COMMONWEALTH OF MASSACHUSETTS

**Division of Administrative Law Appeals**

**1 Congress Street, 11th Floor**

**Boston, MA 02114**

**www.mass.gov/dala**

**Laurence Carroll**,

Petitioner

v. Docket No. CR-15-8

**Massachusetts Teachers’ Retirement System**,

Respondent

**Appearance for Petitioner**:

Laurence Carroll

31 Tara Terrace

Buzzards Bay, MA 02532

**Appearance for Respondent**:

Cristina I. Galica, Esq.

Massachusetts Teachers’ Retirement System

One Charles Park

 Cambridge, MA 02142-1206

**Administrative Magistrate**:

Kenneth Bresler

**SUMMARY OF DECISION**

Denial of petitioner’s application to buy back creditable service is affirmed because he was not teaching pupils

**DECISION**

The petitioner, Laurence Carroll, appeals the denial of the respondent, the Massachusetts Teachers’ Retirement System (MTRS) to buy back creditable service.

Mr. Carroll requested that I decide his appeal based on documents he had submitted, but I called a hearing because Mr. Carroll’s documents did not explicitly discuss his teaching duties. Nor did they specify how much time he spent teaching.

 I held a hearing on June 21, 2016, which I recorded digitally. Mr. Carroll represented himself, testified, and called no other witness. I accepted into evidence nine exhibits. I allowed Mr. Carroll to adopt as his testimony paragraphs 5 and 8 of his prehearing memorandum.

 Both parties submitted post-hearing briefs.

**Findings of Fact**

 1. Mr. Carroll is a member of the MTRS. (Ex. 3.)

2. From 1991 to 1993, Mr. Carroll was Head Teacher/Supervisor of the Network High School in Brockton. (Testimony.)

3. The Network High School was not a Brockton public school; rather, its students were residential clients of the Massachusetts Department of Children and Families. (Testimony.)

 4. Although his title was “Head Teacher/Supervisor,” Mr. Carroll referred to his position as “supervising teacher” and “supervisor.” (Testimony; Pet. Prehearing Memo, ¶ 5.)

5. As Head Teacher/Supervisor, Mr. Carroll worked with teachers, teaching assistants, and counselors to help educate students. He wrote and implemented the school’s English and remedial mathematics curriculum. He implemented the technology curriculum. (Testimony.)

 6. Mr. Carroll was in classrooms daily, although he was not assigned a classroom. He estimated that he was in classrooms for five hours per day. (Testimony.)

 7. Except for when he served as a substitute, Mr. Carroll was not a classroom teacher. (Testimony.)

 8. Mr. Carroll’s job was to assist the classroom teachers and manage students. He helped students to pay attention and stay on task. He intervened with anxious students or those whose behavior was “escalating,” presumably into problematic behavior. He occasionally took such students out of the classroom to engage in one-on-one or small-group work. (Testimony.)

 9. In the classroom, Mr. Carroll helped students with social skills and English arts (although there is no evidence that he stood in front of students and taught English or English arts). He also evaluated students’ social development.[[1]](#footnote-1) (Testimony.)

 10. The Network High School did not have substitute teachers. (Testimony.)

 11. Mr. Carroll’s only classroom teaching was as a substitute. It was “episodic,” and could last a day, a week, or a month. (Testimony.)

 12. Mr. Carroll also had residential duties. (Testimony.)

 13. The written duties of the Head Teacher/Supervisor included:

Provide day to day leadership and instruction in the Millieu[[2]](#footnote-2) by insuring appropriate staffing and coverage levels, daily schedules, activities, and staff-student interactions.

Develop and implement an appropriate range of high school based curricula appropriate to the age and abilities of the students.

(Ex. 9.)[[3]](#footnote-3)

 14. On May 30, 2012, Mr. Carroll applied to buy back creditable service from his employment at the Network High School. (Ex. 3.)

15. On January 2, 2015, the MTRS denied Mr. Carroll’s application because he had not been engaged in teaching pupils under G.L. c. 32, § 4(1)(p). (Ex. 1.)

 16. On January 12, 2015, Mr. Carroll timely appealed. (Ex. 2.)

 17. At the hearing on June 21, 2016, Mr. Carroll narrowed his appeal to 1991 to 1993 as the years of creditable service that he wished to buy back.

**Discussion**

 General Laws Chapter 32, Section 4(1)(p) allows a teacher who is a member of a retirement system to buy previous creditable service if, under various circumstances, the teacher was “previously engaged in teaching pupils in any non-public school in the commonwealth.” The only issue in this appeal is whether Mr. Carroll was “teaching pupils.” He was not. Rather, he was a supervisor with some educational duties that did not fit the statutory requirement.

 Mr. Carroll originally requested that I proceed only on documents, which did not discuss his classroom activities, at all. If I had agreed, he would not have proved his case. *Deborah Herst Hill v. State Board of Retirement*, CR-07-605 (DALA 2009)(“The Petitioner has the burden of proof on each element necessary to establish entitlement to a benefit under Chapter 32”). At the beginning of the hearing, I told Mr. Carroll that this was his case to make and that once the hearing was over, I could not go through documents and make the case for him. I put Mr. Carroll on notice that his documents were insufficient to prove his case and that his testimony was critical. Nonetheless, Mr. Carroll’s direct-examination testimony omitted many details, including about his teaching. If his testimony ended with the testimony that he chose to give, he would not have proved his case. When I asked Mr. Carroll questions about his teaching duties, he did not answer forthrightly or veered off-topic. In other words, I gave Mr. Carroll opportunities to make his case. However, he did not do so.

 The statute’s phrase “teaching pupils” has a “narrow interpretation”: that of “teaching pupils academics.” *Janet Kraskouskas v. Massachusetts Teachers’ Retirement System*, CR-09-288 \*8, 9 (DALA 2014).

A teacher must be teaching academic subjects to pupils. Being a supervisor, helping classroom teachers, and helping students master social skills and control their behavior does not constitute teaching academics, as valuable as Mr. Carroll’s activities were.

If Mr. Carroll taught academic subjects while working with students one-on-one or in groups outside the classroom, he did not so testify. If English arts is an academic subject, similar or equivalent to English, he did not so testify. He did not testify that when he was a substitute teacher, he was teaching academics. He did not testify about how much time he spent as a substitute teacher in 1991 through 1993.

In *Alicia Taft v. Contributory Retirement Board*, CR-02-657 (DALA 2004),

the petitioner was not hired to do teaching, but she did substitute teaching, covering for ill teachers or if a teacher was on a leave of absence.

The decision concluded that

…Ms. Taft's work as Director of Programs at St. Coletta Day School was not fundamentally a teaching function, but an oversight and supervisory function. The fact that she not infrequently engaged in teaching work and had the background to do that effectively, does not alter this conclusion.

 The decision continued that the language of G.L. c. 32, § 4(1)(p) did not include “supervisors of teachers” and the phrase “engaged in teaching pupils” is “too specific in meaning” to

be stretched to encompass someone hired to supervisor teachers and to direct an educational program who also at times did teach pupils.

*Id.,* *aff’d*, *Alicia Taft v. Contributory Retirement Board*, CR-02-657 (CRAB 2004), Suffolk Sup. Ct. Civ. No. 2004-05441 (Memorandum and Order, Nov. 1, 2005).

**Conclusion and Order**

 Mr. Carroll did not teach academics to pupils, which is a prerequisite under G.L. c. 32, § 4(1)(p) to buy creditable service. The denial of his application to buy creditable service is therefore affirmed.

 DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Kenneth Bresler

 Administrative Magistrate

Dated: November 17, 2016

1. It is unclear whether he did so formally, such as with forms, or informally. [↑](#footnote-ref-1)
2. This went unexplained by the evidence. [↑](#footnote-ref-2)
3. Mr. Carroll specifically identified these two items as “consistent” with teaching duties. [↑](#footnote-ref-3)