

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

November 17, 2017

Suffolk, ss.

Docket No. CR-13-317

CRAIG T. CURTIN, Petitioner

v.

STATE BOARD OF RETIREMENT, Respondent

DECISION

Appearance for Petitioner:

Craig T. Curtin, *pro se*
64 Olde Homestead Drive
Marstons Mills, MA 02648

Appearance for Respondent:

Candace L. Hodge, Esq.
State Board of Retirement
1 Winter St., 8th floor
Boston, MA 02108

Administrative Magistrate:

Mark L. Silverstein, Esq.

Summary of Decision

A Department of Youth Services (DYS) official requested that his service as a DYS Casework Manager from March 1994 to March 2006 be reclassified for retirement purposes from Group 1 to Group 2, pursuant to M.G.L. c. 32, § 3(2)(g), on the ground that his “regular and major duties” in that position required him “to have the care, custody, instruction or other supervision of . . . defective delinquents or wayward children,” one of the categories specified by the statute as falling within Group 2, because he spent the majority of his time as a Casework Manager exercising direct custody, supervision and instruction of juveniles assigned to DYS by the courts. The Board’s denial of that request is affirmed.

(1) Because M.G.L. c. 32 does not define “defective delinquents” and “wayward children,” and their definitions elsewhere in the General Laws were deleted during the 1970s, as a matter of law it appears no longer possible for a state employee to have regular and major duties requiring him to have “the care, custody, instruction or other supervision of . . . defective delinquents or wayward children” or, on that basis, to be classified in Group 2 or receive pro-rated retirement benefits for Group 2 service.

(2) Because the legislature has not amended M.G.L. c. 32, § 3(2)(g) to delete its reference to “defective delinquents” or “wayward children,” or to include within those phrases, or add to them, juveniles referred to DYS by the courts, reading the statutory group 2 definition broadly to include such juveniles *per se* would effectively amend the statutory Group 2 definition, which DALA is without authority to do.

(4) Even if the statutory phrase “defective delinquents or wayward children, as used by M.G.L. c. 32, § 3(2)(g),” can be read properly as including juveniles assigned by the courts to DYS, the petitioner did not show that his time performing the regular and major duties of a DYS Casework Manager, particularly as site director at one of the agency’s community day reporting centers, was spent primarily in exercising direct custody of juveniles assigned to DYS by the courts, or in directly providing instruction or other supervision to them, despite his hands-on involvement in the center’s work. Among other things, the “Form 30” for a DYS Casework Manager did not assign him such responsibility, he did not carry a caseload as DYS caseworkers did, and, when he exercised direct custody of, and provided direct instruction or other supervision to, DYS juveniles, it was incidental to or in the context of a greater administrative function he exercised as a Casework Manager.

Background

Petitioner Craig T. Curtin, the current Director of Operations of the Massachusetts Department of Youth Services (DYS) and a member of the Massachusetts Employees Retirement System, which respondent State Board of Retirement (the Board) administers, appeals from the

Board's May 31, 2013 decision denying his request that his prior service as a DYS Casework Manager between March 13, 1994 and March 4, 2006 be reclassified from Group 1 to Group 2 for retirement purposes. He filed a timely appeal of the denial with the Division of Administrative Law Appeals (DALA) on June 12, 2013.

Upon retiring, a Massachusetts public employee is entitled to a superannuation retirement based upon his or her age, years of creditable service, the highest 36 consecutive months of regular compensation earned, and "group classification" for retirement purposes. M.G.L. c. 32, § 5(2)(a). There are four groups in which Massachusetts public employees are so classified. Two of them are relevant here. Group 1 includes "[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified." M.G.L. c. 32, § 3(2)(g). Group 2 includes Commonwealth employees "whose regular and major duties require them to have the care, custody, instruction or other supervision of parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children . . ." *Id.*

Mr. Curtin claims that his prior service as a DYS Casework Manager between 1994 and 2006 fell within this portion of the Group 2 definition because he had oversight responsibility as the "site director" at a DYS "Day Reporting Center" for juveniles assigned to the agency by the courts (also known as a "Community Re-entry Center") during that time. This responsibility included ensuring that services at the center were set up for juveniles and their families and, if caseworkers were not available, searching youth when they entered the building to ensure that they did not bring contraband into the center, and de-escalating situations involving youths who were arguing with each other. The Board contends that it properly denied Mr. Curtin's Group 2 reclassification request

because his DYS casework manager work was primarily administrative, did not involve carrying a caseload, and did not require that he spend the majority of his time in directly exercising custody over juveniles committed to DYS custody, or in directly providing care, instruction or supervision to them.

Each of the parties filed a prehearing memorandum and proposed hearing exhibits.¹ I held a hearing at DALA on September 19, 2017, pursuant to prior written notice, which I recorded digitally. I marked seven exhibits in evidence (Exhs. 1-7), including two different versions of the “Group Classification Questionnaire” comprising Mr. Curtin’s request to classify his prior service as a DYS Case Manager II in retirement Group 2.²

¹/ Mr. Curtin filed a letter dated April 13, 2017 in response to DALA’s first prehearing order, which I treat as his prehearing memorandum (Curtin prehearing mem.) The State Board of Retirement filed a prehearing memorandum dated May 25, 2017 (Bd. prehearing mem.) and four numbered exhibits. As noted above, two of these proposed exhibits appeared to be the same but varied as to signatures and attachments.

²/ I consolidated and renumbered the exhibits during the hearing. To avoid confusion as to exhibit numbering, I have included an Appendix of Hearing Exhibits in Evidence at the end of this Decision.

Mr. Curtin filed three unnumbered proposed exhibits with his prehearing memorandum. The Board filed four proposed exhibits, numbered 1-4, with its prehearing memorandum. There was some overlapping of proposed exhibits and, as noted above, two exhibits appeared to be Mr. Curtin’s reclassification request. However, these differed as to the signatures on them and, in addition, Mr. Curtin’s version included attachments that the Board’s copy did not. I consolidated the parties’ proposed exhibits and, including both versions of Mr. Curtin’s reclassification request, renumbered them Exhs. 1-6.

The Board objected to Exhibit 6, a 1998 DYS publication that Mr. Curtin had submitted, entitled “Youth, Partnership and Public Safety: The DYS Strategic Plan,” as irrelevant to the group classification issue. I overruled the objection and noted the Board’s exception. The exhibit appeared helpful to adjudication as it explained the purpose and function of a DYS “Day Reporting Center” (also known as a “Community Re-Entry Center”) relative to the agency’s statutory role, and therefore placed in context the job duty description of a DYS Casework Manager. To the extent that Mr. Curtin’s work with juveniles

Mr. Curtin alone testified on his behalf. The Board presented no witnesses. The evidentiary record closed when Mr. Curtin's testimony ended, and the entire record closed several minutes later when Mr. Curtin and the Board each waived the submission of a post-hearing memorandum.

Findings of Fact

a. DYS and its "Day Reporting Centers"

1. The Massachusetts Department of Youth Services ("DYS"), formerly the Division of Youth Services within the Department of Education, is the Commonwealth's juvenile justice correctional agency. (Exh. 7 at 1.) The legislature created DHS as a separate agency within the Executive Office of Human Services in 1969. *See* St. 1969, c. 838, codified at M.G.L. c. 18A, § 1.

DYS's statutory mandate is to:

provide a comprehensive and coordinated program of delinquency prevention and services to delinquent children and youth referred or committed to the department by the courts; community services for the prevention of juvenile delinquency through its own staff, through grants-in-aid to cities, towns, and other public agencies and through purchase of services from private nonprofit agencies; and services and

assigned to DHS by the courts can be considered to be "defective delinquents or wayward children"—the phrase used by the relevant portion of the Group 2 definition recited by M.G.L. c. 32, § 3(2)(g)—as a matter of law (an issue I discuss below, at 21-30) Exhibit 6 is material to the proper group classification of Mr. Curtin's prior service between 1994 and 2006.

During the hearing, the Board introduced, and I marked as Exh. 7 in evidence, an undated formal position description ("Form 30) for a DHS Youth Services Caseworker II. During his testimony, Mr. Curtin recognized this document and identified it as stating the duties and responsibilities of a DHS caseworker during the years he worked as one (1984-94), and, as well, between 1994 and 2006 when he worked as a Casework Manager.

facilities for the study, diagnosis, care, treatment, including physical and mental health and social services, education, training and rehabilitation of all children and youth referred or committed.

M.G.L. c. 18A, § 2. The statute also directs that DYS:

shall maintain a program of research into the causes, treatment and prevention of juvenile delinquency, including new methods of service and treatment. The department shall cooperate with other state and local agencies, both public and private, serving children and youth.

Id. The DYS regulations promulgated pursuant to M.G.L. c. 18A, 109 C.M.R. § 2.00 *et seq.*, state that:

As the juvenile justice agency for the Commonwealth of Massachusetts, the Department promotes positive change in the youth in the Department's care and custody. The Department's mission is to make communities safer by improving the life outcomes for youth in its care. The Department achieves its mission through investing in highly qualified staff and a service continuum that engages youth, families and communities in strategies which are fair and promote positive youth development.

109 C.M.R. § 2.01 ("Introduction"), second para.

2. In 1998 (four years after Mr. Curtin became a DYS casework manager), approximately 22,000 juveniles in Massachusetts were arraigned on criminal charges. Approximately 5,000 of them were held on bail at DYS facilities while they awaited trial. Of that number, approximately 1,500 juveniles were adjudicated and committed to DYS custody until age 18 or 21, in addition to the 3,000 already committed to the agency's custody. According to the agency's 1998 Strategic Plan, "[o]n any given day, half the DYS's [juvenile] population is placed in a facility; the other half has been conditionally released from a facility and is now living in the community with a parent, guardian, foster parent, or residing in an independent living program."

(Exh. 6: *Youth, Partnership and Public Safety: The DYS Strategic Plan* (Mass. Dep't of Youth Services, Nov. 1998, at 2.)

3. DYS has divided the state geographically into four “regions” in order to meet its statutory objectives more efficiently, particularly delinquency prevention and the delivery of services to delinquent juveniles committed to DYS by the courts so that they have a better chance of reintegrating into the community. DYS’s Southeast Region includes Cape Code, Martha’s Vineyard and Nantucket and has its main office in Taunton. Each Region is tasked with providing “a continuum of services and supervision” to the juveniles committed to DYS, through residential programs “ranging from staff secure group homes to secure locked units,” and “programs that service youth living in the community.” (Exh. 6 at 2; Curtin testimony.)

4. With the number of juveniles committed to DYS rising continuously through the 1990s, particularly in the 12-17 year old age group, DYS perceived a need to change the way it provided services through “meaningful connections to the community for high-risk youth” and “collaboration around education and job development.” Both approaches were thought to be effective in successfully reintegrating DYS juveniles back into the community, and in preventing or mitigating increasing crime rates. (Exh. 6 at 1, 15.) In plainer terms, DYS began working with local schools to meet the educational needs of juveniles assigned to the agency who still lived with their families and whose parents still had custody of them; it also began working with local businesses to train these juveniles for work they could perform, and provide them with local job opportunities—for example, in the small engine technology, quick-service (fast-food) restaurant, and nurse aide support trades. (*Id.* at 15; Curtin testimony.)

5. In addition to pursuing this change by restructuring its own internal operations, DYS intended “to develop a complete continuum of services and supervision” in each of its four Regions by (among other things) “establishing day reporting centers and other community services in areas with the highest population of DYS youth” (Exh. 6 at 17. DYS’s expected that the Day Reporting Centers (also known as “Community Entrance Centers”) would:

provide an essential link to supervise the transition of youth to their home communities. Centers will also provide prevention services for other court involved youth and will be open to community organizations for providing local services.

(Exh. 6: *Youth, Partnership and Public Safety: The DYS Strategic Plan* (Mass. Dep’t of Youth Services, Nov. 1998, at 17; Curtin testimony.)

6. Previously, DYS had centralized its work with non-incarcerated juveniles assigned to it at each of the agency’s four Regional Offices, including the Southeast Regional Office in Taunton. Each day, juveniles assigned to DYS in each Region had to travel, or had to be transported, to the Regional Office for individual counseling and for offense history counseling, during which the juveniles discussed with DYS caseworkers the criminal charges that had resulted in their assignment to DYS and how they had become involved in the underlying conduct. Their families needed to travel to the Regional Office as well when they were involved in their child’s counseling or meetings. (Curtin testimony.)

7. The establishment of the Day Reporting Centers in 1998 moved these and other DYS services into the community where the juveniles and their families lived. One such Day Reporting Center was established in Hyannis, which serviced juveniles living on Cape Cod, Martha’s Vineyard and Nantucket who were assigned to DYS but were still in their parents’ custody and lived at home.

The Hyannis Day Reporting Center was also closer to local juvenile courts (in Orleans and Barnstable) and to the agencies or agency personnel with whom caseworkers assigned to the Day Reporting Center worked, such as probation officers. (*Id.*)

8. The Day Reporting Centers also provided a more controlled setting for working with non-incarcerated juveniles assigned to DVS than their homes did, although they were not intended to be juvenile detention facilities. Instead, juveniles assigned to DYS who continued to live with their custodial parents would check into the Day Reporting Center daily, where they, and on occasion their families, would meet with an assigned case worker and attend clinics or other counseling center programs. (*Id.*)

b. Mr. Curtin's Work Duties and Responsibilities at DYS

i. Duties and Responsibilities as a DYS Caseworker II (1984-94)

9. Mr. Curtin, born in 1961, graduated from Clemson University in 1984. He began his employment at DYS on August 5, 1984 as a full-time "Caseworker II," and worked in that position until March 12, 1994. During that time, he earned a Masters Degree in Criminal Justice from Anna Maria College. (Curtin testimony.)

10. The official description of a Department of Youth Services caseworker's duties and responsibilities appears in the Commonwealth's "Position Description" (also known as "Form 30") for a "Youth Services Caseworker II." It also states who supervises a DYS caseworker, what qualifications are required to hold this position, and what qualifications must be acquired on the job.

(Exh. 7.)

11. In a section entitled “General Statement of Duties and Responsibilities,” the Form 30 states that a DYS Youth Services Caseworker II has an assigned caseload of juvenile offenders referred to DVS by the courts, and is responsible for working directly with the juveniles assigned to him. Among other things, the caseworker directly supervises the juvenile clients on his assigned caseload, coordinates and facilitates the delivery of DYS services to them, assesses programs and placements for them in accordance with public safety and treatment needs, develops and monitors their treatment plans and relapse prevention plans, and provides family intervention and employment search assistance. He also makes arrangements for juvenile client intake and transportation, investigates and reports parole violations, escapes and probation violations, and apprehends, arrests, detains and transports violators “in cuffs and shackles, when necessary.” (Exh. 7 at 2.)

12. The Form 30 also includes a more detailed statement of a DYS Caseworker II’s duties and responsibilities. As they did when Mr. Curtin worked as a DYS case manager between 1984 and 1994, these duties and responsibilities include:

- (1) Case management and supervision of juveniles assigned to DYS and involved with DYS community day reporting centers;
- (2) Playing a central role in protecting the public, preventing crime and promoting positive opportunities for juvenile offenders by supervising youth in the community and in residential secure facilities;
- (3) Completing diagnostic assessments on juvenile clients recently committed to DYS;
- (4) Conducting home visits and investigations, interviewing family members and caregivers with a focus on developmental, school, family and delinquency history, peer relationships, other agency involvement, substance abuse and behavioral health issues, psychiatric hospitalizations, suicide attempts, and medications and medication history;

- (5) Completing all necessary documentation related to juvenile client assessment, including intake forms, a case history, and an identification of each juvenile's risks and needs;
- (6) Coordinating and participating in case reviews;
- (7) Developing and updating service delivery plans for juveniles assigned to DYS;
- (8) Attending, and representing DYS at court proceedings involving juveniles assigned to the agency;
- (9) Responding to emergencies as needed;
- (10) Developing and maintaining professional relationships and open communications with courts, police departments, District Attorney offices, parents, schools, state agencies and "community resources";
- (11) Participating in clinical, substance abuse, education, vocation/employment, recreation and community service delivery to DYS clients;
- (12) Participating in monitoring juveniles assigned to DYS, including electronic monitoring, curfew, school and daily itinerary checks, community and site visits, family contacts, drug testing and self-reporting;
- (13) Recommending graduated sanctions for parole violators up to and including revocation, and presenting cases at parole revocation hearings;
- (14) Preparing and submitting referrals for residential/facility and community-based programs, and arranging interviews and transportation;
- (15) Conducting family visits and promoting family involvement in support groups;
- (16) Handcuffing and shackling clients for transport to and from various locations including courts and state agencies; and
- (17) Apprehending parole violators and transporting them to secure settings.

(Exh. 7 at 1-2; Curtin testimony.)

13. The Form 30 also states that a DYS Caseworker II supervises no other agency staff and is himself supervised by a District Manager. (Exh. 7 at 1.) The first qualification acquired on the job

that the Form 30 lists is “[c]onsiderable knowledge of casework principles and methods.” (*Id.* at 2.) It does *not* list training in restraints and crisis intervention as a qualification acquired on the job by a DYS Caseworker II (*id.*), and it lists no license and/or certification requirements for this position title. (*Id.* at 3.)

14. As a Caseworker II, Mr. Curtin was assigned a caseload of 35-40 juveniles who had been assigned to DYS by the courts but were not incarcerated. He worked directly with them and their families, with the objective of getting each of the juveniles to the point where he or she could reintegrate into the community by age 18 or 21, depending upon the duration of the juvenile’s assignment to DYS. (Curtin testimony.)

ii. Duties and Responsibilities as a DYS Casework Manager (1994-2006)

15. After working as a DYS caseworker for over ten years, Mr. Curtin was employed by DYS as a “Program Manager II,” with the position title of “Casework Manager,” from March 3, 1994 to March 4, 2006. (Exh. 3 at 1, 2; Curtin testimony.)

16. During an overlapping period, June 2002–September 2006, Mr. Curtin also served as the “Acting Director of Operations” at DYS’s Southeast Regional Office in Taunton, Massachusetts, although for most of this time period (through March 4, 2006) his position title remained “Program Manager II.” (*See* Exh. 5 at 1; Curtin prehearing mem. at 1, para. #1; Curtin testimony.)³

³/ Mr. Curtin’s prehearing memorandum included three paragraphs of factual allegations in support of his appeal (numbered as #1, #2 and #3), each of which included statements regarding his duties and responsibilities as a DYS casework manager between 1994 and 2006. He adopted these statements as part of his testimony while he testified at the hearing under oath. For the sake of accuracy,

17. The Commonwealth of Massachusetts “Position Description”(“Form 30”) for the position title “Casework Manager” at the Department of Youth Services lists the position-holder’s duties and responsibilities, both generally and in detail. It also states who supervises the casework manager and which staff report to the Casework Manager, as well as what the minimum education, licensing and other entrance requirements are for this position, what qualifications are required to hold it, and what qualifications must be acquired on the job. (Exh. 4)

18. In a section entitled “General Statement of Duties and Responsibilities,” the Form 30 for a DYS Casework Manager states:

Responsible for the effective Casework Management as it relates to detained and court-involved committed clients for the Metro Area. Responsible for the direct delivery of services to DYS court involved clients. Responsible for the supervision and custody of clients at court; transport clients to and from court; responsible for the performance and accountability of caseworkers as it relates to the court actions; coordinates efforts between the Department of Youth Services, courts, law enforcement agencies, i.e. Police/Sheriff’s Department and DYS CRC/Neighborhood Centers.

(Exh. 4 at 2.)

19. According to the Form 30, the duties and responsibilities of a DYS Casework Manager from March 3, 1994 to March 4, 2006 were:

- (1) Obtaining information about juveniles through interviews, observations, review of records, and various secure facilities and courts in order to develop appropriate placements and to determine specific programs for individuals;
- (2) Observing and monitoring juveniles in order to determine their progress and make

I distinguish any testimony from the prehearing memorandum that Mr. Curtin adopted (cited as “Curtin prehearing mem.” with the para. # at which the testimony appears) from the remainder of his testimony at the hearing (cited as “Curtin testimony”).

recommendations to the courts;

(3) Conferring with staff members, law enforcement and court personnel to determine availability of resources for providing required services, and to resolve problem situations concerning juveniles;

(4) Working with law enforcement personnel, juvenile court personnel and other representatives of medical health, educational and vocational service agencies in order to arrange placement for program services and to provide transportation of clients [meaning juveniles committed to DYS] to such agencies;

(5) Coordinating schedules with the courts and notifying and accompanying clients during court actions;

(6) Conducting staff meetings and training staff;

(7) Providing technical assistance to employees concerning the assessment of juveniles' needs, the programs in which juveniles needed to be placed, and the development of the juveniles' service plans; and

(8) Performing all work related to meeting with clients and their families to explain court dispositions and actions, and orienting the client and family to the DYS system.

(Exh. 4.)

20. The Form 30 stated that the DYS Casework Manager received directions and supervision from the agency's Director of Community Services, and that the staff who reported directly to the Casework Manager were DYS caseworkers, who had no staff reporting to them. (*Id.*)

21. Among the license and/or certification requirements that the Form 30 listed for a DYS Casework Manager were "Crisis Intervention" and "Restraint Training." Among the "qualifications acquired on the job" that the Form 30 listed for a Casework Manager was "Trained in restraints and crisis intervention." (Exh. 4 at 2.)

22. As a Casework Manager, Mr. Curtin worked daily at the DYS Hyannis Day Reporting

Center (the Center), one of the DYS Community Re-Entry Centers for juvenile offenders committed to DYS who were not incarcerated on a regular basis. He was the Center's "site director," which meant that he was in charge.⁴ When he was there, which was on most work days, a caseworker assigned to the Center monitored it. The Center worked with and provided services to juvenile offenders from Cape Cod, Martha's Vineyard and Nantucket who were committed to DYS by the courts but who were not incarcerated on a regular basis. These juveniles and their families came to the Hyannis Day Reporting Center for family meetings, and the juveniles were expected to check in to the Center regularly, either after school or, if they were no longer in school, during the day. (Exh. 2: Mr. Curtin's appeal; Exh. 5: site director job description prepared by Mr. Curtin and attached to his original "Group Classification Questionnaire; Curtin testimony.)

23. As the Hyannis Day Reporting Center's site director, Mr. Curtin supervised three or four DYS caseworkers who were assigned to the Center. He was responsible for coordinating casework planning and monitoring for these caseworkers, and for working cooperatively with the courts, the probation department, and the school systems where the caseworkers' assigned juvenile clients were enrolled, in order to ensure that the juveniles' needs were met. He also worked with the caseworkers to assure that they produced monthly juvenile client reports, case histories as required, and referral packages for those juveniles who required transfer from DYS's non-custodial Community Re-Entry Center program to its secure residential treatment facilities. (Exh. 2; Curtin testimony.)

24. While he worked as the Hyannis Day Reporting Center's site director, Mr. Curtin had

⁴/ The person in charge at a DYS Day Reporting Center is currently referred-to as its "District Manager," rather than "Site Director." (Curtin testimony.)

regular discussions with juveniles committed to DYS but still in their parents' custody, with their families, and with the leaders of the Center's clinical groups, to ensure that the appropriate services related to community re-entry (including those related to education, job-training and employment) were offered and that the juveniles participated in them. He was not responsible for checking on juveniles in the Center's programs, but he did so to a degree. He sat in on the Center's programs and clinics as an observer and occasional participant in discussions. Because he understood that the juveniles needed jobs, he checked on how the Center's community outreach to local business for job training and placement was going. (Curtin testimony.)

25. The juveniles at the Center were the responsibility of their assigned caseworkers, but Mr. Curtin considered them to be his responsibility if the assigned caseworker was not present on a particular day. He also considered it to be his responsibility to ensure that juveniles did not bring contraband into the Center if the caseworkers were not available to do so. (Curtin testimony; Curtin prehearing mem. at 1, para. #2.)

26. Although it was not a duty or responsibility listed in the Form 30 for a DYS Casework Manager, Mr. Curtin was also involved in transporting juveniles and their families when this was necessary and caseworkers were not available to do this work. However, transporting juveniles required that they be restrained with cuffs and shackles so they would remain in place during transit between the Center and their homes, and one of a Casework Manager's required skills was training in restraints and crisis intervention. (*See* Finding 21 above.) Mr. Curtin knew how to restrain juveniles properly for transport from his prior training and experience as a DYS caseworker. (Curtin testimony.)

27. On a number of occasions, Mr. Curtin also had to “deal with” juveniles who were “acting up” at the Community Re-entry Center, meaning mostly arguing or “horsing around” and, less frequently, fighting. Most of the time, this type of intervention was at the level needed to defuse an argument, stop a tantrum or prevent impulsive behavior that could endanger a juvenile or those around him, rather than at the level of a “9-1-1” situation requiring a call for police assistance. This type of behavior did not occur frequently and, as a result, neither did the need to intervene in order to deal with it. When it occurred, the Center’s caseworkers were more likely to intervene and, if necessary, physically restrain juveniles, without the need for Mr. Curtin’s assistance, but he involved himself and helped restrain juveniles if he saw a need for his intervention. (Exh. 2; Curtin testimony; Curtin prehearing mem. at 1, para. #2.)

28. When he worked as a DYS caseworker between 1984 and 1994, Mr. Curtin had an assigned caseload of juveniles assigned to DYS. (*See* Finding 14.) As a Casework Manager, however, he had no assigned caseload. (Curtin testimony.)

29. During the years 2002-2006, Mr. Curtin was the acting director of operations for DYS’s Southeast Regional Office in Taunton. In this capacity, he was responsible for overseeing both residential and community-based DYS operations and making sure they functioned properly, and that the Southeast Region juveniles assigned to DYS were receiving agency services as DYS had intended. However, his position remained that of a DYS Caseworker II during this time. (Curtin prehearing mem. at 1, para. #1; Curtin testimony.)

iii. Mr. Curtin's Current DYS Position; Application to Classify Prior DYS Casework Manager Service in Group 2; Denial by Board; and Appeal

30. Mr. Curtin is currently, and has been since early March 2006, the Regional Director of DYS's Southeast Regional Office in Taunton, Massachusetts. (Curtin prehearing mem. at 1, para. #1; Curtin testimony.)

31. As a DYS employee, Mr. Curtin has been, and remains, a member in service of the State Employees Retirement System, which the State Board of Retirement administers.

32. As of September 19, 2017, the date of the hearing in this appeal, Mr. Curtin had not applied for superannuation or disability retirement.

33. On April 10, 2013, Mr. Curtin applied to the State Board of Retirement for the classification of his prior service as a DYS Program Manager 2 (Casework Manager) for the period March 13, 1994 to March 4, 2006 in retirement Group 2. In support of this request, Mr. Curtin submitted a "Group Classification Questionnaire" on a form prescribed by the State Board of Retirement. (Exhs. 3, 5.)

34. By letter dated May 31, 2013, the State Board of Retirement denied Mr. Curtin's request for the classification of his prior DYS Casework Manager service in Group 2 for retirement purposes. (Exh. 1.)

35. Mr. Curtin filed an appeal of the state Board of Retirement's denial of his classification request with the Division of Administrative Law Appeals on June 12, 2013. (Exh. 2.)

*Discussion**1. DYS Service Classification for Retirement Purposes, Generally*

M.G.L. c. 32, § 3(2)(g) directs that Massachusetts public employees be classified for retirement purposes in one of four numbered groups, and defines each of these groups. This classification determines the age at which the employee attains maximum retirement allowances. In general, classification in a group with a higher number (Group 2 as opposed to Group 1, for example) means that an employee attains maximum retirement allowances at an earlier age. *See Gaw v. Contributory Retirement Appeal Bd.*, 4 Mass.App.Ct. 250, 251, 345 N.E.2d 908, 909 (1976).

Two of the four groups defined by M.G.L. c. 32, § 3(2)(g) are relevant here. Group 1 consists of “[o]fficials and general employees including clerical, administrative and technical workers, laborers, mechanics and all others not otherwise classified.” Group 2 includes members of police and fire departments specified by the statute; specified trial court employees whose regular and major duties require them to have the care, custody, instruction or other supervision of prisoners; employees of the Department of Children and Families holding the title of social worker A, B, C or D or successive titles who have been employed in such titles for ten or more years; and “employees of the commonwealth or of any county whose regular and major duties require them to have the care, custody, instruction or other supervision of parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children”

Group 2 does not specify any employees of the Department of Youth Services as being

included in the group, as it does for Department of Children and Families social workers. More specifically, the statutory definition does not place, in Group 2, DYS employees whose “regular or major duties” required them to have the care, custody, instruction or other supervision of juveniles assigned to that agency by the courts. A DYS casework manager’s service is classified in Group 1, therefore, unless he was a member of the police, fire, trial court or other employee subsets listed in the Group 2 definition (which Mr. Curtin does not claim to have been), or if his “regular and major duties” required him to have “the care, custody, instruction or other supervision of parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children . . .,” which is what Mr. Curtin claims was true when he was employed by DYS as a casework manager between 1994 and 2006. In doing so, however, he neither claimed nor testified that juveniles assigned to DYS during that time were parolees, whether mentally ill or not, or that any of the DYS juveniles he claimed were in his custody or control, or to whom he claimed to have provided instruction or other supervision, as a Casework Manager were “mentally ill or mentally defective.” His Group 2 classification claim was, therefore, that his regular and major duties as a Casework Manager required him to have “the care, custody, instruction or other supervision of “defective delinquents or wayward children.” Stated another way, Mr. Curtin claimed that having “the care, custody, instruction or other supervision” of juveniles assigned to DYS by the courts (assuming that his regular and major duties as a Casework Supervisor made this his responsibility) equated with having had “the care, custody, instruction or other supervision of . . . defective delinquents or wayward children,” the phrase used by M.G.L. c. 32, § 3(2)(g).

2. Group Classification of Mr. Curtin's DYS Casework Manager Service

Two issues must be resolved in Mr. Curtin's favor for his DYS Casework Manager service to fall within the statutory Group 2 definition. One of them is whether his "regular and major duties" as a Casework Manager required him to have the "care, custody, instruction or other supervision" of DYS juveniles. That is the factual issue on which Mr. Curtin and the Board focused. However, the analysis of Mr. Curtin's claim must begin with a legal issue—whether having the required care, custody, instruction or other supervision of juveniles assigned to DYS by the courts (as Mr. Curtin claimed to have had as a DYS Casework Manager between 1994 and 2006) equates with having had "the care, custody, instruction or other supervision of . . . defective delinquents or wayward children," as M.G.L. c. 32, § 3(2)(g) requires for this service to qualify for Group 2 classification.

a. Did Mr. Curtin's Regular and Major Duties Require That He Have the Care, Custody, Instruction or Other Supervision of "Defective Delinquents or Wayward Children?"

i. "Defective Delinquents or Wayward Children"—Statutory Definitions

It is not at all evident that juveniles assigned to DYS by the courts fall within the purview of the statutory phrase "defective delinquents or wayward children."

I note first that the statutory Group 2 definition refers to "defective" delinquents, not simply "delinquents" or "delinquent children," and to "wayward" children, not simply "children." The words "defective" and "wayward" each modifies "children," and each creates a specific subcategory respectively, of a larger group—thus, the DYS juveniles in question must have been "defective"

delinquents, rather than merely delinquents, or “wayward” children, rather than merely children.

M.G.L. c. 32, § 3(2)(g) does not define “defective delinquents” or “wayward children,” and neither does Chapter 32’s definitions section, M.G.L. c. 32, § 1. The phrases were previously defined by the legislature elsewhere in the General Laws, however.

The phrase “defective delinquent” appeared in the former “defective delinquent statute,” M.G.L. c. 123, § 113.⁵ Section 113 was added to the General Laws during the 1940s to replace a 1911 session law providing for the commitment of “defective delinquents” to “defective delinquent departments,” one of which was established at the former “state farm” at Bridgewater. *See* St.1911, c. 595; *see also Ex Parte Dubois*, 331 Mass. 575, 578-79, 120 N.E.2d 920, 922-23 (1954) (describing both the 1911 statute and its successor, Chapter 123, as having been enacted, pursuant to an exercise of the legislature’s general power “in its capacity as *parens patriae*,” to make “suitable provision for incompetent persons who are unable to take care of themselves,” rather than as criminal or penal statutes that imposed commitment as a punishment). As it was revised through 1948, M.G.L. c. 123, § 113 did not define “defective delinquent.” Instead, it stated the grounds upon which a person could be committed as such. Pursuant to this statute, a court could order, prior to sentencing, that a defendant (not necessarily a juvenile) charged with a non-capital offense be examined by two “experts in insanity” to determine whether he was “mentally defective.” If the experts reported in the affirmative, the court could order further, following a hearing on the defendant’s mental health, that

⁵/ Chapter 123 was then entitled “Commitment and care of the insane and other mental defectives.”

the defendant be committed as a defective delinquent to a “defective delinquent department.” The grounds for such commitment were findings by the court, following a hearing, that the defendant was “mentally defective” and “has shown himself to be an habitual delinquent or shows tendencies toward becoming such and that such delinquency is or may become a menace to the public, and that he is not a proper subject for a school for the feeble minded or for commitment as an insane person.” Based upon these findings, the court could “make and record a finding to the effect that the defendant is a defective delinquent and may commit him to such a department for defective delinquents according to his age and sex” M.G.L. (Ter. Ed.) c. 123, § 113, 1948 rev., as amended by St. 1943, c. 185, § 1 and St.1947, c. 684, § 1.⁶

M.G.L. c. 123, § 113 was repealed in 1970. *See* St. 1970, c. 888, § 4. That repeal deleted the “defective delinquent” definition from Chapter 123. However, the repeal of Chapter 123, section 113 did not delete the phrase “defective delinquent” from Chapter 32, and the legislature did not then, and

⁶/ Chapter 123, section 113 was amended further in 1953, *see* St.1953, c. 645, in response to the many court-ordered invalidations of defective delinquent commitments because of the committing tribunals’ failure to conform to the statute’s procedural prerequisites. *See Ex Parte Dubois*, 331 Mass. 575, 578, 120 N.E.2d 920, 922 (1954). The 1953 revision:

was passed as an emergency measure for the purpose as stated in its preamble “to provide for the immediate observation, examination and recommitment of certain persons who may be mentally defective and a menace to the public.” Its obvious intent is to prevent the immediate discharge of such persons from custody and supervision because of technical fault in their commitment as defective delinquents until from further observation it can be determined that they are not mentally defective and potentially dangerous.

Id. Whether one seeks the 1953 revision or an earlier version, the long-ago repealed M.G.L. c. 123, § 113 is difficult to find, particularly via electronic research, which tends to bring up a notice that the statute was repealed, but not the repealed text. A copy of the statute as revised through 1948 is reprinted in *Petition of O’Leary*, 325 Mass. 179, 182 n. 1, 89 N.E.2d 769, 770 n.1 (1950).

has not since, deleted the phrase from M.G.L. c. 32, § 3(2)(g).

As was true of the phrase “defective delinquent,” the phrase “wayward children” had made a statutory appearance in Massachusetts by the early twentieth century and reflected nineteenth century thinking regarding juvenile offenders. As of 1906, a session law defined “wayward child” as “a child between seven and seventeen years of age who habitually associates with vicious or immoral persons, or who is growing up in circumstances exposing him to lead an immoral, vicious or criminal life.”⁷ *See* St. 1906, c. 413, § 1. That definition of “wayward child” later entered the General Laws, in at least two chapters, both in 1948—at M.G.L. c. 119, § 52, § 1, the definitions section of the delinquent children statute, and at M.G.L. c. 120, § 21, which addressed the effect of the commitment of a “wayward child or delinquent child” to the Department of Youth Services’s predecessor agency upon the child’s future examination, appointment or application for public service. The definition of “wayward child” was later removed from both statutes, but not at the same

⁷/ “Vicious,” as used in the 1906 statute, and probably pronounced “vice-ious,” meant, at that time, tending toward vice or toward behavior deemed to be immoral rather than to violent or ferocious conduct toward another person. Vicious behavior was regarded as addictive; thus, having “vicious habits” meant being “addicted to vice, immorality or depravity,” or to any “practices and habits that are profligate, corrupt, immoral or degrading,” but from the early nineteenth century onward, “vicious conduct” and “intemperate conduct,” the latter of which referred to the consumption of alcohol and its visible economic and social consequences, were used together or interchangeably to refer almost exclusively to drunkenness and, with federal Prohibition and in its aftermath, came to refer to alcohol, drug abuse and other activities that rendered one physically or mentally unable to retain or obtain employment. *See Wilmington DVS v. Dep’t of Veterans’ Services*, Docket No. VS-10-757, Decision at 26-31 (Mass. Div. of Admin. Law App., Dec. 24, 2014)(discussing the history and meaning of “continuous vicious habits” as a ground for denying state veterans’ benefits available under M.G.L. c. 115).

time. St. 1973, c. 1073, § 6 deleted the definition from M.G.L. c. 119, § 52(1).⁸ A 1996 revision of M.G.L. c. 120, § 21 substituted “delinquent child or youthful offender” for “wayward child or delinquent child” in that statute. *See* St. 1996, c. 200, § 23. Neither revision provided for this change elsewhere in the General Laws or, more specifically, in M.G.L. c. 32.

M.G.L. c. 32, § 3(2)(g) has not been revised to eliminate its reference to “defective delinquents or wayward children,” or to clarify that this phrase includes any other category of persons, whether juveniles assigned to DYS or otherwise, and there appear to be no court decisions holding that juveniles assigned to DYS are “defective delinquents or wayward children,” either generally or under the Group 2 definition recited by M.G.L. c. 32, § 3(2)(g). *See Forbes v. State Bd. of Retirement*, Docket No. CR-13-146, Decision at 4 (Mass. Div. of Admin. Law App., Dec. 23, 2016)(absence of such court decisions noted in this recent DALA decision affirming the denial of a request to pro-rate a DYS official’s prior service as a DYS casework manager in Group 2 rather than include it in Group 1 for retirement purposes).

⁸/ St. 1973, c. 1073, § 6 enacted the former Child in Need of Supervision,” or “CHINS,” legislation. M.G.L. c. 119, § 52(1) has since defined two other juvenile offender-related terms— “delinquent child” (as “a child between seven and seventeen who violates any city ordinance or town by-law or who commits any offence against a law of the commonwealth”) and “youthful offender” (as “a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and 18, an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of [M.G.L. c. 268, § 10 (a), (c) or (d) or § 10E]”)

ii. Can “Defective Delinquents or Wayward Children” be Construed Properly as Including Juveniles Assigned to DYS by the Courts?

Mr. Curtin does not claim, and did not testify, that when he worked at the Hyannis Day Reporting Center as a DYS Casework Manager, the juveniles who checked into the Center were “mentally ill or mentally defective,” or that any of these juveniles were being treated for psychiatric issues. He also did not claim or testify that any of these juveniles were “defective delinquents or wayward children.” The gist of his position on this point appears to be, instead, that having the care, custody, instruction or other supervision of DYS juveniles (as he claimed he had as a Casework Manager) was the equivalent of having the care, custody, instruction or other supervision of “defective delinquents or wayward children.”

Reading this equivalence into M.G.L. c. 32, § 3(2)(g) preserves a Group 2 classification option for Commonwealth or county employees whose regular and major duties require them to have the care, custody, instruction or other supervision of juveniles assigned to an agency. Doing so strays, however, from the plain language of the statute and effectively rewrites it. The Group 2 definition does not include employees of the commonwealth or of any county whose regular and major duties require them to have the care, custody, instruction or other supervision of juveniles assigned to an agency. Instead, the Group 2 definition includes commonwealth or county employees whose regular and major duties require them to have the care, custody, instruction or other supervision of “defective delinquents or wayward children.”

Reading that phrase as encompassing having the care, custody, instruction or other supervision of a broader category of juveniles assigned to the Department of Youth Services by the courts also

makes several implicit assumptions about legislative intent. It assumes that in leaving the archaic phrase “defective delinquents and wayward children” intact within the statutory Group 2 definition, the legislature must have intended that the phrase be interpreted broadly. It also assumes that the legislature intended that the phrase be construed broadly so as to as effectively abandon it, as occurred by the amendment of other General Laws that defined or used “defective delinquents” or “wayward children,” and also to reflect reorientation of juvenile justice and mental health services from a *patria*-based system emphasizing the protection of mentally deficient individuals and society from each other to the reintegration of juvenile delinquents and intellectually-challenged individuals into the community. A broad reading of the phrase “defective delinquents and wayward children” assumes, further, a legislative intent to include a larger number of public employees having the care, custody, supervision or instruction of juveniles in Group 2, or to have their work with juveniles categorized in Group 2 and pro-rated as such for retirement purposes, than would be the case if Group 2 encompassed only public employees who had the care, custody, instruction or supervision of “defective delinquents” or “wayward children” specifically.

There is no evidence of any such legislative intent.

The “primary source of insight” into the legislature’s intent in including, within Group 2, Commonwealth or county employees whose regular and major duties required them to have the care, custody, instruction or other supervision of “defective delinquents or wayward children” is the Group 2 definition’s “black letter text,” or plain language. *See International Fidelity Insurance Co. v. Wilson*, 387 Mass. 841, 853, 433 N.E.2d 1308 (1983). Where the statutory language is clear—which it is here, despite the Group 2 definition’s inclusion of the archaic phrases “defective delinquents” and

wayward children,” and the elimination of that language elsewhere in the General Laws— “the forum applying it cannot add words the legislature did not include, whether the omission was deliberate or inadvertent,” meaning that “the forum construing the statute must construe it, not amend it.” *Heidke v. Public Employee Retirement Administration Commission*, Docket No. CR-12-451, Decision at 14-15 (Mass. Div. of Admin. Law App., Jun. 19, 2015.) The legislature’s deletion of these phrases elsewhere in the General Laws shows that it knew how it delete them from M.G.L. c. 32, § 3(2)(g) if it had wanted to do so, and its retention of the phrase “defective delinquents and wayward children” in the statute must be regarded, therefore, as intentional. *Heidke* at 15; *see also Thomas v. Dep’t of State Police*, 61 Mass. App. Ct. 747, 754, 814 N.E.2d 376, 381 (2004)(both decisions: same rule of construction applied as to legislature’s omission from a particular statute of language it included in other, related statutes).⁹

Group 2 classification based upon having the care, custody, instruction or other supervision of “defective delinquents or wayward children” remains, therefore, a specific exception to Group 1 categorization for retirement purposes. Group 1 categorization is the general rule for employees who

⁹/ Reading the phrase as written is also consistent with a common theme running through the Group 2 category of which it is a part. To reprise that category in full, it is Commonwealth and county employees “whose regular and major duties require them to have the care, custody, instruction or other supervision of parolees or persons who are mentally ill or mentally defective or defective delinquents or wayward children.” As archaic as the phrase is, the category of Group 2 employees that includes it comprises Commonwealth and county employees whose regular and major duties comprise working directly with the mental health clients of their employing agencies. Based upon this common thread, the underlying legislative intent is that employees providing mental health services directly to their employing agencies’ clients pursuant to their regular and major duties be included in Group 2. Reading the phrase “defective delinquents and wayward children” as encompassing DYS juveniles based solely upon their assignment to the agency by the courts, regardless of whether they are provided with mental health services by the agency, does not comport with this underlying legislative intent.

are responsible, to the required degree, for the care, custody, instruction or other supervision of juveniles other than those the exception specifies—“defective delinquents or wayward children.” This specific exception must be construed narrowly, and the general rule (in this case, Group 1 categorization) controls unless the specific exception applies. *See, e.g., TBI, Inc. v. Bd. of Health of North Andover*, 431 Mass. 9, 725 N.E.2d 188, 195 (2000) and *Stoughton Dep’t of Veterans’ Services v. Dep’t of Veterans’ Services*, Docket No. VS-10-311, Decision at 13 (Mass. Div. of Admin. Law App., Jul. 17, 2012)(rule of construction applied where a general and specific regulation both apply and appear to conflict).

iii. As a Matter of Law, Can a State Employee Show that His Regular and Major Duties Required Him to Have Custody, Control, Instruction or Other Supervision of “Defective Delinquents or Wayward Children”?

Arguably, Group 2 classification could be available for an employee such as Mr. Curtin who asserts that his regular and major duties required him to be responsible for the care, custody, instruction or other supervision of juveniles, but for the option to apply, he must show that the juveniles he worked with were “defective delinquents or wayward children.” Doing so requires reference to a definition of this phrase or its elements, “defective delinquents” and “wayward children.” M.G.L. c. 32, § 3(2)(g) furnishes no such definition and apparently never did so. “Defective delinquents” and “wayward children” are no longer defined anywhere else in the General Laws. As the General Laws formerly defined those phrases, however, a juvenile assigned to DYS by the courts is not necessarily a “defective delinquent” or a “wayward child.” Per the prior statutory definition, a “defective delinquent” meant a person (whether juvenile or adult) who was “mentally

deficient,” incompetent, unable to take care of himself, and/or insane, and needed to be committed as such, and the definition was not intended to define a criminal or a person requiring punishment under a penal statute. *See* above at 22-24. The prior statutory definition of “wayward child” was based upon association with vicious or immoral persons, or exposure to circumstances exposing him to an immoral, vicious or criminal life. Under neither of these definitions would a juvenile’s assignment by a court to DYS alone define him as a “defective delinquent” or a “wayward child.” Absent any evidence to the contrary here, it may be assumed safely that a juvenile assigned to DYS by the courts was neither charged nor assigned on account of being intellectually challenged or developmentally delayed, or with being “wayward” on account of habitually associating with vicious or immoral persons or growing up in circumstances exposing him to lead an immoral, vicious or criminal life. *See DellaGuistina v. State Bd. of Retirement*, Docket No. CR-11-699, Decision at 4 -5 (Mass. Contributory Retirement App. Bd., Dec. 2, 2015).

Because “defective delinquent” and “wayward child” were formerly defined by the General Laws they are not ambiguous, even if the phrases are now considered archaic, scientifically inaccurate or socially harmful. As a result, there is no need to consult the legislative history, including the deletion of the definitions of “defective delinquent” and “wayward child” from the General Laws during the 1970s, or other extrinsic aids, to discern their meaning. In other words, they must be construed as the legislature wrote them, particularly since the legislature could have said so plainly if it intended the phrases to apply in circumstances other than those specified by the statutory definitions. *See, e.g., Town of Edgartown v. State Ethics Comm’n*, 391 Mass. 83, 460 N.E.2d 1283, 1286 (1084).

Even if resort to dictionary definitions were justified in construing “defective delinquent” or “wayward children,” the adjectives “defective” (as to delinquent persons) and “wayward” would still define a subset of “children” to which the phrases applied, rather than children (or juveniles) generally. Applying the dictionary definitions, “defective,” meaning “of subnormal intelligence” or “someone physically or mentally incapacitated,” *American Heritage Dictionary*, 2nd College Ed. (Houghton Mifflin, 1991), would modify “delinquent,” and “wayward,” meaning “stubborn or disobedient” or swayed by caprice; unpredictable,” *id.*, would modify “children.” The DYS juveniles with whom Mr. Curtin worked, or for whom he was responsible, as a Casework Manager would have to have been of subnormal intelligence or physically or mentally incapacitated, and/or stubborn and disobedient or swayed by caprice, to have been “defective delinquents or wayward children.”

There is no evidence that this was the case. The legislation that established DYS as a separate agency within the Executive Office of Human Services in 1969 (St. 1969, c. 838, codified as M.G.L. c. 18A, § 1), did not use the words “defective” or “wayward” to describe the “delinquent children and youth referred or committed to the department by the courts.” *See* M.G.L. c. 18A, § 1 (discussed above at 5-6.) Neither did the 1998 “Strategic Plan” pursuant to which DYS established day reporting centers such as the Hyannis center where Mr. Curtin worked as a Casework Manager. (*See* discussion of the “Strategic Plan” above at 6-9.) Moreover, DYS’s approach to non-incarcerated juveniles assigned to the agency by the courts emphasized a decentralized counseling approach and re-integration into the community rather than “commitment” as a ward of the state (*id.*), the approach taken by the Commonwealth in earlier times when delinquent juveniles could be classified under the General Laws as “defective” or “wayward.” (*See* above at 22-25.)

In fact, Mr. Curtin did not seek to show that DYS juveniles met the former statutory definitions of “defective delinquents” or “wayward children” when he worked as a Casework Manager, or that DYS juveniles would fall within a dictionary-based definition of these phrases. He argued, instead, for a broad reading of the phrase “defective delinquents and wayward children” as including juveniles assigned to DYS by the courts. That construction is unsupported by the plain language of the phrase used to define Group 2 membership, “defective delinquents or wayward children,” by the definitions of “defective delinquents” and “wayward children” provided previously by the General Laws, or by the ordinary and common meaning of the phrase as might be discerned from the dictionary definitions of “defective” and “wayward.”

Even if Mr. Curtin had attempted to do so, however, it is doubtful he could have shown that juveniles assigned to DYS by the courts were “defective delinquents” or “wayward children.” Because the legislature deleted the definitions of “defective delinquents” and “wayward children” from the General Laws during the 1970s, as a matter of law it appears no longer possible for a state employee to have regular and major duties requiring him to have “the care, custody, instruction or other supervision of . . . defective delinquents or wayward children” or, on that basis, to be classified in Group 2 or receive pro-rated retirement benefits for Group 2 service. *Forbes v. State Bd. of Retirement*, Docket No. CR-13-146, Decision at 5 (Mass. Div. of Admin. Law App., Dec. 23, 2016), citing *DellaGuistina* (Department of Children and Families (DCF) employee, who retired before the Group 2 definition was amended in 2012 to add the DCF social worker category it now includes, could not be classified in Group 2 for retirement purposes based upon having regular and major duties requiring her to have the care, custody, instruction or other supervision of “persons who are mentally

ill or mentally defective or defective delinquents or wayward children” because she did not show that the majority of her client population at DCF fell into one of these categories, and because the “wayward child” and “defective delinquent” categories were repealed, “[t]hese categories cannot add any support to [petitioner’s] claim that a majority of her clients fell within a population covered by [M.G.L. c. 32] § 3(2)(g).”)

b. Insufficient Percentage of Time Spent Having Custody of, or Providing Direct Care, Instruction or Other Supervision, to DYS Client Population

Even if the statutory phrase “defective delinquents or wayward children” is read properly as including juveniles assigned by the courts to DYS, Mr. Curtin did not show that his time performing the regular and major duties of a DYS Casework Manager, particularly as site director at one of the agency’s community day reporting centers, was spent primarily in exercising direct custody of juveniles assigned to DYS by the courts, or in directly providing instruction or other supervision to them, despite his hands-on involvement in the center’s work.

If a retirement system member has retired, his group classification is based on the job he had at the time of retirement. *Williams v. State Bd. of Retirement*, Docket No. CR-12-229, Decision at 5 (Mass. Div. of Admin. Law App., Apr. 28, 2017.) If the employee has not yet retired (as is the case here), group classification is based on the job he held during the time for which he seeks group reclassification for retirement purposes. *See Camara v. State Bd. of Retirement*, Docket No. CR-15-460, Decision at 7-9 (Mass. Div. of Admin. Law App., Sept. 16, 2016). The member’s job title and job description “are key information to be used to determine the appropriate Group classification.”

Williams, citing *Gaw*, 4 Mass. App. Ct. At 256, 345 N.E.2d at 912 (in determining whether former manager of municipal light company should have been classified in Group 1 or Group 4 for retirement purposes, “the test for eligibility is largely the employee's title or job description.”)

It was Mr. Curtin’s burden to prove that during the time period in question, his regular and major duties, or at least 51 percent of them, were spent having custody of, or providing direct client care, instruction or other supervision to, the client population where he worked. See *Williams*, Decision at 6, citing *Judge v. State Bd. of Retirement*, Docket No. CR-03-142, Decision at 5-6 (Mass. Div. of Admin. Law App., Apr. 30, 2004).¹⁰ In addition, “when the [member] rendered care, instruction or other supervision to any individual client or in group sessions, such conduct must not have been merely incidental or in the context of some greater administrative function.” *Williams*, Decision at 6, citing *Giard v. State Bd. of Retirement*, Docket No. CR-08-347, Decision at 4 (Mass. Div. of Admin. Law App., Jun. 8, 2012).

The metric recited by *Williams*—that at least 51 percent of the retirement system members’ “duties . . . were spent providing direct care” —is somewhat awkward, as it is the time performing duties that is spent, rather than the duties themselves. The metric does not refer, thus, to the

¹⁰/*Judge* affirmed the denial of Group 4 classification for the job performed by a Hampden County Sheriff’s Department employee who had held various positions “in the midst” of various inmate populations at correctional facilities, but it also held that the work should be classified in Group 2 rather than Group 1, because (1) he worked in a position where he routinely had, as his job description required, the care, custody and supervision of inmates, including authorizing the movement of inmates in the facility and responsibility for security within the correctional facility’s “orientation unit;” (2) his job description also required that he have the capabilities to perform the duties of a correction officer; (3) he interacted routinely with the inmate population in the orientation unit on an everyday basis and did so per a job requirement that he supervise those inmates directly; and that (4) the work he was “doing day in and day out” satisfied the applicable Group 2 criteria because that his regular and major duties required him to have the care, custody and instruction or other supervision of prisoners.”

percentage of regular and major duties specified on paper that appear related to providing direct care, instruction or other supervision. Instead, it refers to a percentage of the time that the member spent spent carrying out his or her regular and major duties that was devoted to providing direct care, instruction or other supervision to the client population he or she serviced. *See Williams*, Decision at 6 (concluding “that the [p]etitioner’s regular and major duties consisted of providing care, custody, instruction or other supervision to the clients in state custody [at Worcester State Hospital] for at least 51% of the *time*” (emphasis added); *see also Borucki v. State Bd. of Retirement*, Docket No. CR-12-683, Decision at 6 (Mass. Div. of Admin. Law App., Apr. 22, 2016)(registered nurse at the Holyoke Soldier’s Home who appealed the denial of her request to be classified in Group 2 for retirement purposes failed to show that during the last year of her employment “she spent over fifty per cent of her *time* caring for” patients with psychiatric conditions, and instead spent most of her time providing nursing care to patients who were physically ill (emphasis added)).

Assuming, again, that juveniles assigned to DYS by the courts fall within the purview of “defective delinquents or wayward children,” the issue is whether, as a DYS Casework Manager between March 1994 and March 2006, Mr. Curtin was required to have the care, custody, instruction or other supervision of juveniles assigned to DYS by the courts, the agency’s client population, and, if so, whether at least 51 percent of the time he spent performing his regular and major duties as a casework manager was spent specifically in providing direct care, instruction or other supervision to them.

I note initially that during the last year he worked as a DYS Casework Manager (March 2005-March 2006), Mr. Curtin was also an acting DYS Regional Director who worked in the agency’s

regional office in Taunton, where he did not regularly exercise any direct care, custody or supervision over juveniles assigned to DYS. If and when Mr. Curtin exercised this direct care, custody or supervision of juveniles during this final year as a casework manager, it would have been only when he worked at the Hyannis Day Reporting Center. His testimony, and his assertions in his appeal and prehearing memorandum, were ambiguous as to when, and how often, he worked at the Reporting Center in 2005-06, or during the last four years when his DYS job title was “Casework Manager” (2002-06). The exhibits do not provide this information. The record includes, thus, no reliable evidence showing that during the period 2002-06, when he was last employed as a DYS Casework Manager, at least 51 percent of Mr. Curtin’s time was spent providing direct care, instruction or supervision to DYS juveniles, rather than on supervisory, policy-making or other administrative tasks. I conclude, therefore, that between 2002 and 2006, any direct care, instruction and supervision Mr. Curtin rendered, or any juvenile client contacts he had, were incidental to, or were performed in the context of, his supervisory and administrative duties and responsibilities.

Mr. Curtin also requested Group 2 classification for his work as a DYS Casework Manager during the period 1994-2002, the years preceding his work as a DYS acting Regional Director in Taunton. Because he has not yet retired, I cannot focus upon the duties Mr. Curtin performed during his last year of work; per *Camara*, therefore, I focus upon “the time when the member held the position or performed the work for which he or she seeks Group classification for retirement purposes,” which, in this case, was 1994-2006, when Mr. Curtin was employed by DYS as a Casework Manager. I have already determined that any direct care, instruction or other supervision Mr. Curtin provided during the last four years of that period (2002-2006) was incidental to his

performance of administrative duties as an acting DYS regional director at the agency's Taunton office. Therefore, I turn next to the period 1994-2002, when Mr. Curtin worked most of the time at the Hyannis Reporting Center, in order to determine whether at least 51 percent of the time Mr. Curtin spent performing his regular and major duties as a casework manager during those years was spent providing direct care, instruction or other supervision to DYS juveniles.

I begin with the "Form 30s" in evidence, which state the regular and major duties of a DYS Caseworker II— the position Mr. Curtin held during his first twelve years of employment at DYS— and those of a Casework Manager, the position whose group classification is at issue here. Placed side-by-side, the Form 30s allow ready comparison of a caseworker's and a case manager's regular and major duties.

The DYS Caseworker II Form 30 states specifically that a caseworker has an assigned caseload of juveniles referred to DYS by the courts, and was responsible for working directly with the juveniles assigned to him. It also states specifically that a caseworker provides direct supervision of these juvenile clients on his assigned caseload, coordinates and facilitates the delivery of DYS services to them, assesses programs and placements for them in accordance with public safety and treatment needs, develops and monitors their treatment plans and relapse prevention plans, and provides family intervention and employment search assistance. He also makes arrangements for juvenile client intake and transportation, investigates and reports parole violations, escapes and probation violations, and apprehends, arrests, detains and transports violators "in cuffs and shackles, when necessary." (Finding 11.) The Form 30's detailed statement of a Caseworker II's duties and responsibilities also state specifically that a caseworker is responsible for, among other things, "[c]ase

management and supervision of juveniles assigned to DYS and involved with DYS reporting centers,” as well as completing juvenile diagnostic assessments, conducting home visits and investigations (including family member and caregiver interviews), coordinating case reviews, developing and updating juvenile service delivery plans, and attending, and representing DYS at, court proceedings involving juveniles assigned to the agency, and handcuffing and shackling juveniles for transport to and from various locations including courts and state agencies. (Finding 12.)

Per the Form 30, in other words, the DYS caseworker’s regular duties require him to have “the care, custody, instruction or other supervision” of juveniles assigned to DYS by the courts. In fact, this is the first duty that the Form 30 lists for a Caseworker II.

In contrast, the duties and responsibilities of a DYS Casework Manager, as stated by the Form 30 for this position, do not include carrying an assigned caseload of juvenile offenders referred to DYS by the courts. The Form 30 does not state that a DYS Casework Manager has direct responsibility for working directly with the juveniles assigned to him. Consistent with this omission, a DYS Casework Manager carries no caseload of assigned juveniles. Instead, a Casework Manager is responsible for assuring that casework is handled effectively by the caseworkers he supervises. He is responsible for the direct delivery of agency services to the juveniles assigned to DYS by the courts.

However, with the exception of several duties specified by the Form 30 (supervision and custody of juveniles at court, transporting juveniles to and from court, and performing all work related to meeting with juveniles and their families to explain court dispositions and actions and orienting the families to the DYS system), responsibility for direct delivery of agency services to court-assigned juveniles relates to the Casework Manager’s responsibility for supervising the performance and

accountability of caseworkers, and to his responsibility for coordinating “efforts between the Department of Youth Services, courts, law enforcement agencies, i.e. Police/Sheriff’s Department and DYS CRC/Neighborhood Centers.” (Findings 18, 19.)

Per the Form 30, in other words, although a DYS Casework Manager has some direct supervision responsibility for juveniles assigned to the agency, this is one of many duties and responsibilities he has, but it is not the primary one.

The first duty and responsibility that the Form 30 lists for a DYS Casework Manager is assuring effective casework management by the caseworkers, not having “the care, custody, instruction or other supervision” of juveniles assigned to DYS by the courts. Most of the duties and responsibilities that the casework manager Form 30 lists are predominantly supervisory and administrative, among them obtaining information about juveniles to develop appropriate placements and determine specific programs for the, observing and monitoring juveniles to determine their progress and make recommendations to the courts, conferring with staff members and law enforcement and juvenile court personnel to determine available resources for providing services to juveniles assigned to DYS and resolve problem situations concerning juveniles, coordinating schedules with courts, conducting staff meetings and training staff, and providing staff with technical assistance in assessing juveniles’ needs, placing juveniles and developing service plans.

At the core of these Casework Manager responsibilities and duties is assuring that the DYS caseworkers can perform theirs efficiently, and that the agency can carry out its statutory mission. On occasion, this may mean that the Casework Manager performs some of the tasks that a caseworker performs, and he is expected to be able to do so. But again, the Casework Manager has no assigned

caseload, and so the direct “care, custody, instruction or other supervision” of juveniles assigned to DYS by the courts remains predominantly with the caseworkers. On occasion, a Casework Manager has direct responsibility for specific aspects of juvenile care, custody, instruction or other supervision. However, the Casework Manager’s involvement in these tasks is, per the Form 30, mostly supervisory and for the benefit of the caseworkers and the agency primarily.

One particular aspect of this responsibility and duty—a DYC Casework Manager’s supervision and custody of juveniles assigned to DYS—is (and was between 1994 and 2006) at least potentially more direct than a caseworker would have. Per the Form 30, a Casework Manager is expected to become trained on the job in “[r]estraints and crisis intervention” (Finding 21.) The Form 30 for a DYS caseworker recites no such requirement. Nonetheless, it is the Caseworker Form 30, not the Casework Manager Form 30, that specifically lists “[h]andcuffing and shackling clients for transport to and from various locations including courts and other agencies” as a duty and responsibility. (Finding 12.) In this respect, one could reasonably read the Casework Manager’s expected training in “[r]estraints and crisis intervention” to be related more to his responsibilities for assuring efficient casework handling, training staff in administering DYS services to juveniles, and coordinating efforts between DYS and the courts and other law enforcement agencies in providing services to juveniles and resolving “problem situations” with juveniles, than to the direct restraint of juveniles in DYS custody (for example, with handcuffs and shackles). Stated another way, the on-the-job training in “[r]estraints and crisis intervention” required of a Casework Manager is more likely for the purpose of matching or exceeding the same skills expected of a caseworker, and therefore being able to manage and train caseworkers to perform these tasks, than it is for spending most of his

time performing such tasks himself.

Mr. Curtin's testimony did not contradict what the Form 30 shows or suggests as to a Casework Manager's regular and major duties, and how much of the time spent performing them involved the "the care, custody, instruction or other supervision" of juveniles assigned to DYS by the courts. He confirmed that although he had been assigned a caseload as a DYS caseworker, he had no assigned caseload as a Casework Manager. (Finding 28.) As the Hyannis Day Reporting Center's site director, Mr. Curtin supervised three or four DYS caseworkers, and was responsible for coordinating their casework planning and monitoring, and for working with the caseworkers to assure that they produced monthly juvenile client reports, case histories as required, and residential and secure treatment referral packages when juveniles required transfer to DYS facilities from the agency's non-custodial Community Re-Entry Center Program. (Finding 23.) The juveniles at the Center remained the responsibilities of their caseworkers, however, and became Mr. Curtin's responsibility only if a caseworker was not available to perform them. (Finding 24.) There was no testimony or other evidence showing that caseworker absence (or, thus, Mr. Curtin's direct responsibility for juveniles at the Center) was more the rule than the exception.

Mr. Curtin testified that he played a more active role than was required of him in working directly with juveniles. He had regular discussions with juveniles, their families and the leaders of the Center's clinical groups, and he sat in on the Center's programs and clinics as an occasional observer and participant. He also checked on how the Center's community outreach to local business for job training and placement was going, and when caseworkers were not present to do so, he checked juveniles to ensure that they did not bring contraband into the Center. (Finding 24.) In

addition, although the Casework Manager Form 30 did not require him to do so, Mr. Curtin was involved in transporting juveniles and their families when this was necessary and caseworkers were not available to do this work, and also because he knew how to restrain juveniles properly for transport from his prior training as a DYS caseworker. (Finding 26.) Mr. Curtin also testified that on a number of occasions he had to “deal with” juveniles “acting up” at the Center, which involved mostly “horsing around” and, less frequently, “fighting,” but mostly this involved intervention to stop an argument or a tantrum or prevent impulsive behavior that could endanger others. (Finding 27.) These situations, and his intervention in them, occurred infrequently, however, and when it occurred, the Center’s caseworkers were more likely to intervene and, if necessary, restrain juveniles physically without Mr. Curtin’s assistance, although he involved himself and helped restrain juveniles if he saw a need for this intervention. (*Id.*)

It was my overall impression, from Mr. Curtin’s testimony, that he did not do any of these things in order to maintain his personal care, custody, instruction or other supervision of the juveniles at the Center, or because he was required to do them. Instead, he did so in furtherance of his responsibilities and duties as a Casework Manager to assure that the DYS caseworkers could perform their responsibilities and duties efficiently, and to assure that the agency could carry out its statutory mission. He also viewed his responsibilities as the Center’s site director expansively. Partly because of his serious and professional approach to his work and the agency’s mission, partly because he had been a caseworker for many years, and partly because he wanted the juveniles assigned to the Center to be able to move on with life successfully, Mr. Curtin wanted to be involved directly in the Center’s work and with the juveniles and their families. He was clearly motivated to be a “hands-on”

Casework Manager. However, Mr. Curtin did not testify that, in doing so, the time he spent performing his duties and responsibilities as a casework manager was spent primarily in having direct custody of juveniles at the Center, or in providing instruction or other supervision of the Center's juveniles. To the extent he exercised such direct custody, instruction or supervision of juveniles assigned to DVS by the courts, it was incidental to performing the administrative duties and responsibilities as a Center site director who was ultimately responsible for everything that went on at the Center and everyone who was there.

In sum, there is no evidence that exercising direct custody of DYS juveniles, or providing direct care instruction or other supervision to them, was Mr. Curtin's primary responsibility or duty when he served as acting Regional Director in DYS's Taunton Office between 2002 and 2006, or that he spent at least 51 percent of his time exercising it. He was more closely involved with DYS juveniles, their caseworkers and their families when, as a DYS Casework Manager, he served as the Center's site director between 1994 and 2002. As the Center's site director, he was ultimately responsible for everything that went on at the Center and everyone who was there, including the juveniles assigned to DYS who reported to the Center and to their caseworkers. Still, there is insufficient evidence that as the Hyannis Day Reporting Center's site director between 1994 and 2002, at least 51 percent of Mr. Curtin's on-the-job time was spent exercising direct custody of juveniles assigned to DYS by the courts, or in providing direct care, instruction or other supervision to them. Performing those duties and responsibilities remained the primary responsibility of the caseworkers Mr. Curtin supervised. As much as he sought to be a "hands-on" manager involved actively in the Center's work who interacted routinely with the Center's juveniles, their caseworkers

and their families, this was not the required duty or responsibility of a DYS Casework Manager. When Mr. Curtin performed this work or took on these responsibilities, it was necessarily incidental to the greater administrative function he was required to perform as a Casework Manager and, in that capacity, as the Hyannis Day Reporting Center's site director.

One final point remains to be addressed. Mr. Curtin recalled other DYS Casework Managers telling him their work in that position had been classified in Group 2 for retirement purposes, and, although he was not certain this recollection carried any legal weight, he offered it as some evidence in support of the Group 2 reclassification he requested. (Curtin testimony; *see also* Exh. 2: Appeal, first para.) What other Casework Managers may have told Mr. Curtin is hearsay and does not show any such classification reliably, and for this reason it is entitled to no evidentiary weight as to group classification of the service he performed as a DYS Casework Manager. That said, any such prior classification of DYS Casework Manager service in Group 2 would not have precluded the State Board of Retirement from changing its mind about the classification and correcting it, particularly if the Board could no longer reconcile the prior classification with M.G.L. c. 32, § 3(2)(g)'s Group 2 definition. Moreover, even if the Board did not do so, the correction could be made on appeal by DALA and the Contributory Retirement Appeal Board. *See Hunter v. Contributory Retirement Appeal Bd.*, 80 Mass. App. Ct. 257, 263, 952 N.E.2d 456, 461 (2010).

Disposition

Mr. Curtin sought to have his service as a DYS Casework Manager between 1994 and 2006 reclassified for retirement purposes from Group 1 to Group 2 based upon so much of the Group 2

definition, recited by M.G.L. c. 32, § 3(2)(g), as included within that Group Commonwealth employees “whose regular and major duties required them to have the care, custody, instruction or other supervision of . . . defective delinquents or wayward children.” Because the General Laws no longer define “defective delinquents or wayward children,” as a matter of law it appears no longer possible for a state employee to have regular and major duties requiring him to have “the care, custody, instruction or other supervision of . . . defective delinquents or wayward children” or, on that basis, to be classified in Group 2 or receive pro-rated retirement benefits for Group 2 service. Even if “defective delinquents or wayward children” can be read properly as encompassing juveniles assigned to DYS by the courts, it was Mr. Curtin’s burden to show that at least 51 percent of his on-the-job time as a DYS Casework Manager during the years in question was spent exercising direct custody of those juveniles, or in providing them directly with care, instruction or other supervision. He did not make this showing.

Accordingly, the State Board of Retirement’s decision denying reclassification of Mr. Curtin’s prior service as a DYS Casework Manager between March 1994 and March 2006 from Group 1 to Group 2 for retirement purposes is affirmed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Mark L. Silverstein
Administrative Magistrate

Dated: November 17, 2017

APPENDIX TO DECISION: HEARING EXHIBITS IN EVIDENCE

Exh. 1: State Board of Retirement’s denial of Mr. Curtin’s request for Group 2 classification of his work as a Program Manager 2 (Casework Manager) at the Department of Youth Services from March 13, 1994 until March 4, 2006 (dated May 31, 2013);

Exh. 2: Mr. Curtin’s appeal of the State Board of Retirement’s May 31, 2013 denial (with DALA receipt stamp dated June 12, 2013);

Exh. 3: Mr. Curtin’s request for group classification (on a State Board of Retirement form entitled “Group Classification Questionnaire”), dated April 10, 2013, with a signature that reads “Craig Curtin” and including, on its second page, the signatures of his direct or current supervisor, dated April 28, 2013, and the signature of the employing agency-HR representative, dated May 1, 2013 (this is the version of the request that the Board reviewed);

Exh. 4: The formal position description (Commonwealth of Massachusetts “Form 30”) for a Department of Youth Services Casework Manager, Position Title Code 04-MPM, undated, which Mr. Curtin submitted with his request for group classification;

Exh. 5: A document described by Mr. Curtin as his “original” request for group classification (on a State Board of Retirement form entitled “Group Classification Questionnaire”) for his work as a “Site Director-Community Reentry Center” at the Department of Youth Services, from March 11, 1994 to September 1, 2006, dated April 10, 2013, with a signature on the first page that Mr. Curtin identified as his. This exhibit includes a separate document Mr. Curtin prepared describing, in his words, the role of a site director for the Department of Youth Services’ Youth Re-entry Centers;

Exh. 6: Document entitled *Youth, Partnership and Public Safety: The DYS Strategic Plan*, issued by the Department of Youth Services, dated November 1998; and

Exh. 7: Position Description, DPA Form 30-Youth Services Caseworker II, Department of Youth Services (undated).