

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Karen Drake,
Petitioner,

No. CR-23-0119

Dated: July 5, 2024

v.

**Massachusetts Teachers’
Retirement System,**
Respondent.

Appearances:

For Petitioner: Karen Drake (pro se)

For Respondent: Ashley Freeman, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

The Petitioner, a food services director, was not a teacher in a charter school, and as such did not qualify for eligibility in the Massachusetts Teachers’ Retirement System.

INTRODUCTION

Petitioner, Karen Drake, timely appeals a decision of the Massachusetts Teachers’ Retirement System (“MTRS”) denying her entry into MTRS. Both the Petitioner and MTRS submitted a memorandum and exhibits. It was determined that this appeal could be submitted on the papers under 801 Code of Mass. Regs. § 1.01(10)(c). I admit into evidence exhibits marked 1-2 and A-D.¹

¹ I marked two exhibits which the Petitioner submitted in her response to MTRS’s pre-hearing memorandum. Exhibit C is a list of names and positions of other charter school employees who the Petitioner says were granted MTRS membership. Exhibit D is a list of food services workers from other schools and their respective retirement benefits.

FINDINGS OF FACT

1. Ms. Drake is a Food Services Director/Supervisor for Innovation Academy Charter School ("IACS"). (Ex A.)
2. In that position, she reports to the Chief Operating Officer and not, for example, to the principal. (Ex. A.)
3. The Petitioner does not dispute that she is not licensed, nor required to be licensed, by the Department of Elementary and Secondary Education ("DESE").
4. On behalf of Ms. Drake, the business director of IACS requested MTRS consider her eligibility to join MTRS. (Ex. 1.)
5. In an email dated February 07, 2023, MTRS informed IACS that the Food Services Director position was not eligible for membership because the position:
 - [Is] not eligible by title,
 - Doesn't require DESE licensure,
 - Doesn't require the candidate to take the [Massachusetts Test of Educator Licensure] and,
 - Doesn't track as a parallel to a position in a non-charter [school] that typically requires DESE licensure (like a nurse).(Ex. 1.)
6. Ms. Drake filed a timely appeal with DALA.²

² Although Ms. Drake did not file the original request with MTRS seeking a determination of eligibility, and the letter denying her eligibility was not addressed to her, she is still an "aggrieved party." See *City of Methuen v. Methuen Ret. Sys.*, CR-23-0420, 2024 WL 3101693 (DALA Jun. 14, 2024) (discussing standard for determining whether a party is "aggrieved"). MTRS reviewed a specific request on her behalf about her position and made an individualized assessment based on her job description. G.L. c. 32, § 16(4) allows "any party" aggrieved to appeal after notification. Ms. Drake was obviously notified of MTRS's decision and, being an "aggrieved party," appealed. See *Solazzo v. Newburyport Ret. Bd.*, CR-22-0177, 2024 WL 1486097 (DALA Mar. 29, 2024) ("where a nonparty has a direct, immediate and substantial interest that has been prejudiced by the judgment, and has participated in the underlying proceedings to such an extent that the nonparty has intervened 'in fact'" they may appeal).

Analysis

“Teachers employed by a charter school shall be subject to the state teacher retirement system under chapter 32 and service in a charter school shall be creditable service within the meaning thereof.” G.L. c. 71, § 89(y). MTRS codified this eligibility, clarifying it applies to “[i]ndividuals employed, pursuant to a contractual agreement, on at least a half-time basis as a teacher by a Massachusetts public charter school.” 807 Code of Mass. Regs. § 4.02 (2)(b). The regulation then explains that,

Because “teachers” in these entities are members of the MTRS irrespective of any provision of M.G.L. c. 32, a “teacher” in these entities is hereby defined as one who either holds the title of teacher, meets all four of the eligibility criteria set forth in 807 CMR 4.02(1) above, or works in a position that would be eligible for MTRS membership if it were performed in a Massachusetts public school.

807 Code of Mass. Regs. § 4.02 (2)(b).

Thus, to qualify for membership while working at a charter school, MTRS first determines if the prospective member holds the title of “teacher.” If not, it looks at the factors provided in 807 Code of Mass. Regs. § 4.02(1):

- (a) The individual holds a license granted by the Department of Elementary and Secondary Education (DESE) or had a waiver pending licensure from DESE;
- (b) the individual is covered by a contractual agreement for employment with one or more school committees or boards of trustees or by any combination of such committees and boards;
- (c) the contractual agreement requires not less than half-time service as a teacher, as defined in G.L. c. 32; and
- (d) the contractual agreement requires that the individual be licensed by the DESE as a condition of employment.

If an employee is neither a teacher by title nor eligible under § 4.02(a), then MTRS looks to whether the prospective member “works in a position that would be eligible for MTRS

membership if it were performed in a Massachusetts public school.” 807 Code of Mass. Regs. § 4.02 (2)(b).

Ms. Drake is a “food services director/supervisor.” Her title is not “teacher.” Ms. Drake argues that others whose titles are not “teachers” at charter schools are members of MTRS (Ex. C.). But that is not unusual because the law allows certain employees who are not “teachers” by title admission into MTRS. *See* G.L. c. 71, § 38G; *see e.g. Valiant v. MTRS*, CR-20-330 & 427 (DALA Nov. 3, 2023) (school psychologist); *Mello v. MTRS*, CR-19-003, 2023 WL 4548406 (DALA Jul. 7, 2023) (business manager); *DiLisio v MTRS*, CR-18-0283 (DALA Dec. 3, 2021) (school nurse).

Ms. Drake also surveyed other food service directors in public and private schools regarding their retirement benefits. (Ex. D). According to her, of the six other food service directors, one was a member of MTRS, three were members of a city or county retirement system and two were not members of any chapter 32 retirement system. I understand her to argue that because (she claims) one is a member of MTRS, that entitles her to membership here. Besides being unable to assess the accuracy of this list, it does not help Ms. Drake. Food service director is not a position that would qualify for membership in the MTRS if held in a public school. If anything, Ms. Drake’s list shows that food service workers who are members of a retirement system are not normally members of MTRS but, rather, municipal systems. *See e.g. MaGuire v. Malden Ret. Sys.*, CR-15-533 (DALA May 13, 2024); *Guilherme v. Cambridge Ret. Sys.*, CR-18-0572 (DALA Jun 11, 2021). And even if a food service worker was erroneously admitted into MTRS, it is of no moment because I am unable to grant Ms. Drake anything “beyond what the retirement law provides.” *McLaughlin v. SBR*, CR-19-0515. *13, 2022 WL 16921450 (DALA Dec. 23, 2022); *Hardoon v. SBR*, CR-13-071, 2023 WL 11806160 (CRAB

Oct. 5, 2023), *citing Wylie v. Hampden Cnty. Reg. Ret. Bd.*, CR-15-484, *1 (CRAB Nov. 28, 2018) (“benefits may not be enlarged, even by ‘an erroneous interpretation’ by SBR, any of its employees, or CRAB.”).

Finally, Ms. Drake does not meet the criteria for membership under § 4.02(1). She does not hold any licensure with the DESE, nor does her position require her to hold any licensure with the DESE. G.L. c. 71, § 38G (listing positions requiring licensure).

CONCLUSION AND ORDER

For the foregoing reasons, MTRS’s decision to deny Petitioner’s entrance into MTRS is **affirmed**.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

Eric Tennen
Administrative Magistrate