THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Division of Administrative Law Appeals**

Gail Flanagan,

 **Petitioner**

v. Docket No. CR-15-650

 DATED: August 11, 2017

Massachusetts Teachers’

Retirement System,

 **Respondent**

**Appearance for Petitioner:**

*Pro Se*

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**Appearance for Respondent:**

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**Administrative Magistrate:**

Judithann Burke

 **Case Summary**

The Petitioner, who applied to purchase her pre-membership service as a User Support Technician at the Seven Hills Charter Public School in Worcester from August 1996 through January 1998, has failed to prove that she was a teacher in that role. Thus, she is precluded from purchasing that service pursuant to G.L. c. 32 § 3(5) and c. 71, § 89(y).

 **DECISION**

The Petitioner, Gail Flanagan, is appealing from the November 18, 2015 decision of the Respondent, Massachusetts Teachers’ Retirement System (MTRS), denying her request to purchase her service for her work at the Seven Hills Charter Public as a “User Support Technician.” (Exhibit 5.) Her timely appeal was received on December 2, 2015. (Exhibit 6.)

 I held a hearing on March 2, 2017 at the offices of the Worcester Registry of Deeds, 90 Front Street, Worcester MA. I marked Exhibits 1-16. The Petitioner testified and argued in her own behalf. The Respondent did not present any witnesses. The hearing was digitally recorded. Both parties filed pre-hearing memoranda of law. (Respondent-Attachment A; Petitioner-Attachment B.)

 **FINDINGS OF FACT**

 Based upon the testimony and documents submitted at the hearing in the above-entitled matter, I hereby render the following findings of fact:

1. The Petitioner, Gail Flanagan, was a teacher in the Shrewsbury Public Schools from 2000 until her retirement in June 2016. During this period, she was a member of the Massachusetts Teachers’ Retirement System (MTRS). (Exhibit 1 & Petitioner Testimony.)
2. Prior to her membership in the MTRS, the Petitioner worked in a non-teaching capacity within the Worcester Regional Retirement System from October 1995 through June 1996 and again from September 1998 through September 2000. Her creditable service for these periods transferred over to the MTRS when her membership was established by virtue of her employment as a teacher in Shrewsbury. (Attachment A.)
3. From August 1996 through January 1998, the Petitioner worked as a User Support Technician at the Seven Hills Charter Public School in Worcester (Seven Hills). (Exhibit 1 & Petitioner Testimony.)
4. As a User Support Technician, the Petitioner supported teachers, students, parents and staff using technology in education. She performed troubleshooting, installation, and upgrading of technology in the school. She provided one-on-one technical assistance to teachers, administrators and other staff upon request. She worked with teachers to integrate technology resources into lessons across the school curriculum. She also served as a liaison to outside vendors. She developed, managed and evaluated technical support services for home users, including a home computer lab hotline, a home computer repair shop and a technical support library of handouts and installation disks. (Petitioner Testimony & Exhibits 2, 3, 10 & 11.)
5. In a June 13, 1997 Technology Team Performance Review, Tiffany Davis, TSL Director, reported that the Petitioner’s greatest accomplishment up to that point was her setting up and implementing a system for home repair of computers. Ms. David noted that, with over three hundred computers in the hands of inexperienced users that generated an average of seven phone calls and three drop-offs per day, the Petitioner kept the turn-around time to under a week. The Petitioner also located a room on the first floor of the school to use as the repair shop and maintained a database to track the number and types of repairs. She mentored parent volunteers to help her with repairs and the related administrative tasks. (Exhibits 4 &15.)
6. The Certification Review Panel of the Massachusetts Department of Education is an alternative route to certification for candidates who do not meet all of the requirements for certification through the traditional process (section 7.08 of the Regulations for the Certification of Educational Personnel in Massachusetts), but who, through five years of full-time paid professional experience (or the part-time equivalent) have acquired those competencies required for certification. (Exhibits 7 & 16.)
7. In or about late 2001 or early 2002, the Petitioner requested certification in Instructional Technology Specialist (all levels, Provisional with Advanced Standing) E1L2 by means of the Certification Review Panel. She cited, in part, her professional experience at Seven Hills. (Exhibits 8 & 9.)
8. In a letter dated October 22, 2002, David P. Driscoll, Commissioner of Education, informed the Petitioner that the Certification Review Panel had recommended that she be licensed in the area of Instructional Technology Specialist (all levels). The Petitioner’s license was enclosed with the letter. (Exhibits 12 & 13.)
9. The Petitioner applied to purchase her service at Seven Hills on December 14, 2014. (Exhibit 1.)
10. On November 18, 2015, the MTRS denied the Petitioner’s application to purchase her service at Seven Hills on the grounds that a charter school is not a “governmental unit” within the meaning of G.L. c. 32. It is a “body politic and corporate” with the powers and duties set forth in G.L. 71, § 89(y) (the charter school statute), and that statute provides only for the purchase of service as a teacher. (Exhibit 5.)
11. The Petitioner’s timely appeal was received on December 2, 2015. (Exhibit 6.)

**CONCLUSION**

 The Petitioner is not entitled to prevail in this appeal. Charter schools in Massachusetts are created pursuant to G.L. c. 71, § 89(y). The legal rights and obligations of charter schools and their employees are specifically spelled out throughout Section 89. Section 89(y) provides that teachers, and only teachers, will be members of a contributory retirement system and earn creditable service.

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.

The Petitioner was not eligible for membership in the MTRS during her employment at Seven Hills. She was not a teacher. She was a User Support Technician. She provided technical support to teachers, administrators, students and parents. She maintained repair services, did troubleshooting, inventoried equipment and trained other tech personnel.

 In determining whether one is a teacher, DALA and CRAB have focused on the issue of whether the “primary goal” of the position was “fundamentally education or some other purpose. *See Murray v. Massachusetts Teachers’ Retirement System*, CR-08-646 (Division of Administrative Law Appeals 5/17/13; Contributory Retirement Appeal Board 6/26/14.) *Murray, supra* involved a specialist whose primary goal was career development and not education involving traditional school subjects. It is clear that the primary goal of the Petitioner’s position at Seven Hills was to coordinate and provide technical support for the entire school population. She was not limited to providing classroom instruction to the students there or planning their academic curriculums.

 The Petitioner’s DOE certification via the Certification Review Panel does not bear on whether she was a teacher at Seven Hills, although she is to be lauded for achieving same. While the panel credited her for her seventeen some odd months at Seven Hills, she was not certified during that employment period and cannot claim that she is entitled to be labeled a teacher retroactively. Further, none of the DOE documents in the record contain the word “teacher.” The inference to be drawn from this factor is that, while she had achieved specialized technical knowledge and was certified as an Instructional Technology Specialist, she was not deemed to be a teacher at Seven Hills.

 Ergo, while the Petitioner played a very valuable role in providing technology support and services to Seven Hill students and their families, as well as the teachers and administrators, she had no role in directly teaching any academic or vocational curriculum. Teaching was an ancillary role. As such, she has not established that her Seven Hills service meets the requirements of G.L. cc. 32 and 71, § 89. See *Whipple v. MTRS,* CR-07-1136 (Division of Administrative Law Appeals April 12, 2014) (Contributory Retirement Appeal Board December 19, 2014) (employee of a private management company who worked at a charter school and sought to purchase credit for that service after establishing membership in the MTRS was

not entitled to purchase credit for non-teaching service in accordance with the provisions of G.L. c. 71, § 89(y) and c. 32, §3(5)).

 Accordingly the decision of the MTRS denying the Petitioner’s request to purchase her Seven Hills service is affirmed.

So ordered.

BY:

Division of Administrative Law Appeals,

Judithann Burke

Administrative Magistrate

DATED: August 11, 2017