

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Nicole Foley,
Petitioner,

No. CR-25-0340

v.

Massachusetts Teachers' Retirement System,
Respondent.

ORDER OF DISMISSAL

The petitioner appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) excluding the petitioner from the benefits program known as Retirement Plus. See G.L. c. 32, § 5(4). MTRS has filed a motion to dismiss, which the petitioner has not opposed, despite being advised that failure to file an opposition would be construed as indicating the petitioner's agreement with MTRS's position. *Compare Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co.*, 527 F. Supp. 2d 1355, 1371 (M.D. Fla. 2007), with *Jones v. Providence Pub. Sch.*, No. 23-1407, 2024 WL 1128034 (1st Cir. Mar. 11, 2024). Dismissal is therefore appropriate based on mootness and by the petitioner's consent.

The motion also appears to be meritorious essentially for the reasons stated there. It is undisputed that the petitioner failed to enroll in Retirement Plus by a Legislature-imposed deadline that names no exceptions. See Acts 2000, c. 114, § 2. If enrollment after such a deadline is ever permissible, the specific circumstances that may so warrant are not alleged to be present here. See *Gabrielian v. Massachusetts Teachers' Ret. Syst.*, No. CR-23-64, 2025 WL 2322617 (Contributory Ret. App. Bd. June 23, 2025); *In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, 2023 WL 5332723 (Div. Admin. Law App. Aug. 7, 2023). The result in cases

of this nature is not affected by whether the petitioner's circumstances are sympathetic or even unfair. *See Roussin v. Boston Ret. Syst.*, No. CR-23-28, 2024 WL 2956657, at *2 (Contributory Ret. App. Bd. June 3, 2024). *See generally Bristol Cty. Ret. Bd. v. Contributory Ret. Appeal Bd.*, 65 Mass. App. Ct. 443, 446, 450-51 (2006).

In view of the foregoing, it is hereby ORDERED that the motion to dismiss is ALLOWED and this appeal is DISMISSED.

Dated: September 12, 2025

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate
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