

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

**Rose Guinan,**  
Petitioner,

No. CR-24-0559

Dated: September 20, 2024

v.

**Boston Retirement System and Massachusetts  
Teachers' Retirement System,**  
Respondents.

**ORDER OF DISMISSAL**

This is an appeal from a decision of the Boston Retirement System (board) determining that petitioner Rose Guinan is not entitled to be enrolled in the benefits program established by G.L. c. 32, § 5(4). An earlier order directed Ms. Guinan to show cause why the appeal should not be dismissed for failure to state a claim. Ms. Guinan has filed a timely responsive affidavit.

The board issued its decision to Ms. Guinan in January 2023. She lodged a prompt notice of appeal that neither attached a copy of the board's decision nor clearly identified the appropriate respondent.<sup>1</sup> An order required Ms. Guinan to rectify these deficiencies. When she failed to respond, her appeal was dismissed. *Guinan v. Massachusetts Teachers' Ret. Syst.*, No. CR-23-66 (DALA July 14, 2023).

One year later, Ms. Guinan commenced the instant appeal. The board has courteously filed a copy of its decision on Ms. Guinan's behalf. In her affidavit and other papers, Ms. Guinan acknowledges that she was already a teacher in 2001, when the § 5(4) benefits program

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<sup>1</sup> The notice referenced both the board and the teachers' retirement system, as well as the versions of the § 5(4) program administered in both systems ("TARP" and "Retirement Plus").

came into effect; she asserts that she failed to enroll in the program then because she was unaware of its existence.

An appeal is properly dismissed when the matters pleaded in it, taken as true, do not state a claim upon which relief can be granted. Standard rule 7(g)(3).<sup>2</sup> *See White v. Somerville Ret. Bd.*, No. CR-17-863, at \*5 (DALA Nov. 16, 2018). That standard is satisfied here.

To start with, the appeal is untimely. Appeals from the decisions of the retirement boards must be brought within fifteen days. G.L. c. 32, § 16(4). That deadline is satisfied here only if Ms. Guinan's recent submissions are viewed as having effectively revived her original appeal of January 2023 (No. CR-23-66). Otherwise stated, the order dismissing Ms. Guinan's original appeal would need to be reconsidered and vacated. But reconsideration at this juncture is either unwarranted or outright impermissible. Ms. Guinan does not identify any error in the order of dismissal or any significant factor that it overlooked. *See* standard rule 7(l); *Barker v. State Bd. of Ret.*, No. CR-07-155, at \*1-2 (CRAB n.d.). She also describes no good cause for an extension of the deadline that governs motions for reconsideration, which expired months ago, and which may or may not be extendable at all. *See* standard rule 7(l); *Fillmore v. Massachusetts Teachers' Ret. Syst.*, No. CR-23-358, at \*2 (DALA Aug. 13, 2024).

Even if Ms. Guinan could overcome the timeliness issue, she does not state a viable claim on the merits. The well-established rule is that a teacher who failed to enroll in the § 5(4) program in 2001 cannot join the program later on. *See, e.g., Roldan-Flores v. Massachusetts Teachers' Ret. Syst.*, No. CR-18-311 (CRAB Dec. 10, 2020). This rule is consistent with the more general principle that statutes take effect regardless of whether state agencies have

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<sup>2</sup> In accordance with G.L. c. 30A, § 9, the "standard rules" in this context are the provisions of 801 C.M.R. § 1.01.

educated the affected individuals about them. *See Awad v. Hampshire Cty. Ret. Bd.*, No. CR-08-621, 2014 WL 13121791 (CRAB Dec. 19, 2014). A very narrow exception in the context of the § 5(4) program is restricted to teachers who not only failed to receive “notice” about the program but also were “inactive” during the 2001 enrollment window. *See Davey v. Massachusetts Teachers’ Ret. Syst.*, No. CR-01-914 (CRAB Jan. 31, 2003); *In the Matter of Enrollment in Retirement Plus*, No. CR-21-369, 2023 WL 5332723 (DALA Aug. 7, 2023). There is no dispute that Ms. Guinan was an active teacher during 2001.

In view of the foregoing, Ms. Guinan’s pleadings do not state a claim upon which relief can be granted. It is therefore ORDERED that this appeal is DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate