

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

**In the Matter of
Enrollment in Retirement Plus**

No. CR-21-369

and 62 individual appeals¹

Dated: October 5, 2021

Concerning: all consolidated appeals

CONSOLIDATION AND CASE-MANAGEMENT ORDER

Approximately 300 appeals pending before the Division of Administrative Law Appeals (DALA) present disputes over whether members of the Massachusetts Teachers' Retirement System (MTRS) are entitled to be enrolled in the benefits program known as Retirement Plus. G.L. c. 32, § 5(4). This order will refer to those appeals as the "Retirement Plus appeals." The purpose of the order is to commence an effort to adjudicate the Retirement Plus appeals in a streamlined and cohesive manner.

The Retirement Plus appeals reflect the following essential background. Participants in Retirement Plus make enlarged retirement contributions of 11% and enjoy advantageous retirement-allowance computations. G.L. c. 32, § 5(4).² The statute enacting Retirement Plus prescribed three methods by which teachers could become enrolled in the program. Enrollment was automatic and mandatory for individuals hired as teachers on or after July 1, 2001 (kick-off date). Individuals already serving as teachers on the kick-off date received a six-month window, from January to June of 2001, to "elect" to participate. Individuals serving in other retirement

¹ Appendix A identifies the individual appeals that this order governs.

² An identical program applies to teachers in the Boston retirement system.

systems and transferring into MTRS after the kick-off date received a 180-day election window, the effective start date of which is a matter of contention.³

No statute or regulation defines the method by which a teacher is required to “elect” to participate in Retirement Plus. MTRS has, however, prepared specific, instruction-bearing “election forms” for this purpose. In 2001, MTRS endeavored to mail election forms to all individuals then serving as teachers. Thereafter, MTRS’s practice has been to mail election forms to all individuals transferring into MTRS from other retirement systems.

MTRS has notified various teachers that, according to MTRS’s records, those teachers are not enrolled in Retirement Plus because they failed to sign up by the applicable deadline. The Retirement Plus appeals concern such teachers. They involve some individuals who already were teachers as of the kick-off date, and some who transferred into MTRS from other retirement systems at later dates. The adjudication of the Retirement Plus appeals is underway, primarily through orders to show cause.

In some of the Retirement Plus appeals, the petitioners are represented by counsel affiliated with the Massachusetts Teachers’ Association (MTA). At this juncture, only appeals in which MTA has appeared are being consolidated.

It appears that many Retirement Plus appeals turn on undisputed material facts. It also appears that a small number of analytical issues will be decisive of many Retirement Plus appeals. Accordingly, it may be possible to adjudicate a large number of Retirement Plus

³ The statute enacting Retirement Plus required transferring teachers to make their election “within 180 days of establishing membership in [MTRS].” § 5(4)(i). An MTRS regulation states that the 180-day window begins when MTRS “receives the transfer of the member’s account from the other contributory retirement system.” 807 C.M.R. § 13.02. It appears that, consistent with § 13.02, MTRS’s typical practice has been to mail its election form upon receiving the balance of a transferring teacher’s contributions.

appeals through a small number of decisions that (a) set forth the analysis applicable to a particular category of appeals, and (b) identify, without great elaboration, the appeals belonging to that analytical category. Once any appeals are resolved in this fashion, the parties will be free to pursue appellate proceedings in other forums.

Consolidated proceedings of this nature have the potential to resolve a large number of Retirement Plus appeals both fairly and much more efficiently than through only case-by-case filings, hearings, and decisions. These proceedings will require significant assistance and feedback from the parties, and especially from counsel to MTRS and MTA.

For the foregoing reasons, it is hereby ORDERED as follows:

1. The appeals listed in Appendix A (consolidated appeals) are hereby consolidated, subject to the provisions of paragraphs 2-5. From time to time, additional Retirement Plus appeals may be consolidated into these proceedings subject to the same provisions.
2. Future submissions concerning any of the consolidated appeals shall bear the case caption *In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, and shall note prominently whether the submission concerns “all consolidated appeals” or specific appeals only, identified by docket number(s).
3. DALA will maintain submissions concerning all consolidated appeals in the case file numbered CR-21-369. Submissions relating only to specific appeals will be placed in the case files of those appeals.
4. A notice will be placed in the file of each of the consolidated appeals stating that additional papers relevant to the appeal are filed in the case file numbered CR-21-369. The form of the notice appears in Appendix B.

5. Orders concerning the consolidated appeals will be served by email, subject to reconsideration if any parties establish that they are unable to obtain access to an email account.

801 C.M.R. § 1.01(4)(c).

6. By December 6, 2021, counsel to MTRS and MTA shall submit a joint memorandum addressing the following points:

- (a) Appendix C is a list of Retirement Plus appeals (as defined *supra*). MTRS shall identify in the joint memorandum any additional Retirement Plus appeals of which it is aware. MTRS shall also state whether, in its view, any of the appeals listed in Appendix C is not a Retirement Plus appeal, or has been resolved.
- (b) Appendix A, which lists the consolidated appeals, is intended to capture the Retirement Plus appeals in which MTA has appeared. MTA shall identify in the joint memorandum any appeals missing from Appendix A or appearing on it in error.
- (c) The parties shall identify in the joint memorandum any other errors appearing in Appendixes A and C.
- (d) The involvement of proficient counsel tends to advance a litigant's ability to obtain a fair and effective adjudication of his or her rights. Special efficiencies are achieved when the same proficient counsel represents many or all parties sharing common interests in consolidated, multi-party proceedings. All sides to these proceedings—especially the teachers that MTRS and MTA both serve—will therefore benefit if MTA's counsel is able to appear on behalf of additional petitioners in additional Retirement

Plus appeals. MTA's counsel shall therefore state in the joint memorandum whether MTA has made efforts to assume representation of such additional petitioners.

- (e) The parties are invited to propose any additional procedural measures that, in their view, may facilitate the fair and efficient adjudication of the Retirement Plus appeals.
- (f) The parties are invited to propose, jointly or separately, analytical "buckets" of Retirement Plus cases that may be decided by a shared legal analysis. For example, it will likely be necessary to divide the Retirement Plus cases into those involving teachers who were MTRS members as of the kick-off date and those involving teachers who transferred into MTRS at later dates. It also will probably be necessary to sub-divide each the foregoing categories.

7. A status conference is scheduled for December 13, 2021. It will take place on a videoconferencing platform. In the December 6, 2021 joint memorandum, the parties shall identify the individuals who will appear for them at the conference by names and email addresses.

8. The procedures established in this order are intended to facilitate the "speedy and fair disposition," G.L. c. 7, § 4H, of numerous pending appeals, consistent with the various statutes and regulations governing DALA proceedings. *See* G.L. c. 30A; G.L. c. 32, § 16(4); 801 C.M.R. § 1.01. The parties shall lodge prompt objections, in the December 6, 2021 joint memorandum or thereafter, if in their view the procedures employed in these consolidated proceedings abridge the substantive rights of any party.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Served by email on:

Ashley Walter, Esq. (for the petitioners)

James O'Leary, Esq. (for MTRS)

Copy by email to:

Uyen M. Tran, Esq. (Contributory Retirement Appeals Board)

APPENDIX A: CONSOLIDATED APPEALS¹
(by petitioner name and docket number)

Amanda Boczanowski, 14-479	Jessica Hajjar, 18-197
Teresa Vidrine, 14-488	Kevin Howe, 18-199
Elizabeth Wiseman, 15-219	Patricia Hale, 18-206
Laura Dennison, 15-621	Eric Grasso, 18-209
Doria Habib, 16-53	Laurie Delaney, 18-213
Erin Haugh, 16-62	Tammy Bailey, 18-217
Josh Takis, 16-84	Joyce Sioch, 18-249
Julie Barkin, 16-229	Susan Labelle, 18-293
Tara Veteramo, 17-442	Alexandra M. Leonard, 18-381
Stephaanie Zuidema, 17-469	Michelle Nicholas, 18-474
Nancy Marley Nunes, 17-559	Kathleen Marble, 18-478
Emily Fanaras-Chan, 17-619	Jocelyn Allan, 18-599
Jennifer Lyons, 17-683	Nadine Kariotis, 18-623
Alexandre Alvarez, 17-835	Jeremy Folster, 18-625
James Flynn, 18-12	Karal Gartsu, 19-82
Gaston Levesque, 18-103	Lisa Lombardi, 19-95
Erin Smith, 18-107	Joseph Scarbo, 19-107
Laura Faherty, 18-127	Jessica Coons, 19-128
Eliza Cummings, 18-172	Jennifer Kelly, 19-137
Kerry Gallagher, 18-178	Sarah Hickey, 19-142
Brett Ordway, 18-189	Julie Derderian, 19-175

¹ I.e., Retirement Plus appeals in which MTA has appeared.

John Cross, 19-176

Emily Borek, 19-357

Tracie Tavares, 19-358

Heather Harris-Keddy, 19-408

Julia Tringuk, 19-443

Gabriella Gonzalez, 19-470

Marlee Cassel, 19-479

Jennifer Fioretti, 19-524

Laura Walley, 20-4

Rebecca Powell, 20-8

Keveny Glynn, 20-16

Natalie Thompson, 20-23

Rachel Doring, 20-99

James Graffam, 20-106

Andrew Bernard, 20-127

Peter Alexopoulos, 20-134

Barbara Goydas, 20-177

Meredith Friend, 20-264

Sonya Dugan, 20-266

Cheryl Mantia, 20-280

**APPENDIX B: FORM OF NOTICE PLACED IN CASE FILES
OF INDIVIDUAL APPEALS**

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

«Petitioner»,
Petitioner,

No. «Docket»

Dated: October 5, 2021

v.

Massachusetts Teachers' Retirement
System,
Respondent.

NOTICE

Additional submissions concerning this appeal are filed in *In the Matter of Enrollment in Retirement Plus*, No. CR-21-369.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate

APPENDIX C: RETIREMENT PLUS APPEALS
(by petitioner name and docket number)

Amanda Boczanowski, 14-479	Alyssa Toner, 17-141
Teresa Vidrine, 14-488	Kelly Feurt, 17-207
Cynthia Minezzi, 14-489	Derek Brennan, 17-243
Valter Lourenco, 15-215	Melissa Ogden, 17-264
Elizabeth Wiseman, 15-219	Nathaniel Turner, 17-292
Barbara Peskin, 15-486	Steven Mucci, 17-296
Tory Boepple, 15-586	Kristen Almquist-Cevallos, 17-299
Laura Dennison, 15-621	Rebecca Sacco, 17-302
Diane Buonopane, 15-649	Kristen Maloney, 17-303
Doria Habib, 16-53	Peter Sheridan, 17-311
Erin Haugh, 16-62	Jessica Johnson, 17-312
David Joseph, 16-71	Dawn Davis, 17-314
Jaime Kimenker, 16-76	Derek Medeiros, 17-321
Josh Takis, 16-84	Eric Hawkes, 17-322
Molly Curry, 16-113	Adam McCusker, 17-323
Julie Barkin, 16-229	Jennifer Pignone, 17-324
Shelley Rego, 16-237	Lara Taylor, 17-330
Erica Joyce, 16-292	Jennifer Lynch, 17-333
Christina Todd, 16-391	Sarah Chase (Graves), 17-336
Emily Fanaras-Chan, 17-36	Eric Gervais, 17-340
Emily Holleran, 17-77	Robert Clark, 17-341
Anna Corbett, 17-92	Kathleen Martin, 17-343
Susanna Scafidi, 17-120	Stephanie Poh, 17-356

Erica Mellon, 17-357	Gail Duffy, 17-450
Kathryn Richerson, 17-359	Bonnie Wren-Burgess, 17-451
Matthew Finn, 17-360	Lisa Wright, 17-464
Samantha Maio, 17-365	Stephaanie Zuidema, 17-469
Ingeborg Kuhlka, 17-366	Megan O'Loughlin, 17-470
Sandra Nilson, 17-380	Caroline Troy, 17-475
Mary Raymond, 17-382	Jeffrey Capuzziello, 17-482
Hope Tripp, 17-384	Lauren Hanlon, 17-483
Kimberly Seaver, 17-386	Emma Fog, 17-485
Cara Maloney, 17-396	Andrew Garlick, 17-486
Marla Delacruz-Ballard, 17-399	Kristen Jensen, 17-489
Angela Vandal, 17-403	Maureen Morelli, 17-494
Rowena Mattson, 17-408	Vanessa Irving Maloney, 17-496
Annie Rutledge, 17-413	Elizabeth Backer Walkin, 17-503
Amy Ball, 17-414	Shelly Boisvert, 17-508
Lori Simpson, 17-415	Victoria Prince, 17-514
Peter Zopes, 17-417	Kristina Benecke, 17-515
Jill McCarthy, 17-421	Noreen D'Andrea, 17-525
Maura Cordon, 17-425	Kelley Long, 17-526
Sharon Nieves, 17-432	Janelle DeMarchant, 17-527
Laura Shay, 17-439	Mary Payne, 17-531
Nicholas Robin, 17-441	Marybeth O'Brien, 17-532
Tara Veteramo, 17-442	Kimberley McCormack, 17-533
Christopher Gildea, 17-443	Kelly McAvoy, 17-534
Michelle Heim-Balch, 17-449	Karly Ronan, 17-536

Brenda Morrison, 17-537	Joseph Lento, 17-624
Mark Mosher, 17-543	Danielle Lambert, 17-626
John Mathews, 17-545	Margaret Gleason, 17-641
Dawn Bowler, 17-547	Anna Tarshish, 17-660
Marla Yanovitch, 17-550	Melissa Stellato, 17-669
Allison MacDonald, 17-558	Kristen Clifford, 17-671
Nancy Marley Nunes, 17-559	Daniel Georgette, 17-675
Katie Lindley Belois, 17-563	Heidi Ousler Lang, 17-676
Josie D'Elia, 17-575	Kelly Gallant-Hovespian, 17-681
Barbara Walsh, 17-578	Inna Belenky, 17-682
Tara Forrest, 17-583	Jennifer Lyons, 17-683
Anne Murphy, 17-587	Lisa Rasanen, 17-685
Ramon Cosme, 17-591	Debra Price, 17-690
Timothy Parachojuk, 17-592	Laurie Berard, 17-691
Carmela Nazon Guilloteau, 17-596	Jessica Peabody, 17-692
Kathleen Firlings, 17-597	Kristen Grange, 17-696
Kristen Thomas, 17-600	Derek Morrison, 17-700
Kevin Benecke, 17-602	Rebecca Imming, 17-701
Kaitlin Mucciarone, 17-611	Shawn Thomas, 17-704
Jeffrey Caritey, 17-615	Alyssa Foy, 17-714
Jillian Middlemiss, 17-616	Lisa Ryder, 17-717
Emily Fanaras-Chan, 17-619	Jean Poulin, 17-719
Joann Severance, 17-620	Micaela Shea, 17-721
Robert Zollo, 17-621	William Gauthier, 17-728
Asya Shestopal, 17-622	Christine Crocker, 17-735

Laura Cronin, 17-741	Jessie Fournier, 17-919
Elizabeth Fife, 17-743	Eric Murray, 17-920
Shelby Whalen, 17-744	Michelle Simon, 17-921
Karen Stackpole, 17-748	Doreen Bashista, 17-922
James Walsh, 17-751	Melissa Hotchkiss, 17-923
Peter Marifone, 17-752	Gabrielle Agron, 17-924
Jacquelyn Connolly, 17-763	Lisa Meldon, 17-927
Kathleen Robinson, 17-769	Lisa Luongo, 17-954
Mark Henry, 17-770	James Flynn, 18-12
Annmarie Fennelly, 17-771	Cara Letendre, 18-30
Elise McHugh, 17-772	Debbie Price, 18-32
Reyne Booth, 17-774	Michael Keaney, 18-36
Karen Toro, 17-784	JoAnn Orluk, 18-43
Conor Brosnan, 17-788	Cynthia Paris, 18-44
Jason Hoye, 17-789	Sally Nixon, 18-46
Laurie Lawlor, 17-790	Tracy Crowley, 18-47
Kate Reed, 17-797	Chris Warren, 18-51
Mary Coppinger-Fraser, 17-810	Anna Wythe, 18-52
Romona Norris, 17-814	Georgina Chavez, 18-59
Charlotte Mugnier, 17-833	Gaston Levesque, 18-103
Alexandre Alvarez, 17-835	Allyson Cournoyer, 18-104
Heather Geary, 17-836	Francis Friedman, 18-106
Patricia Caron, 17-837	Erin Smith, 18-107
Mark Geoffrey, 17-910	Marisol Rivas-Nunez, 18-108
Jean Kirchner, 17-917	Jennifer Devlin, 18-109

Kristen Feltcherr, 18-113	Randi Murray, 18-202
Jacqui Cohenno, 18-117	Jaclyn Merullo, 18-205
Kathleen Marandola, 18-120	Patricia Hale, 18-206
Kara Yuen, 18-122	Maribeth Lalli, 18-208
Kara Jagodzinski, 18-123	Eric Grasso, 18-209
Laura Faherty, 18-127	Laurie Delaney, 18-213
Elaine Spearing, 18-128	Caitlan Hannigan, 18-214
Carol Crowe, 18-135	Tammy Bailey, 18-217
Patricia Munzner, 18-138	Joyce Sioch, 18-249
Bruce Moulthrop, 18-139	Kellie Bayramshian, 18-255
Andrea Koenig, 18-141	Susan Labelle, 18-293
Anne Pieterse, 18-146	Kathleen Joy Laufer, 18-368
David Clark II, 18-147	Alexandra M. Leonard, 18-381
Caren Delahunt Baker, 18-148	Michelle Nicholas, 18-474
Dorothy Lorraine Tower, 18-149	Kathleen Marble, 18-478
Audrey Healey, 18-169	Rebecca St. Martin, 18-507
Eliza Cummings, 18-172	Jocelyn Allan, 18-599
Kerry Gallagher, 18-178	Nadine Kariotis, 18-623
Donna Gomes, 18-180	Jeremy Folster, 18-625
Yusra Khan, 18-181	Eva Moss, 18-643
Ryan Sullivan, 18-187	Timothy Collins, 19-48
Brett Ordway, 18-189	Julie Erwin, 19-79
Sharon Alwardt, 18-196	Karal Gartsu, 19-82
Jessica Hajjar, 18-197	Lisa Lombardi, 19-95
Kevin Howe, 18-199	Joseph Scarbo, 19-107

Jessica Coons, 19-128	Jacob Schutz, 19-455
Jennifer Kelly, 19-137	Gabriella Gonzalez, 19-470
Sarah Hickey, 19-142	Marlee Cassel, 19-479
Rachel Aldridge, 19-148	Treva Tolley, 19-511
Kelly Keaton, 19-158	Jennifer Fioretti, 19-524
Julie Derderian, 19-175	Taylor Mathias, 19-534
John Cross, 19-176	Emily Dannen, 19-556
Paula McKeen, 19-179	Katelyn Nocella, 19-593
Kimberly Gasque, 19-184	Laura Walley, 20-4
Anne Smith, 19-199	Rebecca Powell, 20-8
Brenna Ferrick, 19-223	Keveny Glynn, 20-16
Karl Michalik, 19-264	Natalie Thompson, 20-23
Jennifer Pelletier, 19-301	Rachel Doring, 20-99
Robert Vandenabeele, 19-317	James Graffam, 20-106
Emily Trzaskos, 19-324	Andrew Bernard, 20-127
Lyn O'Neil, 19-331	Peter Alexopoulos, 20-134
Emily Borek, 19-357	Jennifer Ethier, 20-148
Tracie Tavares, 19-358	Nicole Pellegrini, 20-161
Maureen Trowbridge, 19-359	Nicole Bell, 20-165
Robert Teehan, 19-366	Barbara Goydas, 20-177
Lin Ann Hurchinson, 19-402	Donald Shelters, 20-205
Heather Harris-Keddy, 19-408	Danielle Kemsley, 20-227
Samantha Asmar, 19-434	Meredith Friend, 20-264
Lauren Haskins, 19-441	Sonya Dugan, 20-266
Julia Tringuk, 19-443	Cheryl Mantia, 20-280

Stephanie Bizeur, 20-328

Gina Flanagan, 20-397

Daryn Starkey, 20-402

Tara Boudreau, 20-456

James Lutz Jr., 21-75

Martin Keane, 21-76

William Woodward, 21-79