

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

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Paul Gregory,

Petitioner,

v.

Massachusetts Teachers' Retirement System,

Respondent.

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Docket Nos.: CR-19-0590  
CR-19-0591

Date: July 14, 2023

**Appearance for Petitioner:**

Paul Gregory, *pro se*  
Pittsfield, MA 01201

**Appearance for Respondent:**

Salvatore Coco, Esq.  
Associate General Counsel  
Massachusetts Teachers' Retirement System  
500 Rutherford Avenue, Suite 210  
Charlestown, MA 02129

**Administrative Magistrate:**

John G. Wheatley

**SUMMARY OF DECISION**

The petitioner is not entitled to purchase creditable service for his prior employment at the Key Program or Meridian Associates. He is not eligible for service credit under G. L. c. 32, § 3(5) because he was employed by private entities, not a "governmental unit." He is ineligible to purchase service credit under G. L. c. 32, § 4(1)(p) because he was not "engaged in teaching pupils" in those positions. The Massachusetts Teachers' Retirement System's decisions denying the petitioner's applications to purchase creditable service are therefore affirmed.

## DECISION

The petitioner, Paul Gregory, appeals two decisions of the Massachusetts Teachers' Retirement System (MTRS) that denied his applications to purchase creditable service for his prior employment at the Key Program and Meridian Associates. Mr. Gregory and MTRS each filed a pre-hearing memorandum, which I have marked as briefs "A" and "B," respectively. I held an evidentiary hearing on June 1, 2022, at the Division of Administrative Law Appeals' office in Malden, which was recorded. Mr. Gregory was the only testifying witness. I admitted Exhibits 1-18 into evidence. MTRS filed a post-hearing memorandum on July 28, 2022 (brief "C"), and Mr. Gregory filed a memorandum on July 29, 2022 (brief "D"). The administrative record closed when I received the briefs.

## FINDINGS OF FACT

Based on the testimony at the hearing and the documents admitted into evidence, I make the following findings of fact:

### Key Program

1. The petitioner, Paul Gregory, was employed by the Key Program, Inc. from October 1, 1983, to March 31, 1986. (Testimony; Exhibits 6, 7, 14.)
2. The Key Program is a publicly funded nonprofit corporation under contract with the Massachusetts Department of Youth Services that provides "a variety of supportive services to troubled youth and their families," including "residential placements, outreach services [and] mental health clinical services." (Exhibits 7, 8B, 14.)<sup>1</sup>

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<sup>1</sup> I inadvertently marked two documents as Exhibit 8 during the hearing. For clarification, Exhibit 8A refers to the petitioner's application to purchase "other Massachusetts public service" credit for his work at Meridian Associates (i.e., pages 21-34 of the petitioner's package of exhibits), and Exhibit 8B refers to the printout from the Key Program's website (i.e., pages 35-41).

3. Mr. Gregory worked at the Key Program's emergency shelter in Pittsfield, Massachusetts, for minors between 12 and 17 years old. (Testimony; Exhibits 6, 14.)

4. Mr. Gregory was required to have a bachelor's degree to be a caseworker, but he did not need or have a teacher's license. (Testimony.)

5. Adolescents are placed at the shelter by the Massachusetts Juvenile Court or the Department of Children and Families (DCF) due to family neglect, school truancy, delinquency, or traumatic events that put them at risk. The duration of their stay at the shelter varies from 30 days to 6 months or longer, depending on their family situation and any final disposition in Juvenile Court or agency proceedings. (Testimony; Exhibits 6, 14.)

6. During the first sixteen months of his employment (from October 1, 1983, through March 30, 1985), Mr. Gregory worked as a caseworker at the emergency shelter. As a caseworker, Mr. Gregory supervised between 10 to 17 children at a time, directed the children on their daily chores, supervised family visits, completed reports to the Juvenile Court and DCF, transported the children to and from school, assisted the children with their homework, and participated in school meetings regarding behavior and educational plans. (Testimony; Exhibits 6, 14.)

7. Caseworkers were assigned to the shelter 24 hours per day, working in three separate shifts: (1) 7:00 a.m. to 3:00 p.m. ("day shift"), (2) 3:00 p.m. to 11:00 p.m. ("evening shift"), and (3) 11:00 p.m. to 7:00 a.m. ("night shift"). Mr. Gregory's work schedule rotated between these three shifts.

8. Some of the children at the shelter were not permitted in school due to their behavior. Pittsfield Public Schools provided the shelter "curriculum packets" for each of those

students, which included instructions from the teachers regarding the curriculum and assignments for the period covered by the packet. (Testimony.)

9. The shelter relied on Pittsfield Public Schools to supply the educational materials and to provide detailed instructions regarding the class assignments and the expectations of each child for completing the schoolwork in the packet. Assignments might include, for example, a reading assignment with questions for the student to answer, multiple choice questions, or a chapter from a textbook to study. (Testimony.)

10. The “primary responsibility” of Mr. Gregory and the other shelter staff was to stabilize the children’s behavior in order to get them back into school. The children were responsible for completing the schoolwork in their curriculum packets, but the staff was always available to provide direction and support when needed. (Testimony.)

11. During the day shift, the caseworkers tried to mirror the school day as much as possible for the children who were not allowed in public school. Mr. Gregory and the other caseworkers would remain present in the room(s) where the students were working on their curriculum packets and were available to provide instruction and guidance. The extent of the caseworkers’ involvement depended, in part, on the instructions provided by the teachers for completing the curriculum packets. Mr. Gregory described his interaction with the children as “constantly checking, monitoring,” and “keeping them on task.” (Testimony.)

12. Mr. Gregory also provided individual instruction to the children as needed in various subjects—including mathematics, science, reading, and English—to assist them in completing the schoolwork in their curriculum packets. He monitored their work and was available to answer their questions or to clarify their homework assignments. (Testimony; Exhibits 6, 14.)

13. Caseworkers in the evening shift were also available to assist the children with their schoolwork and homework assignments as needed. (Testimony.)

14. Caseworkers during the night shift were present for supervision and to periodically check on the children to make sure they are in their rooms sleeping. (Testimony.)

15. The Key Program staff did not grade the students' work or impose discipline for refusing to complete work in the curriculum packet. Rather, they would return the packets to the schools for the students' teachers to assess. (Testimony.)

16. Approximately 4-6 hours per day was devoted to schoolwork at the shelter. After the end of the school day, the children had a break period for recreation, followed by dinner, a period for movies or games, and then bedtime at 8:30-9:00 p.m. (Testimony.)

17. The shelter staff also taught the children "life skills" such as doing laundry, preparing meals, and daily hygiene. (Testimony.)

18. The staff was responsible for preparing the meals and for meal cleanup but would encourage the children to participate. (Testimony.)

19. Following his work at the emergency shelter, Mr. Gregory accepted a position as team leader of a residential program operated by the Key Program in Pittsfield, serving a one-year term from March 31, 1985, to March 31, 1986. (Testimony; Exhibits 6, 14.)

20. The residential program operated in a similar manner to the emergency shelter, and with a similar daily routine. The difference was that the children in the residential program were placed by the Juvenile Court or DCF for stays of one year or longer, whereas placement in the emergency shelter was for an undetermined duration pending the outcome of court proceedings. (Exhibits 6, 14.)

21. As team leader, Mr. Gregory supervised 8 counselors and between 15 to 20 adolescents in the residential program. He described his duties as “more administrative,” without much “hands-on” instruction. He was responsible for staff assignments, and he was more involved in school-based meetings to discuss adolescent behaviors and educational tracks. (Testimony; Exhibits 6, 14.)

Meridian Associates

22. From April 7, 1986, to April 8, 1988, Mr. Gregory was employed as a caseworker by Meridian Associates in Pittsfield.<sup>2</sup> (Testimony; Exhibits 6, 8A, 15.)

23. Meridian Associates was a publicly funded nonprofit corporation that provided support services to people with mental health challenges. (Testimony; Exhibit 9.)

24. Meridian received referrals from the Department of Mental Health and the Berkshire County Mental Health Department. It provided support services to these “clients” both at their homes and at Meridian’s Pittsfield location. (Testimony.)

25. Meridian did not employ certified teachers. Mr. Gregory was required to have a bachelor’s degree, have 3-5 years or more of relevant experience, and be able to work a flexible schedule. (Testimony; Exhibits 6, 15.)

26. Mr. Gregory worked with adolescent clients at Meridian, between 12 and 17 years old, from April 1986 to April 1987. From April 1987 to April 1988, he worked with clients between 17 and 21 years old. (Testimony; Exhibits 6, 15.)

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<sup>2</sup> Mr. Gregory was employed as a program director at Meridian Associates from April 9, 1988, to January 24, 1989. He concedes that he is ineligible to purchase creditable service for his work as program director, and he does not pursue such credit in this appeal.

27. As a caseworker at Meridian, Mr. Gregory's "overall responsibility" was to complete screenings and assessments for all incoming clients, which included an evaluation of the client's physical shape/condition, identification of any medical issues, and screening for any family-related or other issues that may require intervention. Mr. Gregory would further "identify challenges to their most basic needs (food, clothing, shelter, education, employment) and, if needed, connect them with mental health counseling" and help them secure insurance benefits when possible. (Testimony; Exhibits 6, 15.)

28. Mr. Gregory also assisted Meridian's clients by providing them transportation to and from school, helping them find housing and employment, helping them locate family members, and teaching them "life skills" such as personal financial management (e.g., saving money, banking, etc.). (Testimony.)

29. Mr. Gregory monitored the children assigned to him to make sure they attended, and stayed in, school. He also attended school disciplinary meetings to advocate for the children and try to prevent expulsion or other disciplinary action that might put the child at greater risk of self-harm or other behavioral issues. (Testimony; Exhibits 6, 15.)

30. At times, Mr. Gregory was required to accompany one or more children at school. His role was to monitor the children and keep them on task with their schoolwork, not to provide classroom instruction. He typically sat in the back of the children's classroom, to try not to call attention to the child he was supervising or to cause the child embarrassment. (Testimony.)

#### Applications to Purchase Creditable Service

31. From August 2004 through August 2019, Mr. Gregory was employed as a guidance counselor at Pittsfield Public Schools. (Exhibits 6, 17.)

32. He became a member of MTRS on August 24, 2004, and he made his last contribution to MTRS on September 13, 2019. (Exhibits 7, 17.)

33. On December 26, 2018, MTRS received two applications from Mr. Gregory to purchase service credit for “other Massachusetts public service”—one for his prior employment at the Key Program and one for his work at Meridian Associates. (Exhibits 14, 15; see also Exhibits 7, 8A.)

34. On October 8, 2019, MTRS received two applications from Mr. Gregory to purchase service credit for “prior teaching service in a nonpublic, Massachusetts publicly-funded school,” for his prior employment at the Key Program and Meridian Associates. (Exhibits 14, 15; see also Exhibits 7, 8A.)

35. On December 3, 2019, MTRS denied Mr. Gregory’s applications to purchase creditable service. MTRS concluded that Mr. Gregory was not “engaged in teaching pupils” with respect to his work for either the Key Program or Meridian Associates and was therefore ineligible to purchase creditable service for nonpublic school teaching service under G. L. c. 32, § 4(1)(p). With respect to his request to purchase service credit for prior “public service” under G. L. c. 32, § 3(5), MTRS determined that he was ineligible because he was employed by private entities. (Exhibits 4, 5.)

36. On December 9, 2019, Mr. Gregory filed a timely appeal. (Exhibit 18.)

#### ANALYSIS

##### *I. Eligibility Under G. L. c. 32, § 3(5) – Prior Public Service*

The petitioner’s initial applications sought to purchase creditable service under G. L. c. 32, § 3(5), which allows a member of the Massachusetts public retirement system to purchase credit for prior service as an employee of a “governmental unit other than that by which he is presently employed.” A “governmental unit” is defined as “the commonwealth or any political



subdivision thereof.”<sup>3</sup> G. L. c. 32, § 1. A private nonprofit or charitable organization is not a “governmental unit,” even if it is publicly funded under a state contract. *Gray v. Massachusetts Teachers’ Retirement Sys.*, CR-17-194, at 3 (DALA Jul. 2, 2020).

The Key Program and Meridian Associates were both private nonprofit organizations that were state-funded. They are not political subdivisions of the Commonwealth and therefore are not “governmental units.” As such, the petitioner is not eligible to purchase creditable service for his work at either nonprofit organization under G. L. c. 32, § 3(5).

## *II. Eligibility Under G. L. c. 32, § 4(1)(p)–Prior Teaching Service at a Nonpublic School*

Under limited circumstances, members of the Massachusetts public retirement system may purchase creditable service for time previously spent teaching in a nonpublic school in Massachusetts. G. L. c. 32, § 4(1)(p). The requirements for purchasing credit for nonpublic school teaching service under § 4(1)(p) are more stringent than those for earning creditable service as a public-school employee. *Provost v. Massachusetts Teachers’ Retirement Sys.*, CR-11-483, at 1 (CRAB Jul. 10, 2012). To be eligible, a member must show that they were “engaged in teaching pupils” in a “non-public school” in Massachusetts and that “the tuition of all such pupils taught was financed in part or in full by the commonwealth.” G. L. c. 32, § 4(1)(p); *Stebbins v. Massachusetts Teachers’ Retirement Sys.*, CR-13-234 (DALA Feb. 9, 2018).

The Contributory Retirement Appeal Board has narrowly construed the phrase “engaged in teaching pupils” in a nonpublic school to be limited to “teaching of academic or vocational subjects, generally in the classroom and during the school day.” *Lukasik v. Massachusetts*

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<sup>3</sup> The complete definition of “governmental unit” is “the commonwealth or any political subdivision thereof, except that a teacher who is a member of, or eligible for membership in, the teachers’ retirement system shall, for the purpose of membership and the requirements in connection therewith, be deemed to be employed by the same governmental unit.” G. L. c. 32, § 1.

*Teachers' Retirement Sys.*, CR-15-668, at 5 (CRAB Feb. 21, 2020). It does not include “supportive” or “related” services such as “residential services, life skills training, and emotional counseling” that may assist students with their academic curriculum. *Id.* at 3, 5. See, e.g., *Verbits v. Massachusetts Teachers' Retirement Sys.*, CR-17-1032 (DALA May 27, 2021) (school psychologist who taught social and emotional skills to students was ineligible to purchase service credit for that work); *Burke v. Massachusetts Teachers' Retirement Sys.*, CR-16-259 (DALA Jul. 24, 2020) (holding that teacher who taught “functional academics” and life skills was ineligible); *Dibella v. Massachusetts Teachers' Retirement Sys.*, CR-10-0181 (DALA Mar. 4, 2016) (“A therapist, even one who provides services in a classroom to students, is not teaching students academics.”). Nor does it include screening prospective clients, *Provost v. Massachusetts Teachers' Retirement Sys.*, CR-11-483, at 1 (CRAB Jul. 10, 2012), attending school meetings or developing educational plans, *Bellevue v. Massachusetts Teachers' Retirement Sys.*, CR-11-467, at 5 (CRAB Jun. 26, 2014), behavior management, *Rose v. Massachusetts Teachers' Retirement Sys.*, CR-16-43, at 5-6 (DALA Jul. 21, 2017), or afterschool tutoring and assistance with homework, *DiRubio v. Massachusetts Teachers' Retirement Sys.*, CR-12-212, at 7 (DALA Jan. 26, 2018). To qualify, rather, the prior work must primarily consist of academic teaching in a school setting. *Lukasik, supra*, at 8 n.21.

The petitioner’s prior work at the Key Program and Meridian Associates does not meet this requirement. His responsibilities as a caseworker for both entities covered a variety of supportive services and counseling to children, including providing transportation, teaching fundamental life skills, advocating for them at school disciplinary meetings, and monitoring school attendance, none of which constitute “teaching pupils” at a nonpublic school within the meaning of G. L. c. 32, § 4(1)(p). Although he did provide some academic instruction to

children as a caseworker at the Key Program, teaching was not his primary responsibility, and it did not consume the majority of his work time. This is particularly true when he worked the evening and night shifts, when he was responsible for supervising recreational activities, preparing dinner and cleaning up thereafter, getting the children to bed, and monitoring them overnight. And while he attended classes with children at times when he worked at Meridian Associates, he was there for support and guidance and not to provide academic classroom instruction.

I have no doubt that Mr. Gregory worked very hard for the children he served at both the emergency shelter and through Meridian's outreach program. The value of his services, to underserved populations, cannot be overstated. DALA cannot adopt the petitioner's broad interpretation of the statute's eligibility requirements, however, and is bound to follow the narrow construction established through binding precedent. See, e.g., *Fahey v. Boston Retirement Bd.*, CR-15-630, at 6 (DALA Nov. 2, 2016) (DALA is bound by CRAB precedent).

#### CONCLUSION AND ORDER

The petitioner failed to prove that he is entitled to purchase service credit for his prior employment at either the Key Program or Meridian Associates. MTRS's decisions denying his applications to purchase creditable service are therefore affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS



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John G. Wheatley  
Administrative Magistrate