

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS**

Middlesex, ss.

Kevin Driscoll,
Petitioner,

Docket No. CR-25-0343

Dated: January 23, 2026

v.

Massachusetts Teachers' Retirement
System,
Respondent.

ORDER OF DISMISSAL

Petitioner Kevin Driscoll timely appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) denying his request to be assigned "Tier 1" status for retirement purposes.¹ The parties filed prehearing memoranda and 11 proposed exhibits, the latter of which I enter into evidence.² Mr. Driscoll's appeal is dismissed for failure to state a claim. 801 C.M.R. § 1.01(7)(g)(3).

Mr. Driscoll first became a member of MTRS in 2002. He taught until June 23, 2005. In response to a serious family medical situation, Mr. Driscoll withdrew his contributions to his retirement funds on August 23, 2013, thus terminating his membership in MTRS.

On August 26, 2019, Mr. Driscoll resumed teaching and again became a member of MTRS. On May 15, 2025, Mr. Driscoll requested that MTRS place him in Tier 1, should he be able

¹ G.L. c. 32, § 5 establishes different requirements and benefits for members who began state service before April 2, 2012, from those who begin their service on or after April 2, 2012. For administrative convenience, MTRS assigns its members to Tier 1 or Tier 2 respectively.

² Mr. Driscoll filed his appeal, his request to MTRS, and its decision. MTRS filed eight documents identified in its prehearing memorandum.

to buy back his earlier years of service.³ He argues for an exception to be made based on his personal circumstances in 2013 that lead him to withdraw his contributions.

When Mr. Driscoll received the refund of his contributions, he terminated his membership in MTRS and “surrendered all other rights and privileges to which he was entitled as a member.” (Exhibit 1.) See G.L. c. 32, § 3(1)(c). The application form he filed informed him of the consequences of a withdrawal, specifically including the consequences for members in what MTRS refers to as Tier 2. As a result, when Mr. Driscoll again became an MTRS member in 2019 he had only the rights and expectations of a member who joined in 2019. *Selby v. State Bd. of Ret.*, No. CR-19-0010 (Div. Admin. Law App. Apr. 29, 2022); *Kelley v. State Bd. of Ret.*, No. CR-98-901, (Div. Admin. Law App. Jan. 28, 2000). Furthermore, a member’s entitlement to creditable service does not create retroactive membership. *Manning v. Contributory Ret. App. Bd.*, 29 Mass. App. Ct. 253, 255-56 (1990).

G.L. c. 32, § 5 contains no exceptions. A member’s status is based solely on whether they became a member of MTRS before, on, or after April 2, 2012. Mr. Driscoll lost any rights associated with his earlier membership when he withdrew his contributions, so he only possesses the rights of a member enrolled in MTRS in 2019. The Division of Administrative Law Appeals (DALA) [and the Contributory Retirement Appeal Board (CRAB)] are without authority to alter the statutory requirements of the retirement law. See *Bristol Cnty. Ret. Bd. v. Contributory Ret. App. Bd.*, 65 Mass. App. Ct. 443, 451-52 (2006), *Petrillo v. Public Emp. Ret. Admin.*, No. CR-92-731, at *1 (Contributory Ret. App. Bd. Oct. 22, 1993). In 2024, CRAB

³ It appears MTRS told Mr. Driscoll he was eligible to buy back his earlier service.

confirmed that “DALA and CRAB simply do not have the authority to provide equitable relief where it contravenes the retirement law.” *Banks v. State Bd. of Ret.*, No. CR-24-0068, 2024 WL 3770229, at *2 (Contributory Ret. App. Bd. Jul. 3, 2024). In short, DALA cannot grant Mr. Driscoll an exception the retirement law does not authorize.

Mr. Driscoll’s submissions do not state a claim upon which DALA can grant relief. His appeal is dismissed.

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