

COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals  
14 Summer Street, 4th Floor  
Malden, MA 02148  
[www.mass.gov/dala](http://www.mass.gov/dala)**

**Nancy Campbell,**  
Petitioner

v.

Docket Nos. CR-22-0137, -0138

**Massachusetts Teachers' Retirement System,**  
Respondent

**Appearance for Petitioner:**

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**Appearance for Respondent:**

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Senior Legal Counsel  
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**Administrative Magistrate:**

Kenneth Bresler

**SUMMARY OF DECISION**

Member of Massachusetts Teachers' Retirement System (MTRS) sought to buy back service from her service at two nonpublic schools. The first school had out-of-state students, and petitioner failed to prove that she did not have a retirement plan from the school. At the second school, petitioner was vice principal and taught pupils infrequently. MTRS's denials of her applications are affirmed.

## DECISION

The petitioner, Nancy Campbell, appeals the denials by the Massachusetts Teachers' Retirement System (MTRS) of two applications to buy back service under G.L. c. 32, §4(1)(p).

I held a hearing on May 7, 2024 by Webex, which I recorded. Ms. Campbell testified and called Karen Ann Panarella, with whom she used to work, as a witness.

I admitted Exhibits 1 through 10 and 14 through 18. I admitted Exhibit 16, a letter by Michele Morin, Vice President of Human Resources for Hillcrest Educational Centers, for a limited purpose, namely, because it documented Hillcrest's efforts to find information about Ms. Campbell's employment and I anticipated that that information might be useful in this decision. (Ultimately, it was not useful.) I did not admit Exhibit 16 for its substance. If I had known that Ms. Campbell would invoke Exhibit 16 substantively in her post-hearing brief, I would not have admitted it. *See e.g.*, Pet. Br. unnumbered page (Exhibit 16 "proves..."). In addition, Exhibit 16 does not say what Ms. Campbell's brief says it says. (Pet. Br. unnumbered page) To avoid any further confusion about and misuse of Exhibit 16 in any later proceedings, I withdraw it from evidence.

Both parties submitted post-hearing briefs in July 2024 .

### Findings of Fact

1. Ms. Campbell is a member of MTRS. (Stipulation)

#### Hillcrest Educational Centers

2. From September 15, 1992 to May 25, 1995, Ms. Campbell taught special education students at Hillcrest Educational Centers, Pittsfield. (Ex. 2)

3. Hillcrest was a Chapter 766 school that operated for 12 months per year. (Campbell testimony)

4. On September 10, 2020, Ms. Campbell applied to buy creditable service from her service as a special education teacher at Hillcrest from September 15, 1992 to May 25, 1995.

(Ex. 2)

5. On her application, Ms. Campbell stated that “students came from various cities and towns in MA, NY, CT, etc.” She also stated that school districts that sent the students “funded the tuition.” (Ex. 2)

6. Ms. Campbell remembered at least one student from Staten Island, New York.

(Campbell testimony)

7. On her application, Ms. Campbell stated that she had not received and would not be eligible to receive a retirement benefit from Hillcrest, including a 403(b) plan. (Ex. 2)

8. On Part 2 of Ms. Campbell’s application, Hillcrest’s Human Resources Generalist stated that Hillcrest had contributed to a 403(b) plan for Ms. Campbell and that Ms. Campbell had vested in it. (Ex. 2)

9. A web page for Hillcrest, printed in 2012, which was 17 years after Ms. Campbell taught there, stated that Hillcrest employees had a 403(b) plan available to which Hillcrest “may make a discretionary contribution.” (Ex. 17)

10. Ms. Campbell testified that she did not have a 403(b) plan from Hillcrest. The basis of her testimony was that she had not received communications from any such plan. She also testified that she did not roll over a 403(b) account from her employment at Hillcrest into any other retirement account. (Campbell testimony)

11. On March 15, 2022, MTRS denied Ms. Campbell’s application to buy her past service in the Hillcrest Educational Centers. (Ex. 1)

12. The reasons for MTRS’s denial were:

A. According to the documents that MTRS had received, Hillcrest Educational Centers “accepts out of state students,” whereas G.L. c. 32, §4(1)(p) requires that the tuition of all pupils that an applicant taught to have been financed partly or fully by the Commonwealth.

B. Ms. Campbell had vested in a 403(b) plan. If any of the money came from her employer, she could not have bought her past service under the statute. (Ex. 1)

13. On March 31, 2022, Ms. Campbell timely appealed. (Ex. 6)<sup>1</sup>

14. This appeal became CR-22-0137.

Learning Prep School<sup>2</sup>

15. From September 1, 1999 to June 20, 2006, Ms. Campbell was Vice Principal at the Learning Prep School, Newton. (Ex. 3)

16. Her primary job duty was to manage the process of students’ Individualized Education Programs (IEPs). Another major duty was to oversee discipline of students. (Campbell testimony)

17. Ms. Campbell also served as a substitute teacher if a teacher was sick or a teaching position was vacant. Sometimes she served as a substitute for a single class session in a week; sometimes she substituted for one class every day for a week. For two or three months, she split teaching an English course with another teacher until Learning Prep hired a permanent teacher. She taught at Learning Prep so long ago that she does not know how often she taught. (Campbell testimony)

18. Ms. Campbell did not have her own classroom at Learning Prep. (Campbell

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<sup>1</sup> Presumably, the denial letter was mailed on March 15, 2022. The soonest that Ms. Campbell could have received it was March 16, 2022. Fifteen days later, on March 31, 2022, she emailed her appeal. Fifteen days is the appeal deadline. G.L. c. 32, §16(4). Thus, her appeal was timely.

<sup>2</sup> That is the name of the school, not “Learning Preparatory School.”

testimony)

19. Miss Panarella remembers that Ms. Campbell was in a classroom every day.

(Panarella testimony) However, that does not mean that Ms. Campbell was *teaching pupils* in a classroom every day.

20. On February 1, 2020, Ms. Campbell applied to buy creditable service from her service as vice principal at the Learning Prep School from September 1, 1999 to June 20, 2006. She listed her “Duties and responsibilities” as “Administrative.” (Ex. 4)

21. On March 15, 2022, MTRS denied Ms. Campbell’s application to buy her past service in the Learning Prep School. (Ex. 3)

22. The reason for MTRS’s denial was that G.L. c. 32, §4(1)(p) requires an applicant to have taught pupils, whereas Ms. Campbell was a vice president and performed administrative duties. (Ex. 3)

23. On March 31, 2022, Ms. Campbell timely appealed this denial and the denial of her application to buy her service at Hillcrest. (Ex. 6)

24. This appeal became CR-22-0138.

### **Discussion**

Ms. Campbell must prove her case by a preponderance of the evidence. *Bagley v. Contributory Retirement Appeal Board*, 397 Mass. 255, 258 (1986). MTRS has not “failed to meet its burden,” as Ms. Campbell argues (Pet. Br. unnumbered page), because MTRS has no burden to meet.

A member of the Massachusetts Teachers’ Retirement System may purchase past service “in any non-public school in the commonwealth” under certain circumstances. G.L. 32, § 4(1)(p). The three relevant circumstances in this appeal are:

1. The member must have been “previously engaged in teaching pupils in any non-public school in the commonwealth.”

2. The “tuition of all such pupils taught” must have been “financed in part or in full by the commonwealth.”

3. The member must not “be entitled to receive a retirement allowance, annuity or pension from any other source.”

G.L. 32, § 4(1)(p). Ms. Campbell’s appeal fails on all three relevant circumstances.

#### Hillcrest Educational Centers

Ms. Campbell’s students, according to her own application, came from, not only Massachusetts, but New York, Connecticut, *and other states*. (Ex. 2) She remembered at least one student from Staten Island, New York. (Campbell testimony) Thus, she cannot meet the requirement that the “tuition of all such pupils taught” must have been “financed in part or in full by the commonwealth.” G.L. 32, § 4(1)(p).

In addition, Hillcrest contributed to a 403(b) plan for Ms. Campbell and Ms. Campbell had vested in it, according to Hillcrest’s human resources person. (Ex. 2) A web page for Hillcrest stated that Hillcrest employees had a 403(b) plan available to which Hillcrest “may make a discretionary contribution.” (Ex. 17) Although the web page is from 17 years after Ms. Campbell taught at Hillcrest, the web page adds weight to the human resources person’s statement.

As proof that she does not have a 403(b) plan from Hillcrest, Ms. Campbell offered that she does not receive communications from any such plan. (Campbell testimony) However, in weighing all the facts, it is more likely than not, *Sargent v. Massachusetts Accident Co.*, 307 Mass. 246, 250 (1940), which is what “preponderance of the evidence” means, that Ms.

Campbell had a 403(b) plan from Hillcrest. Thus, she cannot meet the requirement that she not “be entitled to receive a retirement allowance, annuity or pension from any other source.” G.L. 32, § 4(1)(p).

#### Learning Prep School

Infrequent and episodic teaching, such as being a substitute teacher, does not satisfy the statute. *Alicia Taft v. Contributory Retirement Board*, CR-02-657 (DALA 2004 [, CRAB 2004); *Laurence Carroll v. Massachusetts Teachers’ Retirement System* [CR-15-8 (DALA 2016)].

*Susan Happ v. Massachusetts Teachers’ Retirement System*, CR-16-130 (DALA 2017). *See Rosemary Bogan v. Massachusetts Teachers’ Retirement System*, CR-05-945 (DALA 2007) (preschool director who occasionally substituted in classrooms was not engaged in teaching pupils).

The issue is not whether Ms. Campbell administrative duties *as a vice principal*, rather than as a substitute teacher, entailed teaching pupils. It is unclear whether Ms. Campbell so argues. *See* Pet. Br. unnumbered page (Ms. Campbell “*performed services that were consistent with the conventional notion of teaching*”) (emphasis added).

Nor is the issue whether Ms. Campbell, when she was a substitute teacher, taught academics. *Janet Kraskouskas v. Massachusetts Teachers’ Retirement System*, CR-09-288 \*8, 9 (DALA 2014). Ms. Campbell taught academics as a substitute teacher. *See* Pet. Br., unnumbered page, arguing this point.

The issue is that Ms. Campbell’s teaching was infrequent and episodic, insufficient to meet the requirement that she was “previously engaged in teaching pupils.” G.L. 32, § 4(1)(p).

#### **Conclusion and Order**

MTRS’s denials of Ms. Campbell’s two applications to buy back service under G.L. 32, § 4(1)(p) are affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

/s/

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Kenneth Bresler  
Administrative Magistrate

Dated: September 27, 2024