

DOUGLAS WICKS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF BERNARDS, : DECISION
 SOMERSET COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioning taxpayer alleged the Board failed to comply with state law and regulations in carrying out its roofing projects.

The ALJ concluded that the allegations raised by petitioner were already addressed by forums of competent jurisdiction and must be dismissed on the basis of *res judicata* and under the doctrine of *collateral estoppel*. The ALJ concluded that under the facts of this case, petitioner failed to have the proofs necessary to proceed to plenary hearing. The Petition was dismissed.

The Commissioner dismissed the matter as moot since it was undisputed that the roof replacement project at Ridge High School was completed and approved by the necessary authorities and there was “simply no *meaningful* relief to be obtained in this forum.”

<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>

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply were submitted in accordance with *N.J.A.C.* 1:1-18.4.

Petitioner emphatically objects to the Initial Decision issued by the Administrative Law Judge (ALJ) arguing, *inter alia*, that he was improperly denied a hearing and this matter should, therefore, be remanded to the OAL for an “open and full hearing***.” (Petitioner’s Exceptions at 1) Petitioner argues that the ALJ failed to make any findings of fact or conclusions of law, that he lacked the expertise necessary to hear a case such as this one, and that his statements in the Initial Decision at pages 6 and 7 regarding previous review of this matter by other investigative bodies and agencies are simply unsupported on this record. (*Id.* at 3-5) The Initial Decision, petitioner asserts, failed to properly consider the issues raised in the course of this litigation. (*Id.* at 7-8)

In reply, the Board “objects to Petitioners [sic] use of evidence not presented at the hearing, in violation of the N.J.A.C. 1:1-18.4(c).” (Board’s Reply at 1) The Board argues that there is no merit to petitioner’s contentions and, therefore, the Initial Decision should be affirmed.

Upon careful and independent review of the record in this matter, including an audio cassette tape of the proceedings that took place on September 24, 2002 at the OAL, the Commissioner determines to grant the Board’s Motion for Summary Decision, for the reasons set forth below.¹

Initially, the Commissioner agrees with the ALJ’s view that the essence of petitioner’s “complaint” is that the Board violated *N.J.A.C.* 6:22-1.7 by advertising, bidding and awarding the 2001 contract for the replacement of the Ridge High School roof before obtaining construction code approval. (Request for Declaratory Judgment/Petition of Appeal at 2, paragraph 5a; Initial Decision at 4)² Thereafter, as enumerated in the Initial Decision at pages 4 and 5, petitioner alleges other violations of administrative code, State school law and specifically, the Public School Contracts Law, *N.J.S.A.* 18A:18-1 *et seq.*, in connection with the Board’s roof replacement projects at the Cedar Hill School, the Annin School and Ridge High School. The Board denies each allegation. (Board’s Answer)

By Order dated May 16, 2002, and based on earlier litigation brought by petitioner in this matter (*see Wicks v. Board of Education of the Township of Bernards, Somerset*

¹ Although the Board filed a Motion for Summary Decision before the OAL on September 4, 2002, the ALJ did not issue a ruling on the motion.

² It is noted that *N.J.A.C.* 6:22-1 *et seq.*, the School Facility Planning Service regulations, were repealed and recodified as *N.J.A.C.* 6A:26-1 *et seq.*, effective October 1, 2001. *See* 33 *N.J.R.* 1809(a), 33 *N.J.R.* 3482(a).

County, Commissioner Decision No. 383-00, November 20, 2000, *aff'd* State Board of Education April 4, 2001), the ALJ determined that the “Petitioner is barred by the doctrine of res judicata and by the entire controversy doctrine [from] relitigating the Cedar Hill and Annin School roof project anew.” (ALJ’s Order, May 16, 2002 at 8) Thus, the within matter was confined to only those issues relating to the roof replacement project at Ridge High School. The Commissioner herein affirms this interlocutory order, which petitioner did not appeal in accordance with *N.J.A.C.* 1:1-14.10.³

With respect to the allegations concerning the roof replacement project at Ridge High School, the Board argues in its Motion for Summary Decision, *inter alia*, that such issues are now moot. Specifically, the Board contends:

Since initiating this second action, the parties appeared before the Somerset County Construction Board of Appeals. On April 22, 2002, a Certificate of Approval was issued for the Ridge High School.*** On July 29, 2002, the New Jersey Economic Development Authority determined that all conditions precedent to the execution of the grant agreement for the Ridge High School roofing project had been met. ***⁴

Simply stated, inasmuch as the roofing project for the Ridge High School has been completed, the debate concerning the construction of the project [is] academic and moot.*** Further, the previous

³ Petitioner did, however, submit to the ALJ, by letter dated May 25, 2002, numerous objections to his Order. Petitioner therein argues, *inter alia*, that the issues raised in the within matter regarding the alleged Cedar Hill School violations should *not* be dismissed, since these violations did not arise until after the prior case record was closed. Petitioner argues, “with respect to the claim of *res judicata*, I would advise that the claims in the instant case are all new and based upon subsequent events unknown at the time of the earlier case.” (Petitioner’s Letter of May 25, 2002 at 3) Petitioner acknowledges, however, that the Cedar Hill School reroofing project has been completed. Therefore, even assuming petitioner accurately states that the issues in the within matter regarding the Cedar Hill School *could not have been* raised in his prior litigation, the Commissioner finds, for the reasons set forth *infra*, that such issues are moot.

⁴ The Board attaches a copy of the Economic Development Authority’s letter of July 29, 2002 at Exhibit D of its Motion for Summary Decision.

Petition raising similar claims was forwarded to the Office of Compliance for review and the Board was vindicated.*** (Board's Brief in Support of Motion for Summary Decision at 3, 9)

Thus, even if the requested remand were to be granted *and* petitioner were to prevail on the merits of his claims that the Board acted as he alleged in his petition in carrying out the Ridge High School project, the Commissioner finds that, at this stage, where it is undisputed that the roof replacement project at Ridge High School has been completed and approved by the necessary authorities, there is simply no *meaningful* relief to be obtained in this forum.⁵ In this regard, the Commissioner recognizes that:

An issue is “moot” when a determination is sought on a matter which, when rendered, cannot have any practical effect on the existing controversy. In other words, the conflict between the parties has become merely hypothetical. *See Black's Law Dictionary* 409 (5th ed. 1979), and *In re Conroy*, 190 *N.J. Super.* 453 458 (App. Div. 1983). Our courts, and the Commissioner as well, ordinarily will refuse to review questions which become academic prior to the issuance of a decision out of reluctance to render a legal decision in the abstract and a desire to conserve judicial or administrative resources.*** (*Barshatky v. Freehold Regional High School District Bd. of Educ.*, 95 *N.J.A.R.2d* (EDU) 71, 73)

⁵ Notably, by way of relief, petitioner requested that the Commissioner: (1) direct the Board to provide all requested public documents to him; (2) declare the professional design contract of 2001 between the Board and Thomas Rienzi to be null and void; (3) require that plans and specifications for the reroofing project at Ridge High School be declared null and void as they contain false and misleading material factors, and that the project be redesigned with code compliant specifications, readvertised and rebid in accordance with the law; (4) declare that the Board has violated *N.J.S.A.* 18A:12-22 and *N.J.S.A.* 18A:11-1(d); and (5) direct that the Office of Compliance investigate these matters and confirm these violations. (Request for Declaratory Ruling/Petition of Appeal at 3-4)

Accordingly, summary decision is properly granted in the Board's favor and this matter is dismissed.⁶

IT IS SO ORDERED.⁷

COMMISSIONER OF EDUCATION

Date of Decision: February 5, 2003

Date of Mailing: February 5, 2003

⁶ Notwithstanding this outcome or that there is no relief to be granted herein, the Commissioner notes that it is simply not clear on this record whether, in executing its roof replacement project at the Ridge High School, the Board acted in compliance with *N.J.S.A. 18A:7G-1 et seq.*, the Educational Facilities and Construction Act, which became effective July 18, 2000. Indeed, although the Board specifically contends that "the Ridge High School roof was a normal building maintenance requiring review *only* by the local code officials pursuant to *N.J.A.C. 6:22-1.1(b)****" (Board's Answer at 2, paragraph "a", emphasis added), it also indicates that it received "full approval from the State of New Jersey Department of Education Facilities Review and a full permit from the local code officials" for this project. (*Id.* at paragraph "h") The Commissioner, therefore, herein cautions this and all other boards that failure to act in accordance with the standards established in *N.J.S.A. 18A:7G-1 et seq.*, and, now, its implementing regulations, *N.J.A.C. 6A:26-1 et seq.*, may result in action to withhold State funds. *N.J.A.C. 6A:26-14.1*.

⁷ This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.