

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0164-22
A-0388-22

PATRICIA O'KEEFFE,

Plaintiff-Appellant,

v.

PARAMUS BOARD OF
EDUCATION and BOARD
OF TRUSTEES OF THE
TEACHERS' PENSION
AND ANNUITY FUND,

Defendants-Respondents.

PATRICIA O'KEEFFE,

Petitioner-Appellant,

v.

BOARD OF TRUSTEES,
TEACHERS' PENSION AND
ANNUITY FUND,

Respondent-Respondent.

Argued September 26, 2023 – Decided November 2, 2023

Before Judges Sabatino, Marczyk, and Chase.

On appeal from the Superior Court of New Jersey, Chancery Division, Bergen County, Docket No. C-000121-22 (A-0164-22), and the Board of Trustees of the Teachers' Pension and Annuity Fund, Department of the Treasury (A-0388-22).

Albert J. Leonardo argued the cause for appellant (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, PC, attorneys; Richard A. Friedman, of counsel; Albert J. Leonardo, of counsel and on the briefs).

AnnMarie Harrison argued the cause for respondent Paramus Board of Education (Hatfield Schwartz Law Group LLC, attorneys; Stefani C. Schwartz, of counsel and on the brief; AnnMarie Harrison, on the brief).

Porter R. Strickler, Deputy Attorney General, argued the cause for respondent Board of Trustees of the Teachers' Pension and Annuity Fund (Matthew J. Platkin, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Porter R. Strickler, on the briefs).

PER CURIAM

We consolidate these two appeals, argued back-to-back, for the purpose of issuing a single opinion. Both cases involve related issues stemming from school teacher Patricia O'Keeffe's submission of a conditional letter of resignation subject to approval of her application for ordinary disability retirement benefits. She appeals the Chancery Division's orders dated August

25 and 31, 2022, dismissing her claims against the Paramus Board of Education ("PBOE") and the Board of Trustees of the Teachers' Pension and Annuity Fund ("TPAF"). O'Keeffe also appeals the TPAF's inaction in responding to her administrative appeal of TPAF's guidance issued to the PBOE, which O'Keeffe asserts prevented the PBOE from certifying her retirement application.

During the pendency of these appeals, we were advised O'Keeffe withdrew her initial retirement application and submitted an unconditional letter of resignation, which the PBOE certified and the TPAF is now processing. Accordingly, we are convinced O'Keeffe's contentions—that we should intervene and require the PBOE to complete and submit the required employer certification form and direct the TPAF to process the retirement application—are now moot. We further conclude O'Keeffe's administrative appeal of the TPAF's purported inaction is also moot. We therefore dismiss the appeal, subject to O'Keeffe's right to appeal the TPAF's final agency decision concerning her application for disability retirement benefits.

I.

O'Keeffe was employed by the PBOE as a teacher for twenty-four years. In July 2021, O'Keeffe applied for ordinary disability benefits with the Division of Pensions and Benefits ("Division") of the New Jersey Department of the

Treasury. Upon receipt of O'Keeffe's application, the Division notified the PBOE to complete a "Certification of Service and Final Salary" form. The Division advised that the PBOE could not certify an employee's retirement application unless it had proof of the employee's retirement. In May 2022, O'Keeffe submitted a conditional letter of retirement to the PBOE. The letter states:

Please be advised that I hereby retire from employment with the Paramus School District. My last day of work is anticipated to be June 30, 2022, for a retirement date effective July 1, 2022, subject to the New Jersey Division of Pensions and Benefits granting my application for ordinary disability retirement benefits.

Further, I reserve all rights to return to work if my disability vanishes or if I become able to perform my former duties as a Teacher. In the event that the Division of Pensions and Benefits denies my application for ordinary disability retirement, I will report for duty.

(emphasis added.)

On May 5, 2022, the PBOE rejected O'Keeffe's retirement letter because it was conditional as it stated her resignation was "subject to" approval of her disability retirement application. The PBOE thereafter refused to complete and submit the Employer Certification of Service and Final Salary form without an unconditional resignation from O'Keeffe.

With respect to the issues in the administrative appeal, during this above timeframe, in December 2021, the New Jersey Education Association ("NJEA") wrote a letter to the Division and referenced two teachers, with circumstances similar to O'Keeffe's. The letter requested, among other things, that the Division change its webpage to clarify that employees who apply for ordinary disability should not be required to submit unconditional letters of resignation and that letters of retirement conditioned upon the Division's grant of a disability pension should be accepted.

In January 2022, the Division responded, noting the concept of "conditional resignation" "runs contrary" to the requirements and procedures of disability retirements. Relying on N.J.A.C. 17:3-6.1(e), N.J.A.C. 17:3-6.1(f), and N.J.A.C. 17:2-6.1, the Division stated that termination of employment is a requirement for a TPAF retirement. It further informed the NJEA the Division would not change "published information or procedures to suggest, encourage, or allow a termination for a disability retirement that is conditional to the retirement's approval," as the proposed changes runs counter "to the requirement that the member be incapable of performing normal or assigned job duties, or any other position the employer may assign." Further, the Division stated it

required a completed employer certification form before it can process a disability retirement application.¹

In February 2022, the NJEA requested that "the Division reconsider and revise its position and guidance on these issues." The NJEA also stated if the Division would not reconsider its position, "demand is made that the Division refer the matter to the respective Boards of Trustees." In March 2022, an attorney representing another similarly situated TPAF member and the NJEA requested that the TPAF consider the issue at its next board meeting and reserved the right to appeal. In May 2022, O'Keeffe's attorney also wrote to the TPAF and requested to join in the NJEA's administrative "appeal." O'Keeffe requested that "the TPAF and PERS Boards reverse . . . the Division's erroneous guidance and direct the Division to immediately cease and desist from requiring disability retirement applicants to unconditionally and irrevocably resign from their employment."

In June 2022, the Division responded to the NJEA stating that it is "the Division's position that any dispute concerning an employer's refusal to

¹ The Acting Director further noted, "[w]hile some employers may be reluctant to require or accept an employee's termination without knowing that the disability retirement will be approved[,] the Division sees this as an internal matter within the employing agencies."

complete a Certification of Service and Final Salary based on the sufficiency of the language in the retiring employee's resignation is a labor issue outside the purview of both the Division or the TPAF Board." The letter also attempted to clarify the NJEA's characterization—that the Division's existing regulations and publications required an irrevocable resignation—was incorrect. Instead, the TPAF noted that when an employer submits the employee's certification to the Division, the employer may select "Resigned (Pending Board Approval)." This designation, according to Acting Director and pursuant to N.J.S.A. 18A:66-40, "does not disqualify a public employee from: 1) returning to work if their disability vanishes or diminishes to the point they may return to full-duty; nor does it 2) prohibit the employer from reemploying the public employee if their disability application is denied."

In June 2022, O'Keeffe filed a verified complaint and order to show cause in the Chancery Division. The complaint alleged that the PBOE failed to perform a ministerial duty and the TPAF failed to rectify an erroneous directive issued to local boards of education. The TPAF moved to dismiss based on a lack of subject matter jurisdiction. On August 25, 2022, the court granted the motion, denied the order to show cause, and dismissed the complaint as to the TPAF. O'Keeffe and the PBOE agreed that the court's decision, with respect to

the TPAF's motion, indicated O'Keeffe did not have a valid claim. Therefore, the PBOE and O'Keeffe requested the court to also enter an order dismissing the complaint as to the PBOE, subject to O'Keeffe's right to appeal. Accordingly, on August 31, 2022, the court entered an order dismissing plaintiff's complaint "as to all counts and against all parties."

O'Keeffe appealed the August 25 and 31, 2022 trial court orders dismissing her complaint with prejudice. O'Keeffe separately filed a notice of appeal concerning the TPAF's inaction regarding the request to change the directive that applicants for ordinary disability must submit unconditional letters of resignation before the TPAF would process their disability applications.²

Importantly, shortly before oral argument was scheduled, we were advised O'Keeffe had submitted an unconditional resignation letter. The PBOE and the TPAF assert the appeals are now moot. The PBOE notes it certified O'Keeffe's application, and it was successfully submitted to the State. In short, the PBOE maintains it did exactly what O'Keeffe had requested in her appeal and her

² O'Keeffe also moved for summary disposition requesting we reverse the TPAF's administrative inaction. By order dated November 3, 2022, we denied the motion for summary disposition. The TPAF cross-moved to dismiss the appeal on November 4, 2022, which was denied by order dated December 1, 2022.

disability application will now be considered by the TPAF. O'Keeffe maintains the issue is not moot because the TPAF "could not confirm that [it] would ultimately accept" the PBOE's certification of O'Keeffe's resignation and that we should direct the TPAF "to decide O'Keeffe's application without requiring an unconditional . . . resignation." She further asserts her application for ordinary disability retirement benefits "remains undecided and in limbo." The TPAF counters it is currently processing O'Keeffe's application and the issue on appeal concerns the processing of her application, not her eligibility for disability retirement, and therefore there is no active dispute. Given this recent development, we confine our discussion here to the mootness issue.

"Mootness is a threshold justiciability determination rooted in the notion that judicial power is to be exercised only when a party is immediately threatened with harm." Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 311 (App. Div. 2010) (citation omitted). "[O]ur courts normally will not entertain cases when a controversy no longer exists and the disputed issues have become moot." DeVesa v. Dorsey, 134 N.J. 420, 428 (1993) (Pollock, J., concurring). An issue has become moot "when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." N.Y.

Susquehanna & W. Ry. Corp. v. State Dep't of Treasury, Div. of Tax'n, 6 N.J. Tax 575, 582 (Tax 1984), aff'd, 204 N.J. Super. 630 (App. Div. 1985).

The doctrine of mootness emanates from the Judiciary's unique institutional role as a branch of government that only acts when a genuine dispute is placed before it. We generally do not render advisory decisions retrospectively opining about the legality of matters that have already been resolved, for "[o]rdinarily, our interest in preserving judicial resources dictates that we do not attempt to resolve legal issues in the abstract." Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996).

In limited instances, courts will address the merits of appeals that have become moot, electing to do so "where the underlying issue is one of substantial importance, likely to reoccur but capable of evading review." Ibid. For example, courts have set aside mootness concerns in certain cases where the matter evading review posed a significant public question or affected a significant public interest. See, e.g., In re Conroy, 98 N.J. 321, 342 (1985) (addressing the withholding or withdrawing of life-sustaining treatment); State v. Perricone, 37 N.J. 463, 469 (1962) (considering blood transfusions for an infant that conflicted with the parents' religious beliefs a significant public interest).

Guided by these well-established principles, we decline to reach the issues presented by O'Keeffe in these appeals because the orders and directive being challenged are moot at this juncture. In O'Keeffe's appeal of the court's orders, she requests that we require the PBOE "to complete and submit the required employer certification form to the TPAF and order TPAF to decide O'Keeffe's disability retirement application without requiring an unconditional resignation from O'Keeffe." Similarly, in the administrative appeal, O'Keeffe requests that we "reverse [the] TPAF's administrative inaction with respect to the administrative directive^[3] that requires O'Keeffe to unconditionally . . . resign . . . in order for her ordinary disability application to be processed by [the PBOE] and [the] TPAF"

Given O'Keeffe has now submitted an unconditional resignation and the TPAF has started to process the disability application, we agree the issues before us are moot. We therefore need not reach the substantive issues presented in this appeal involving the PBOE and the TPAF's purported inaction as the TPAF has represented that the Division is processing O'Keeffe's application for

³ The TPAF maintains that it never issued a directive and the letters referenced by O'Keeffe is the Division's "general guidance" to employers and is not an appealable administrative determination, let alone a specific determination by the Division as to her application.

ordinary disability.⁴ O'Keeffe asks this court to render a decision on a legal issue that has already been resolved. Again, we are satisfied the issues are moot. O'Keeffe, of course, has the right to challenge any adverse determination by the TPAF concerning her application for ordinary disability.

Lastly, although the issues raised in the appeals are certainly important to a limited class of teachers who may be in a similar position as O'Keeffe, the issues before us do not sufficiently present issues of widespread importance to overcome mootness principles. Under these circumstances, we discern no basis to issue an advisory opinion. See State v. Rose, 206 N.J. 141, 189 (2011) (Rivera-Soto, J., concurring in part and dissenting in part).

The appeals are dismissed as moot.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION

⁴ Counsel at oral argument had no awareness of whether any person or organization had pursued relief from the TPAF for rulemaking under N.J.S.A. 52:14B-4(f). Counsel for the TPAF represented at oral argument that the TPAF has scheduled O'Keeffe for an independent medical examination. Although it had to be rescheduled, there is no dispute the Division is actively processing the disability retirement application.