

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Emily DeCilio,
Petitioner,

Docket No.: CR-25-0164

v.

Dated: May 1, 2026

Massachusetts Teachers' Retirement System,
Respondent.

Appearances:

For Petitioner: Emily DeCilio (pro se)

For Respondent: Salvatore Coco, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner seeks to participate in the benefits program known as Retirement Plus, G.L. c. 32, § 5(4), after missing her one-time, six-month enrollment opportunity under St. 2022, c. 134, § 3. The respondent board properly declined to enroll the petitioner belatedly. Retirement Plus's enrollment deadlines are strict. A narrow exception to them under *Davey v. Massachusetts Teachers' Retirement System*, No. CR-01-914 (Contributory Ret. App. Bd. Jan. 31, 2003), is inapplicable here for reasons both case specific and more general.

DECISION

Petitioner Emily DeCilio appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) determining that she is not entitled to participate in the benefits program known as Retirement Plus. See G.L. c. 32, § 5(4). After several procedural turns, the appeal was submitted on the papers without objection. 801 C.M.R. § 1.01(10)(c). I admit into evidence exhibits marked I-VII (Ms. DeCilio's) and 1-13 (MTRS's).

Findings of Fact

I find the following facts, supplemented for clarity with key points of law.

1. In approximately 2013, Ms. DeCilio entered public service as a paraprofessional in the Quincy public schools. She was a member of the retirement system administered by the Quincy Retirement Board. Late in 2015, Ms. DeCilio became a teacher and a member of MTRS. (Exhibits I, II.)

2. As a result of her transfer into MTRS, Ms. DeCilio became entitled to a 180-day opportunity to enroll in Retirement Plus. For reasons immaterial here, MTRS viewed Ms. DeCilio's enrollment opportunity as running from July 2020 to January 2021. During that span, MTRS sent Ms. DeCilio several letters inviting her to enroll. Ms. DeCilio did not respond. (Exhibits 2-5. See St. 2000, c. 114, § 2; 807 C.M.R. §§ 13.02, 13.04.)

3. From August 2022 until late 2023, Ms. DeCilio was at home on paid maternity leave. During her leave, Ms. DeCilio was required to leave her work-issued laptop at the workplace. She also could not access her work-issued email address. (Exhibits III, IV.)

4. A statute enacted during 2022 established a new Retirement Plus enrollment opportunity for certain teachers who missed earlier opportunities to enroll. The new enrollment "window" lasted from January to June of 2023. (St. 2022, c. 134, § 3.)

5. MTRS made profuse efforts to inform its eligible members about the 2023 enrollment window. Before the window opened, MTRS identified the members that it viewed as eligible. The list included Ms. DeCilio. In September-November 2022, MTRS sent three advance alerts to the eligible members by email. In January 2023, a vendor mailed hard-copy "packets" to the same recipients. During June 2023, MTRS sent another four reminder emails

to each eligible member who had not yet responded. MTRS's informational campaign also included many other elements. (Exhibits 6-9, 13.)

6. The Postal Service notified MTRS that four teachers needed to have their hard-copy mailings forwarded to updated addresses. Ms. DeCilio was not among them. For purposes of its various emails to Ms. DeCilio, MTRS used a Gmail address appearing in its files; Ms. DeCilio continued to have access to the Gmail account through at least February 2025. (Exhibits 6-13.)

7. In early 2025, MTRS sent a decision to Ms. DeCilio stating that she is not entitled to participate in Retirement Plus. Ms. DeCilio timely appealed. (Exhibit 1.)

Analysis

Participants in Retirement Plus make enlarged retirement contributions of 11%. In return, they are entitled to advantageous benefit calculations designed to allow them to retire early. *See* G.L. c. 32, § 5(4)(i); *Dwyer v. Massachusetts Tchrs.' Ret. Syst.*, No. CR-23-459, 2024 WL 4345195, at *2 (Div. Admin. Law App. Sept. 13, 2024).

The program began to operate in 2001. The original statute allowed all individuals who were already teachers to enroll in Retirement Plus during January-June of that year. St. 2000, c. 114, § 2. The statute provided that, going forward, individuals transferring into MTRS from other retirement systems would be able to join the program within 180 days of "establishing membership" in MTRS. *Id.* *See* 807 C.M.R. § 13.02. To enroll or "elect" in this context, a teacher must provide MTRS with an enrollment form or other written request. *See Fillmore v.*

Massachusetts Tchrs.' Ret. Syst., No. CR-23-358, 2024 WL 277245, at *1 (Div. Admin. Law App. Jan. 5, 2024).¹

Over the years, hundreds of teachers have appealed from MTRS decisions stating that they missed their opportunities to join Retirement Plus. A statute enacted in 2022 recognized that special difficulties have hampered the enrollment efforts of individuals transferring into MTRS from other systems. *See Kelly v. Massachusetts Tchrs.' Ret. Syst.*, No. CR-19-137, 2023 WL 3948776, at *3 (Div. Admin. Law App. June 5, 2023). The statute gave such teachers a new opportunity to enroll, “on or after January 1, 2023 but not later than June 30, 2023.” St. 2022, c. 134, § 3(b).

Statutory deadlines and other brightline statutory rules cannot be modified for “equitable” reasons. *See Bristol Cty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 446, 450-51 (2006); *O'Malley v. Contributory Ret. Appeal Bd.*, 104 Mass. App. Ct. 778, 782 (2024). Likewise, statutes generally take effect without regard to whether the people they regulate receive any individualized information about them. *See Awad v. Hampshire Cty. Ret. Bd.*, No. CR-08-621, 2014 WL 13121791, at *3 (Contributory Ret. App. Bd. Dec. 19, 2014). *See also Clothier v. Teachers' Ret. Bd.*, 78 Mass. App. Ct. 143, 146 (2010). It follows from these principles that Ms. DeCilio cannot enroll in Retirement Plus after the expiration of her deadline.

A complication arises from the unusual precedent of *Davey v. Massachusetts Teachers' Retirement System*, No. CR-01-914 (Contributory Ret. App. Bd. Jan. 31, 2003). The teacher in that matter missed his opportunity to enroll in Retirement Plus during the first half of 2001.

¹ Individuals who begin their Massachusetts public service as teachers are automatic, mandatory participants in Retirement Plus. *See* G.L. c. 32, § 5(4)(i); St. 2000, c. 114, § 2.

The Contributory Retirement Appeal Board (CRAB) allowed him to enroll belatedly, noting that he was “an inactive member” of MTRS during the enrollment window and “did not receive notification of eligibility to elect to participate.” *Id.* at *2.

Neither *Davey* nor subsequent opinions have explained why the facts of that case created room for an exception to a statutory deadline. But CRAB has never specifically overruled *Davey*. A more recent decision, *Simonet v. Massachusetts Tchrs.' Ret. Syst.*, No. CR-18-164, 2021 WL 12298083 (Contributory Ret. App. Bd. Oct. 28, 2021), applied and distinguished *Davey*, treating it implicitly as good law. CRAB’s latest word on Retirement Plus, *Gabrielian v. Massachusetts Tchrs.' Ret. Syst.*, No. CR-23-64, 2025 WL 2322617 (Contributory Ret. App. Bd. June 23, 2025), includes some language apparently contrary to *Davey* but some more supportive of it.²

A holding of an appellate tribunal must be followed even after its foundations have weakened, right up until the appellate tribunal (or a higher one) says otherwise. *See 1A Auto, Inc. v. Director of Off. of Campaign & Pol. Fin.*, 480 Mass. 423, 431 (2018); *Briggs v. Worcester Reg'l Ret. Bd.*, No. CR-20-384, 2022 WL 9619041, at *3 (Div. Admin. Law App. Mar. 11, 2022), *aff'd*, 2023 WL 11806156 (Contributory Ret. App. Bd. Nov. 29, 2023). Regardless, Ms. DeCilio is not entitled to relief even on the assumption that *Davey* remains binding. This conclusion flows from considerations on two levels of generality.

² CRAB wrote in *Gabrielian* that “the deadline for filing an election to [Retirement Plus] cannot be enlarged.” 2025 WL 2322617, at *3-4. But CRAB also noted that the petitioners in that case “did not qualify for the exceptions noted by the magistrate,” i.e., the exception for *Davey*-type circumstances. *Id.* at *2 (discussing *In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, 2023 WL 5332723, at *3 (Div. Admin. Law App. Aug. 7, 2023)).

Focusing first on the particulars of Ms. DeCilio’s case, she does not satisfy the two conditions stated in *Davey*. The condition requiring Ms. DeCilio to have been an “inactive member” is tricky: CRAB may or may not have intended to give the word “inactive” its technical meaning, derived from G.L. c. 32, § 3(1)(a), which would exclude members on *paid* periods of leave, including Ms. DeCilio. See *Simonds v. Massachusetts Tchrs.’ Ret. Syst.*, No. CR-23-140, 2024 WL 4345190, at *3 n.3 (Div. Admin. Law App. Sept. 13, 2024). But it is clear enough that Ms. DeCilio fails to meet the condition of having received no “notification of eligibility to elect to participate.” *Davey, supra*, at *2. She bears the burden of proof. *O’Grady v. State Bd. of Ret.*, No. CR-07-1126, 2012 WL 13406335, at *2 (Contributory Ret. App. Bd. July 10, 2012). Her primary argument is that she lacked access to her work-issued email account while on leave: but MTRS has shown that it used Ms. DeCilio’s personal, Gmail address for purposes of its serial emails; and MTRS’s vendor sent Ms. DeCilio a hard-copy mailing, which enjoys the presumption that the mails operate properly. See *Dwyer*, 2024 WL 4345195, at *4-5; *Commonwealth v. Barboza*, 68 Mass. App. Ct. 180, 185 (2007).

At a higher level of generality, the principle that a trial-level tribunal must obey a weakened-but-not-overruled appellate precedent is limited to “direct application[s]” of the precedent. *1A Auto*, 480 Mass. at 431. A federal court has explained the limits of this principle:

There is . . . a difference between following a precedent and extending a precedent. . . . [I]f the facts of a gravely wounded [precedent] do not line up closely with the facts before us—if it cannot be said that decision “directly controls” our case—then, we are free to apply [updated] reasoning . . . to the case at hand.

Jefferson Cty. v. Acker, 210 F.3d 1317, 1320 (11th Cir. 2000).

The cases of teachers who missed the 2023 enrollment opportunity are not “directly” controlled by *Davey*, which arose out of the original, 2001 window. The difference between the two situations is meaningful. The 2001 window coincided with Retirement Plus’s creation. Out-of-the-office teachers like the member in *Davey* might have known nothing at all about the program. But more than twenty years later, there was reason to expect teachers to tend to their own Retirement Plus statuses. Further, the 2023 enrollment window was a successive opportunity to enroll, granted specifically to teachers who had already missed a first opportunity upon transferring into MTRS. The considerations that animated *Davey* might or might not carry over to the circumstances presented here.

Ms. DeCilio makes one additional point: she states that from the time she became a teacher until she began her leave of absence, her employer withheld enlarged, Retirement Plus contributions of 11% from her paycheck. The assertion enjoys some record support; but even if it is true, it cannot change the result. Given that Ms. DeCilio never enrolled in Retirement Plus, her enlarged contributions were erroneous. MTRS is required to correct errors of this nature and to return any excess amounts to the member. G.L. c. 32, § 20(5)(c)(2); *Hunter v. Contributory Ret. Appeal Bd.*, 80 Mass. App. Ct. 257, 263 (2011); *Harris v. Massachusetts Tchrs.’ Ret. Syst.*, No. CR-24-712, 2025 WL 689852 (Div. Admin. Law App. Feb. 21, 2025). If Ms. DeCilio’s paystubs confused or misled her, then her situation is unfortunate and potentially unfair; but the courts have not allowed such circumstances to alter a member’s statutorily prescribed entitlements. See *Clothier*, 78 Mass. App. Ct. at 146; *Moynihan v. Contributory Ret. Appeal Bd.*, 104 Mass. App. Ct. 1108, slip op. at 7-8 (2024) (unpublished memorandum opinion).

Conclusion and Order

In view of the foregoing, MTRS's decision is AFFIRMED.

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Division of Administrative Law Appeals