed more than ninety days after Mattes had received notice of Board action. But, she also held that since the right to payment for unused sick leave does not arise until retirement, and Mattes had filed for a Deferred Retirement date of March 1, 2018, "any right she had to payment for unused sick time cannot be enforced until then." Judge James-Beaves went on to say that "[i]f petitioner does not receive payment for unused sick leave upon her official retirement date, as recorded by the TPAF, she should be permitted to again file a petition with the Commissioner to enforce the terms of her contract."

A final decision was issued by the Commissioner on September 12, 2017. While agreeing that the challenge to the Board's July 17, 2015, denial of sick leave benefits was untimely filed, the Commissioner likewise agreed that "[a]ny disputes that may arise between the parties that are triggered by the petitioner's Deferred Retirement date of March 1, 2018, are not yet ripe for . . . review."

### This Petition of Appeal

On October 5, 2017, the Board of Trustees of the Teachers' Pension and Annuity Fund approved Mattes' application for Deferred Retirement, effective March 1, 2018. She was again notified that on February 1, 2018, the Board of Trustees approved her application for Deferred Retirement effective March 1, 2018; apparently Mattes had changed her option for the type of retirement payments she would receive. She received an Explanation of Retirement Allowances via letter dated March 27, 2018, and her first pension check was dated April 1, 2018. Through counsel, Mattes again asked for the sick leave payment promised by her contract. The Board declined to make that payment, and the present petition of appeal was filed.

## **CONCLUSIONS OF LAW**

### Jurisdiction

This case raises thorny questions about jurisdiction; indeed, the transmittal cover sheet notes "jurisdiction is a threshold matter." And upon reviewing the file, I too initially questioned whether this matter arose under the school laws. N.J.S.A. 18A:6-9. Our courts have held that where a controversy does not arise under the school laws, it is outside the jurisdiction of the Commissioner, even if the dispute pertains to school personnel. Bd. of Educ. of East Brunswick Twp. v. Twp. Council of East Brunswick, 48 N.J. 94, 102 (1966). It is well established that contractual claims by school employees do not invoke the Commissioner's jurisdiction, as such claims do not require an

interpretation of the school laws. Picogna v. Board of Education of Cherry Hill, 249 N.J. Super. 322, 335 (App. Div. 1991). Demikoff v. Harrington Park Board of Education, 97 N.J.A.R.2d (EDU) 16. Mattes relies heavily on the language of her employment contract in support for her claim to relief.

I nonetheless **CONCLUDE** that the Commissioner does have jurisdiction to adjudicate Mattes' case for the following reasons. Mattes' petition must be examined in its overall procedural context. Firstly, in its earlier incarnation, this petition was initially filed with the Superior Court; I might have suggested that was the proper forum. But, the Superior Court judge disagreed, and the Commissioner accepted jurisdiction. At no time did the prior A.L.J., or the Commissioner herself, suggest that jurisdiction was improperly laid here. Mattes relied on this procedural history when she filed the petition now before me. She did not repeat "the mistake" she made the first time; she now filed directly with the Department of Education. It would be inequitable to dismiss her case and return her back to a forum that earlier declined jurisdiction. Indeed, were I to do so, Mattes would rightly protest that she surely has a right to be heard somewhere. I **CONCLUDE**, based on this procedural history, that Mattes' somewhere is here.

Secondly, the Board has persuasively argued in favor of jurisdiction. While conceding that the Commissioner lacks jurisdiction over purely contractual claims, the Board notes that "incidental interpretation of the contract necessary to resolve the educational claims is properly done by the Commissioner." Middletown Bd. of Educ. v. Witmer, 2009 N.J. Super. Unpub. LEXIS 2260 (App. Div., August 17, 2009). And indeed, the contract provision at issue here specifically references Title 18A; providing that any payment for unused sick days "shall be consistent with the law in effect at the time this Contract is signed." The parameters of the Board's ability to make payment for unused sick leave is governed by N.J.S.A. 18A:30-3.5 and N.J.S.A. 18A:30-3.6. Apropos to the issue before me, these statutes provide that payment for unused sick leave is available "only at the time of retirement from a State-administered or locally-administered retirement system based on the leave credited at the time of retirement." This statutory scheme will guide my determination whether Mattes has "retired" within



the contemplation of her contract, and my determination whether the relief she seeks is consistent with law, as likewise required by her contract. I accordingly **CONCLUDE** that the Commissioner has subject matter jurisdiction, as this dispute requires an analysis of the parties' right and obligations both under contract and under the school laws.

Mattes' Entitlement to Reimbursement for Unused Sick Leave

Mattes' contract, and the applicable law, make it plain that Mattes was entitled to payment for unused sick leave only "at the time of retirement." N.J.S.A. 18A:30-3.5; N.J.S.A. 18A:30-3.6. Her contract specifies an additional condition precedent for such payment; that is, that her "retirement" be "from the Washington Township School District."

It is clear from the earlier decision by Judge James-Beavers, as affirmed by the Commissioner, that Mattes had not yet "retired" when she left her employment with Washington Township in 2015. Indeed, Judge James-Beavers held that

...these statutory provisions [N.J.S.A. 18A:30-3.5, N.J.S.A. 18A:30-3.6] indicate that an individual is typically not entitled to be paid for unused sick time until her date of retirement from a State-administered or locally-administered retirement system. Here it is undisputed that petitioner's deferred retirement date is March 1, 2018. Therefore, any right she has to payment for unused sick time cannot be enforced until then.

[Mattes v. Washington Township Bd. of Educ., EDU 02729-17, Initial Decision, June 19, 2017]

It is also easy to **CONCLUDE** that Mattes is now "retired," as that term is understood both under her contract and under the school laws. The relevant statutes define "retirement" as "retirement from a State-administered...retirement system." N.J.S.A. 18A:30-3.5; N.J.S.A. 18A:30-3.6. Mattes retired from the TPAF effective March 1, 2018. She did so via the "Deferred Retirement," mechanism, described by statute as when "a member of the pension fund who has 10 years of service credit in

the pension fund and who separates voluntarily or involuntarily before attaining the age of 60 years...[elects] to receive a Deferred Retirement Allowance beginning at the age of 60 years..." N.J.S.A. 18A:66-113. The trickier question is whether Mattes' retirement in 2018 constituted retirement "from the Washington Township School District," notwithstanding the fact that she physically left her employment there years earlier.

The Board urges that several concerns militate against granting Mattes the relief she seeks. Its most significant argument, from a public policy standpoint, is that granting this petition would allow "similarly situated employees to collect windfalls from districts across the State..." The Board contends that other TPAF-covered employees with at least ten years of service would be encouraged to resign from their positions; demand their sick leave pay-outs; and then return to a new school district "where they could continue to accumulate sick leave and presumably repeat this cycle." This argument made sense in the context of Mattes' November 2017 petition of appeal, because then, she had not yet retired. Paying her then could have led to the ills the Board describes.

But the Board's argument holds little appeal under facts that reveal that between the date of her resignation from Washington Township, and the date of her Deferred Retirement, Mattes engaged in no TPAF-eligible employment. By determining that Mattes' claims were not ripe until her Deferred Retirement Date, Judge James-Beavers and the Commissioner guaranteed the Board an opportunity to decline payment if Mattes had secured TPAF-eligible employment elsewhere after she had "retired" from Washington Township. And had she done so, the Board's argument that she did not retire from service in its school district would have made perfect sense and would have compelled a denial of Mattes' claim to relief.

But Mattes did not return to employment in a TPAF position at any time after she left Washington Township. I thus **CONCLUDE** that her separation of employment constituted retirement because Washington Township is the last place Mattes worked while a TPAF member. And she was employed there when she filed for Deferred

Retirement. I thus **CONCLUDE** that Mattes retired from the Washington Township district and is entitled to the sick leave payment promised by her contract.

#### The Timeliness of This Petition

Finally, the Board urges that this petition, like Mattes' earlier one, should be dismissed as untimely under N.J.A.C. 6A:3-1.3(i). This argument is a nonstarter. The Board asserts that the time for appeal was triggered in 2015, when the Board initially declined payment. But Judge James-Beavers and the Commissioner both held that a cause of action would accrue anew once Mattes retired in March 2018.

Their holdings constitute the law of the case. The law of the case doctrine generally prohibits a second judge, in the absence of additional developments or proofs, from differing with an earlier ruling. The doctrine is a non-binding rule intended to prevent re-litigation of a previously resolved issue. Lombardi v Masso, 207 N.J. 517, 538 (2011). Our courts have held that "[a] hallmark of the law of the case doctrine is its discretionary nature, calling upon the deciding judge to balance the value of judicial deference for the rulings of a coordinate judge against those factors that bear on the pursuit of justice and, particularly, the search for truth. Little v KIA Motors Am, Inc., 425 N.J. Super 82 (App. Div. 2012). Sound discretion dictates that I defer to these earlier rulings. I **CONCLUDE** that Mattes' cause of action was triggered by her retirement date of March 1, 2018. Her petition was filed on April 19, 2018, and thus is timely.

#### ORDER

Based on the foregoing, the Washington Township Board of Education is **ORDERED** to make payment to Mattes in the sum of \$15,000; that sum representing compensation for unused sick leave days per her contract.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 29, 2018



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DATE

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**ELLEN S. BASS, ALJ**

Date Received at Agency:

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November 29, 2018

Date Mailed to Parties:

sej

**APPENDIX**

**EXHIBITS**

J-1 Joint Stipulation of Fact with attachments.