

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

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

No. CR-21-369

Concerning: all consolidated appeals

Dated: September 30, 2022

**CASE-MANAGEMENT ORDER
IN LIGHT OF NEW APPLICABLE STATUTE**

Several hundred appeals pending before the Division of Administrative Law Appeals present disputes over whether members of 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 implement a plan for resolving the Retirement Plus appeals in the wake of a new applicable statute, Acts 2022, c. 134, § 3.

Retirement Plus came into effect on July 1, 2001. Participants in the program make enlarged retirement contributions of 11% and enjoy advantageous retirement-allowance computations.

A small number of Retirement Plus appeals involve teachers who already were MTRS members as of July 1, 2001 (2001 petitioners). The governing statute permitted such teachers to enroll in Retirement Plus during January-June 2001.

A much larger group of Retirement Plus Appeals involves teachers who transferred into MTRS from other retirement systems after the July 1, 2001 effective date (transfer petitioners). The governing statute gave each such teacher a 180-day window to enroll in Retirement Plus.

Consolidated proceedings concerning a large number of Retirement Plus appeals have been ongoing since October 2021. Consolidated orders and submissions have been filed in the instant docket.

Only appeals in which the Massachusetts Teachers Association has appeared have been formally consolidated. Those appeals include approximately half of the Retirement Plus appeals. Largely as a result of MTRS and MTA’s efforts, more than 100 Retirement Plus appeals have been settled, withdrawn, or dismissed in recent months.

In August 2022, the Legislature enacted Acts 2022, c. 134, § 3. This new statute dramatically impacts these proceedings: it permits all transfer petitioners (and other individuals) to enroll in Retirement Plus.¹ To be effective, the enrollments must occur during the first half of 2023. Any election into Retirement Plus is irrevocable.

The new statute does *not* place any of the transfer petitioners in Retirement Plus. Any transfer petitioners who will take no action will remain—irrevocably—outside Retirement Plus. Nonetheless, the new statute eliminates the problem that generated each transfer petitioner’s appeal. The pertinent MTRS decisions no longer prevent the transfer petitioners from participating in Retirement Plus (if they still wish to do so). In this sense, the transfer petitioners no longer have any practical stake in the outcome of their original appeals.

With the foregoing background in mind, this order implements a plan for resolving the pending Retirement Plus appeals (including by adjudication, where appropriate). The plan was constructed primarily by MTRS and MTA. It concerns the appeals of both the 2001 petitioners and the transfer petitioners; it addresses both MTA-represented and unrepresented petitioners.²

¹ In the Legislature’s words, the new enrollment opportunity 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 and not later than June 30, 2022, inclusive; (iv) began contributing to [MTRS] on or after July 1, 2001 and not later than June 30, 2022; and (v) did not provide a written election to participate in [Retirement Plus] to [MTRS] on or before December 31, 2022.” Acts 2022, c. 134, § 3(a).

² Appendixes 1 and 2 list pending appeals of MTA-represented and unrepresented petitioners, respectively, distinguishing between 2001 petitioners and transfer petitioners.

The plan is essentially the following: (a) each transfer petitioner will receive an opportunity to enroll in Retirement Plus and withdraw his or her appeal; (b) subsequently, the appeals of any transfer petitioners who do not withdraw their appeals will be dismissed based on mootness; and (c) with regard to the 2001 petitioners, MTRS and MTA will file consolidated briefs presenting their analyses of the governing legal issues.

It is therefore ORDERED as follows:

Applicable to	Instruction
Unrepresented transfer petitioners	<p>1. In the near future, DALA will issue an individual order to each unrepresented transfer petitioner stating: (a) that the petitioner may join Retirement Plus by delivering a new, irrevocable election form to MTRS during the first half of 2023; (b) that the petitioner should expect to receive information from MTRS about how to accomplish this; (c) that MTRS will provide DALA with a copy of the petitioner’s Retirement Plus election form; (d) that DALA’s receipt of the election form will result in the termination of the petitioner’s outstanding appeal; and (e) that if the petitioner chooses not to enroll in Retirement Plus, then his or her appeal is likely to be dismissed as moot. The individual orders will also provide the petitioners with MTRS’s contact information.</p>
Unrepresented transfer petitioners	<p>2. MTRS shall deliver correspondence and election forms to all unrepresented transfer petitioners. The correspondence shall explain that these petitioners may join Retirement Plus by delivering an executed election form to MTRS during the first half of 2023. MTRS shall complete this mailing project by December 15, 2022.</p>

Applicable to	Instruction
MTA-represented transfer petitioners	<p>3. MTRS shall also provide MTA with any pertinent documents and information concerning the enrollment of transfer petitioners. It shall do so by December 1, 2022. Within 30 days after receiving these materials, MTA shall relay them to the transfer petitioners it represents.</p>
MTA-represented transfer petitioners	<p>4. With regard each transfer petitioner it represents, MTA shall provide MTRS with: (a) a form electing to participate in Retirement Plus; (b) a form electing not to participate in Retirement Plus; or (c) written confirmation that the member does not intend to file an election form. MTA is asked to urge its clients to choose between options (a) and (b).</p>
All transfer petitioners	<p>5. MTRS shall provide DALA with copies of the election forms filed by any transfer petitioners. Any such form will be construed as a withdrawal of the pertinent petitioner’s appeal. MTA may also inform DALA of appeals being withdrawn by its clients (case-by-case, in batches, or all appeals in one withdrawal document). By May 1, 2023, MTA shall file a report that either (a) confirms that all transfer petitioners represented by MTA have withdrawn their appeals; or (b) lists the remaining appeals of such petitioners and explains why those appeals cannot yet be resolved.</p>
All transfer petitioners	<p>6. It may be that certain transfer petitioners will not promptly enroll in Retirement Plus and will not withdraw their appeals. In approximately early May 2023, the appeals of such petitioners are likely to be dismissed as moot in light of Acts 2022, c. 134, § 3. <i>See Jochim v. State Bd. of Ret.</i>, No. CR-15-328, at 4 (DALA Oct. 28, 2016) (citing cases).</p>

Applicable to	Instruction
All 2001 petitioners	<p>7. MTRS and MTA shall file briefs presenting their positions regarding the overarching legal questions pertinent to the appeals of the 2001 petitioners. MTRS shall file its brief by June 1, 2023. MTA shall file its brief by June 30, 2023. Any arguments presented by MTA will be considered in favor of the unrepresented petitioners. Any concessions or admissions made by MTA will <i>not</i> be held against the unrepresented petitioners.</p>
All MTA-represented petitioners	<p>8. The appeals listed in Appendix 1 shall be, or shall continue to be (in most cases), consolidated and governed by the orders and submissions filed in the instant docket.</p>
All petitioners	<p>9. MTA shall resume its practice of submitting monthly spreadsheets tracking the Retirement Plus appeals. To the extent practicable, the spreadsheets shall be filed after consultation with MTRS and shall identify any information about which the parties disagree.</p>
All petitioners	<p>10. Notwithstanding the foregoing provisions, specific Retirement Plus appeals may be addressed in a different manner where particular circumstances so warrant.</p>
All petitioners	<p>11. A copy of this order will be delivered to CRAB. DALA will also make efforts to publish it on DALA's website. These measures also will be undertaken as to any subsequent orders or decisions impacting a substantial number of Retirement Plus appeals.</p>

SO ORDERED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

**APPENDIX 1: MTA-REPRESENTED PETITIONERS
(by name and docket number)**

1.A. MTA-Represented Transfer Petitioners

Amanda Boczanowski, 14-0479	Gaston Levesque, 18-0103
Teresa Vidrine, 14-0488	Laura Faherty, 18-0127
Elizabeth Wiseman, 15-0219	Eliza Cummings, 18-0172
Diane Buonopane, 15-0649	Kerry Gallagher, 18-0178
Doria Habib, 16-0053	Jessica Hajjar, 18-0197
Erin Haugh, 16-0062	Kevin Howe, 18-0199
Josh Takis, 16-0084	Patricia Hale, 18-0206
Julie Barkin, 16-0229	Eric Grasso, 18-0209
Emily Holleran, 17-0077	Laurie Delaney, 18-0213
Anna Corbett, 17-0092	Tammy Bailey, 18-0217
Susanna Scafidi, 17-0120	Joyce Sioch, 18-0249
Derek Brennan, 17-0243	Teresa Distefano, 18-0280
Sarah Chase (Graves), 17-0336	Susan Labelle, 18-0293
Samantha Maio, 17-0365	Alexandra M. Leonard, 18-0381
Sharon Nieves, 17-0432	Michelle Nicholas, 18-0474
Joshua Euglow, 17-0609	Kathleen Marble, 18-0478
Emily Fanaras-Chan, 17-0619	Jocelyn Allan, 18-0599
Melissa Stellato, 17-0669	Nadine Kariotis, 18-0623
Jennifer Lyons, 17-0683	Jeremy Folster, 18-0625
Jean Kirchner, 17-0917	Kelly Schofield, 19-0056
Melissa Barbeau, 17-0996	Bailey Stetson, 19-0057
William Burns, Jr., 17-1019	Christine Nueve, 19-0075
James Flynn, 18-0012	Caitlin Casey, 19-0076

Timothy Cullen, 19-0077
Karal Gartsu, 19-0082
Gregory Bendel, 19-0090
Steve Bradham, 19-0093
Adrienne Baker, 19-0094
Lisa Lombardi, 19-0095
Joseph Scarbo, 19-0107
Jessica Coons, 19-0128
Jennifer Kelly, 19-0137
Sarah Hickey, 19-0142
Kelly Keaton, 19-0158
Julie Derderian, 19-0175
John Cross, 19-0176
Emily Borek, 19-0357
Tracie Tavares, 19-0358
Julia Tringuk, 19-0443
Gabriella Gonzalez, 19-0470
Marlee Cassel, 19-0479
Jennifer Fioretti, 19-0524
Emily Dannen, 19-0556
Katelyn Nocella, 19-0593
Laura Walley, 20-0004

Rebecca Powell, 20-0008
Keveny Glynn, 20-0016
Natalie Thompson, 20-0023
Michelle Jones, 20-0107
Dayna Joy, 20-0108
Kourtney Murphy, 20-0109
Edward O'Brien, 20-0110
Kristen Passanisi, 20-0111
Jillian Perry, 20-0112
Yan Phing-Zheng, 20-0113
Kristen St. Peter, 20-0114
Andrzej Topolewski, 20-0115
Peter Alexopoulos, 20-0134
Barbara Goydas, 20-0177
Shawn Weld, 20-0208
Meredith Friend, 20-0264
Sonya Dugan, 20-0266
Cheryl Mantia, 20-0280
Megan Mountzoures, 21-0152
Elizabeth Simone, 21-0158
Kailin Bixby, 21-0227
Pamela Garwood, 21-0237

*1.B. MTA-Represented 2001 Petitioners**

Alexandre Alvarez, 17-0835

Sarah Fenton, 19-0084

Lauren McCarron, 18-0177[†]

Karl Michalik, 19-0264

Michael Murphy, 18-0565[†]

Kathleen Lachance, 20-0058

* Including any petitioners who have not made clear whether they are transfer petitioners or 2001 petitioners.

[†] Until recently, these two appeals were assigned to Administrative Magistrate Kenneth J. Forton.

**APPENDIX 2: UNREPRESENTED PETITIONERS
(by name and docket number)**

2.A. Unrepresented Transfer Petitioners

Andrea Barlow, 12-0280	Peter Zopes, 17-0417
Valter Lourenco, 15-0215	Megan O'Loughlin, 17-0470
Jaime Kimenker, 16-0076	Caroline Troy, 17-0475
Molly Curry, 16-0113	Jeffrey Capuzziello, 17-0482
Erica Joyce, 16-0292	Lauren Hanlon, 17-0483
Christina Todd, 16-0391	Emma Fog, 17-0485
Emily Fanaras-Chan, 17-0036	Andrew Garlick, 17-0486
Alyssa Toner, 17-0141	Elizabeth Backer Walkin, 17-0503
Kelly Feurt, 17-0207	Victoria Prince, 17-0514
Nathaniel Turner, 17-0292	Noreen D'Andrea, 17-0525
Steven Mucci, 17-0296	Kelley Long, 17-0526
Kristen Almquist-Cevallos, 17-0299	Janelle DeMarchant, 17-0527
Peter Sheridan, 17-0311	Mary Payne, 17-0531
Adam McCusker, 17-0323	Marybeth O'Brien, 17-0532
Jennifer Pignone, 17-0324	Kimberley McCormack, 17-0533
Robert Clark, 17-0341	Kelly McAvoy, 17-0534
Ingeborg Kuhlka, 17-0366	Brenda Morrison, 17-0537
Sandra Nilson, 17-0380	Mark Mosher, 17-0543
Mary Raymond, 17-0382	John Mathews, 17-0545
Hope Tripp, 17-0384	Dawn Bowler, 17-0547
Kimberly Seaver, 17-0386	Marla Yanovitch, 17-0550
Marla Delacruz-Ballard, 17-0399	Barbara Walsh, 17-0578
Lori Simpson, 17-0415	Tara Forrest, 17-0583

Anne Murphy, 17-0587
Ramon Cosme, 17-0591
Timothy Parachojuk, 17-0592
Kathleen Firlings, 17-0597
Kristen Thomas, 17-0600
Jeffrey Caritey, 17-0615
Jillian Middlemiss, 17-0616
Joann Severance, 17-0620
Robert Zollo, 17-0621
Asya Shestopal, 17-0622
Anna Tarshish, 17-0660
Heidi Ousler Lang, 17-0676
Kelly Gallant-Hovespian, 17-0681
Inna Belenky, 17-0682
Lisa Rasanen, 17-0685
Jessica Peabody, 17-0692
Kristen Grange, 17-0696
Derek Morrison, 17-0700
Rebecca Imming, 17-0701
Shawn Thomas, 17-0704
Alyssa Foy, 17-0714
Jean Poulin, 17-0719
Micaela Shea, 17-0721
Christine Crocker, 17-0735
Elizabeth Fife, 17-0743

Shelby Whalen, 17-0744
Karen Stackpole, 17-0748
James Walsh, 17-0751
Peter Marifone, 17-0752
Jacquelyn Connolly, 17-0763
Kathleen Robinson, 17-0769
Mark Henry, 17-0770
Elise McHugh, 17-0772
Conor Brosnan, 17-0788
Jason Hoye, 17-0789
Laurie Lawlor, 17-0790
Kate Reed, 17-0797
Mary Coppinger-Fraser, 17-0810
Charlotte Mugnier, 17-0833
Jessie Fournier, 17-0919
Eric Murray, 17-0920
Melissa Hotchkiss, 17-0923
Karen Van Slyke, 17-0955
Ciara O'Keefe, 17-0963
Nicole Causey, 17-0964
Justin Bailey, 17-0983
Lisa Jones, 17-0984
Sandra Fowke, 17-0991
Joseph Maney, 17-0993
Heather Benner, 17-1014

Andie Merkowitz, 17-1027

Mary Patterson, 17-1030

Alec Dorsey, 17-1031

Robin Halperin, 17-1061

Letitia Zani, 17-1064

Alison Cousins, 17-1069

Sean Keogh, 17-1071

JoAnn Orluk, 18-0043

Cynthia Paris, 18-0044

Sally Nixon, 18-0046

Anna Wythe, 18-0052

Marisol Rivas-Nunez, 18-0108

Jennifer Devlin, 18-0109

Jacqui Cohenno, 18-0117

Kathleen Marandola, 18-0120

Kara Yuen, 18-0122

Patricia Munzner, 18-0138

Bruce Moulthrop, 18-0139

Donna Gomes, 18-0180

Yusra Khan, 18-0181

Eva Moss, 18-0643

Timothy Collins, 19-0048

Diane Cohen, 19-0051

Karla Gartsu, 19-0082

Melissa Perry, 19-0085

Kediesha Bogle, 19-0086

Brendan Amedio, 19-0099

Anne Smith, 19-0199

Brenna Ferrick, 19-0223

Jennifer Pelletier, 19-0301

Lin Ann Hurchinson, 19-0402

Lauren Haskins, 19-0441

Treva Tolley, 19-0511

Taylor Mathias, 19-0534

Jennifer Ethier, 20-0148

Nicole Bell, 20-0165

Stephanie Bizeur, 20-0328

Beth Ann Brunstrom, 21-0055

Lauren Brault, 21-0074

Amanda Kasprzak, 21-0107

Heidi O'Brien, 21-0187

Amy Bainbridge-Jordan, 21-0195

Jennifer Hutchinson, 21-0206

Francesca Pellegrino, 21-0240

Matthew James, 21-0242

Katani Sumner, 21-0260

Michelle Hannon, 21-0295

Marisa McCarthy, 21-0350

Rachel Doring, 21-0490

Erica Hansen, 21-0491

Molly Driscoll, 22-0016

Joseph Eckstrom, 22-0047

Stephanie Goodman, 22-0094

Meghan Grier, 22-0146

Melissa Ziobro, 22-0210

Michael Feinberg, 22-0231

Jennifer Thomas, 22-0249

Sarah Rubino, 22-0258

Hannah Robidoux, 22-0280

Matthew Holt, 22-0309

Reid Cargan, 22-0321

Brittany Sullivan Merrill, 22-0348

2.B. Unrepresented 2001 Petitioners*

Amy DeFeudis, 18-0210

Stephen Centerrino, 19-0049

William Goncalo, 19-0050

Ellen Slattery, 19-0078

Steven Cloutier, 19-0081

Julius Walker, 19-0083

Kerrilee Niles, 19-0089

Ashley Gomes, 19-0098

Robert Vandenabeele, 19-0317

Lyn O'Neil, 19-0331

Maureen Trowbridge, 19-0359

Paul Rebello, 20-0056

Amy Young, 20-0176

Gina Flanagan, 20-0397

Julie Stanley, 21-0014

James Lutz Jr., 21-0075

Christine Johnson, 21-0139

Tracey Hartman, 21-0146

Robert Norton, 21-0153

Mary Kirwan Hayes, 21-0162

Patricia Moore, 21-0291

Melissa Candon, 21-0315

Stephanie Andella, 21-0325

Jill Neuman, 21-0391

Julie Fox, 21-0392

Deborah Casagrande, 21-0568

Regina Symonds, 21-0666

Rebecca Blouwolf, 21-0668

Roger Tait, 22-0029

Joan McWilliams, 22-0041

* Including any petitioners who have not made clear whether they are transfer petitioners or 2001 petitioners. These petitioners are likely to receive individualized orders addressing the uncertainty surrounding the facts of their appeals.

Chris Santos, 22-0073

Penny Kalman, 22-0089

Laura Mahan, 22-0091

Christine Theroux, 22-0110

Colleen Whitman, 22-0118

Leela Bakshi, 22-0135