

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

In the Matter of
Enrollment in Retirement Plus

No. CR-21-369

Concerning: all transfer appeals

Dated: April 18, 2023

ORDER REVISING CASE-MANAGEMENT PROCEDURES

Hundreds of teachers who transferred from other retirement systems into MTRS after July 1, 2001 have been excluded from the benefits program known as Retirement Plus for failure to make timely elections into that program. Many such teachers have appealed the pertinent decisions to DALA. Those teachers have been termed “transfer petitioners” in these consolidated proceedings, which have been ongoing since October 2021. Roughly half of the transfer petitioners are represented by the Massachusetts Teachers Association (MTA).

In late 2022, the Legislature crafted a solution to the transfer petitioners’ problem: a new statute allowed them to join Retirement Plus during the first half of 2023. *See* Acts 2022, c. 134, § 3(a).¹ A case-management order dated September 30, 2022 established procedures intended to prevent this new election window from going to waste.

Among the provisions of that order were the following. The order included lists of represented and unrepresented transfer petitioners, approximately 249 individuals in all. MTRS was directed to deliver correspondence to all transfer teachers—through MTA, in the case of its clients—informing them about the 2023 election window. The deadlines established for that

¹ The new enrollment window is open to anyone who “(i) is a teacher; (ii) transferred from another contributory retirement system . . . to [MTRS]; (iii) became eligible for membership in [MTRS] on or after July 1, 2001 . . . ; (iv) began contributing to [MTRS] on or after July 1, 2001 . . . ; and (v) did not provide a written election to participate in [Retirement Plus] to [MTRS] on or before December 31, 2022.”

mailing project were around the end of 2022. The case-management order further instructed MTRS to file copies of all transfer teachers' successful election forms, which would be construed as notices of withdrawal. MTA was authorized to file consolidated notices withdrawing the appeals of its clients.

At an April 3, 2023 status conference, MTRS reported the following information. MTRS has retained a vendor to transmit correspondence and collect forms relating to the 2023 election window.² The vendor has not yet mailed correspondence or forms to a number of the individuals listed in prior orders as transfer petitioners. To date, the vendor has not provided MTRS with copies of the transfer petitioners' election forms.

In light of these updates, MTRS was directed to file a report: (a) identifying the individuals listed in prior orders as transfer petitioners whom MTRS does not view as eligible for the 2023 election window; and (b) discussing whether MTRS will be able to file copies of the transfer petitioners' successful election forms. MTRS has not yet filed that report.

Retirement Plus has generated substantial uncertainty and dissatisfaction. Hundreds of teachers have found themselves excluded from the program against their wishes. The current election window is a golden opportunity to resolve that problem for hundreds of individuals. The window's lifespan is more than half over. The instant order therefore establishes new measures intended to increase the probability that each transfer petitioner who is eligible for the 2023 election window will receive a meaningful opportunity to use it.

² It appears that MTRS has not routed communications to and from MTA's clients through MTA. The logic of this practice was not explored at the April 3, 2023 status conference. *See generally* Mass. R. Prof. C. 4.2.

It is therefore ORDERED as follows:

1. MTRS shall file FORTHWITH its report identifying individuals listed in prior orders as transfer petitioners whom MTRS does not view as eligible for the 2023 election window.

2. MTRS's assessments regarding various individuals' eligibility or ineligibility for the new election window may all be correct. Nonetheless, it would be an absurdity if any petitioner were to disagree with MTRS, litigate that dispute, prevail on the merits, but find the 2023 election window closed by then. MTRS is therefore directed to: (a) promptly make election forms available to all individuals listed in prior orders as transfer petitioners; (b) accept timely forms from those individuals for provisional filing; and (c) provide such individuals with confirmation that their forms have been received, are in good order, and will be processed as timely in the event that the petitioners are deemed eligible for the 2023 election window.

3. MTRS has represented that, in its view, a teacher may elect into Retirement Plus not only by using MTRS's standardized, preprinted forms, but also through any signed document communicating an election decision. *See also Desire v. MTRS*, No. CR-14-200, at *7-8 (DALA July 7, 2017). In the case of any individuals listed in prior orders as transfer petitioners who attempt to file election forms using non-standardized signed documents, MTRS shall comply with clauses (b) and (c) of paragraph 2.

4. MTRS has filed one preliminary list of transfer petitioners who have elected into Retirement Plus through the 2023 election window. MTRS shall continue to file such lists on a rolling basis. With respect to *unrepresented* petitioners who, according to MTRS's lists, have elected into Retirement Plus, individual orders will dismiss their appeals as moot on that basis (while affording each petitioner an opportunity to seek reconsideration). MTA is urged to

continue to file consolidated notices withdrawing its clients' appeals, and is directed to file an update immediately in the event that it becomes unwilling to file such notices.

5. The provisions of prior orders remain in effect to the extent that they do not conflict with the instant order. Among other things, MTRS shall persist in its efforts to obtain and file copies of transfer petitioners' successful election forms; and the appeals of transfer petitioners who do *not* elect into Retirement Plus using the 2023 window will also be dismissed as moot in the foreseeable future, likely during May 2023.

6. This order will be posted on DALA's website. A copy will also be provided to CRAB. In addition, copies of the order may be mailed in the near future to some or all of the unrepresented individuals identified in MTRS's report pursuant to paragraph 1.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate