

CONTRIBUTORY RETIREMENT APPEAL BOARD

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DEBORAH HOGAN,  
Petitioner-Appellant

v.

MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,  
Respondent-Appellee.

CR-15-567<sup>1</sup>

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DECISION

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Petitioner Kathleen Hogan appeals from a decision of the Chief Administrative Magistrate of the Division of Administrative Law Appeals (DALA), affirming the decision denying her application to purchase creditable service for pre-membership nonpublic school service pursuant to Section 4(1)(p) because she was not “engaged in teaching pupils.” Respondent MTRS also appeals from the DALA decision in which the Chief Administrative Magistrate determined the tuition of all students instructed by Ms. Hogan were at least partially funded by the Commonwealth or Massachusetts public school systems. The Chief magistrate heard the matter on September 13, 2019 and admitted four exhibits from Ms. Hogan and four exhibits from the MTRS. The magistrate’s decision is dated July 22, 2020. Ms. Hogan and the MTRS filed timely appeals to us.

After considering the arguments by the parties and after a review of the record, we incorporate the DALA decision by reference and adopt its Findings of Fact 1 – 16 as our own with the following minor clarification.<sup>2</sup> Based on our decision in *Galanti v. Massachusetts Teachers' Retirement System*, CR-15-566 (CRAB Dec. 2022), we affirm.

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<sup>1</sup> Pursuant to a Motion to Consolidate, this appeal was consolidated with that of *Diane Galanti v. MTRS*, CR-15-566; *Kathleen Marble v. MTRS*, CR-15-565; and *Theresa Mellen v. MTRS*, CR-15-562 because they involve similar facts.

<sup>2</sup> In Finding of Fact 6, we amend the first sentence to reflect the following:

### *Background*

Ms. Hogan, an MTRS member employed by the Rockland Public Schools, applied to purchase prior private school teaching at the Cardinal Cushing Center, Inc. (hereinafter “Cardinal Cushing”), a residential nonpublic alternative school from July 1989 through June 2003.<sup>3</sup> She was not allowed to purchase this service during which she was a child care worker.<sup>4</sup> MTRS determined that she was not “engaged in teaching pupils” for the purpose of purchasing creditable service under G.L. c. 32, § 4(1)(p).<sup>5</sup>

While Ms. Hogan asserts that her role at Cardinal Cushing was that of a Residential Life Skills Instructor, Mr. Sigmund Kozaryn, Vice President and Chief Financial Officer for Cardinal Cushing, certified that she maintained the position of child care worker.<sup>6</sup> As a childcare worker, Ms. Hogan initially worked the overnight shift at St. Catherine’s dormitory, but the majority of her time at Cardinal Cushing was spent working the day shift.<sup>7</sup> The goal of this work was to help these students, who were unable to attend public schools due to severe social, emotional or intellectual challenges, learn to manage their social and emotional needs and gain life skills.<sup>8</sup> By learning these skills, it was hoped that these students could transition to living a more independent life.<sup>9</sup>

As a child care worker, Ms. Hogan was assigned approximately 4-5 students, primarily “lowest or earliest functioning” girls ages 12 to 16, with various intellectual disabilities and developmental delays.<sup>10</sup> She confirmed that her students were from Massachusetts, namely Falmouth, Danvers, Duxbury, Mendon, and Worcester.<sup>11</sup> Mr. Kozaryn confirmed that the

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At Cardinal, Ms. Hogan provided instruction for residential students, primarily “lowest functioning” girls at “Saint Catherine’s” dormitory.

<sup>3</sup> FF 4; Hogan Ex. 1- 2. Section 4(1)(p) does not permit Ms. Hogan to purchase creditable service for the same period in which she is entitled to receive a retirement allowance from any other source. Ms. Hogan indicated in her application that she participated in Cardinal Cushing’s retirement plan beginning July 1, 1999. She is not permitted to purchase creditable service for this period. FF 14. Hogan Ex. 1.

<sup>4</sup> FF 15; Hogan Ex. 2.

<sup>5</sup> FF15; Hogan Ex. 3.

<sup>6</sup> Hogan Ex. 1, 3.

<sup>7</sup> Tr. 154-155.

<sup>8</sup> FF 11; Tr. 158.

<sup>9</sup> Tr. 158.

<sup>10</sup> FF 6; Tr. 155.

<sup>11</sup> FF 8; Tr. 156.

tutions of Ms. Hogan's students were paid in whole or in part by the Commonwealth or Massachusetts Public School systems.<sup>12</sup>

While at Cardinal Cushing, Ms. Hogan used a Life Facts curriculum to provide instructions in social and behavioral skills, human development awareness, functional academics and activities of daily living.<sup>13</sup> In providing these instructions, she developed lesson plans and utilized handouts to demonstrate these skills. She also practiced these skills and engaged in travel training with her students to implement and reinforce these skills. She made progress notes and communicated issues or concerns in a log book.<sup>14</sup> Working with other members of the Individualized Education Program (IEP) team, Ms. Hogan assisted in drafting IEP plans for each of her students and participated in IEP meetings.<sup>15</sup> She also worked closely with the Residential Coordinator, teachers, and other staff to maintain consistent structure and develop behavior plans. Part of her responsibilities also included dispensing of medications.<sup>16</sup> Although this was not part of her job description, Ms. Hogan also served as a substitute teacher on occasion.<sup>17</sup>

### *Discussion*

In *Lukasik*, we concluded that the choice of the words "engaged in teaching pupils" in a non-public "school" in enacting § 4(1)(p) was intended by the Legislature to include instruction in the academic and vocational subjects that are typically taught for credit in the public schools, generally in the classroom, but not the myriad of other special education services that are provided in alternative day and residential schools.<sup>18</sup> We explained that the Legislature meant to distinguish between the teaching of academic and vocational subjects to special needs students, comparable to traditional subjects taught in public schools, and the broad array of supportive services that were required by the newly-enacted special education law, Chapter 766.<sup>19</sup> We were

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<sup>12</sup> FF 8; Hogan Ex. 1; Tr. 8, 42.

<sup>13</sup> FF 12; Ex. 4; Tr. 168.

<sup>14</sup> Tr. 163.

<sup>15</sup> FF; Tr. 8, 16.

<sup>16</sup> *Id.*

<sup>17</sup> FF 13; Tr. 182.

<sup>18</sup> *Lukasik* at \*12.

<sup>19</sup> See *Lukasik* at \*2-7; St. 1972, c. 766, § 11 (approved July 1, 1972; effective September 1, 1974, codified at G.L. c. 71B); St. 1973, c. 760 (approved Sept. 11, 1973; enacting G.L. c. 32, § 4(1)(p)). See generally 34 C.F.R. § 300.34 (describing "related services" under the Individuals with Disabilities Education Act as including such "supportive services as are required to assist a child with a disability to benefit from special education"); Yael Cannon, Michael Gregory, &

asked in *Galanti* to reconsider our interpretation of “engaged in teaching pupils” in a non-public “school” under § 4(1)(p) to broaden the scope of subjects considered as “engaged in teaching pupils” to include functional academics. *Galanti v. MTRS*, CR-15-566 (Dec. 2022). We declined to do so for reasons explained below.

In *Galanti*, we reiterated that the absence of any mention of these other services in § 4(1)(p), including the teaching of functional academics, where they were so central to the contemporary reform of the special education laws which occurred just prior to the enactment of this provision, strongly suggests that the Legislature intended to allow teachers to purchase only prior teaching in traditional subjects, such as those taught for credit in public schools, and only when taught in a “school” setting. Had the Legislature intended there to be a more expansive view, it would have explicitly provided for it.<sup>20</sup> See *Galanti* at \*6-7. Instead, Section 4(1)(p) remained limited to those “engaged in teaching pupils” in a non-public “school.” *Limoliner v. Dattco, Inc.*, 475 Mass. 420, 425 (2016) (where limitations are present in one related statute and absent in another, fair to conclude that the Legislature knew how to enact them and that difference was intentional).

Further, we noted that CRAB has historically maintained a narrow interpretation to “teaching pupils.”<sup>21</sup> This narrow interpretation is also warranted as this provision provides an

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Julie Waterstone, *A Solution Hiding in Plain Sight: Special Education and Better Outcomes for Students with Social, Emotional, and Behavioral Challenges*, 41 Fordham Urb. L.J. 403, 458 (2013) (describing related services as “essentially any service that is necessary for a student to learn”).

<sup>20</sup> G.L. c. 32, § 3(4a) permits the purchase of prior private sector service when “engaged in teaching pupils or as an administrator in a non-public school” prior to January 1, 1973. See *Rosing v. Teachers’ Retirement Syst.*, 458 Mass. 283, 287 (2010). The Legislature also allowed teachers to purchase out of state public school teaching, which includes service as teachers, principals, supervisors, superintendents or presidents. G.L. c. 32, § 3(4).

<sup>21</sup> See *Murray v. Mass. Teachers’ Retirement Syst.*, CR-08-646 (DALA May 2013, *aff’d* CRAB June 2014)(work was not fundamentally education involving traditional school subjects where primary goal was career development rather than “engaged in teaching pupils”); *Kraskoukas v. MTRS*, CR-09-288 (DALA Sept. 2014)(fundamental duties of the Director of Social Services for nonpublic school was not “engaged in teaching pupils”); *Anderson v. Mass. Teachers’ Retirement Syst.*, CR-15-182 (DALA Nov. 2015, *aff’d* CRAB Sept. 2016)(duties of child and family counseling, case management, development of staff-in-service training, individual and group counseling, teacher trainings and home/school consultations did not constitute “teaching pupils”); and *Joyner v. Boston Retirement Bd.*, CR-14-542 (CRAB May 2017)(member not engaged in teaching pupils while employed at nonpublic schools). See also *Buindo v. Mass. Teachers’ Retirement Syst.*, CR-15-416 and CR-15-417 (DALA Dec. 2018, *aff’d* CRAB Feb.

enhanced benefit that is generally not permitted - the purchase of creditable service for private sector work - which is an exception to the general rule that creditable service is available only for work in a governmental unit or for other public service.<sup>22</sup>

Lastly, we re-emphasized that the overall structure of the Massachusetts retirement law supports the narrow interpretation of § 4(1)(p). The retirement law was enacted in 1945 to increase the financial soundness of the retirement systems by establishing a contributory system. *See Plymouth Retirement Bd. v. Contributory Retirement Appeal Bd.*, 483 Mass. 600, 710 (2019); St. 1945, c. 658 (eff. Jan. 1, 1946) (“An Act To Establish a Single Contributory Retirement Law for Public Employees”). A narrow application of § 4(1)(p) best supports this purpose. We noted that the purchase of creditable service is expensive to retirement systems. Members who purchase creditable service under Section 4(1)(p) pay only five percent of their salary, whereas the contribution rates from 1975 to the present have increased to seven, eight, and nine percent, with an additional two percent on amounts over \$30,000.<sup>23</sup> Limiting creditable service purchases for prior service in a nonpublic school to work in traditional concepts of teaching pupils in a school and excluding the broad array of other services that were ultimately mandated when Chapter 766 took effect<sup>24</sup> would assist in maintaining the financial soundness of the retirement systems.

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2020)(decision on the merits was not reached but, petitioner was denied service purchase because work providing adaptive physical education in different settings did not qualify as “teaching pupils”); *Fisher v. Mass. Teachers’ Retirement Syst.*, CR-13-276, CR-13-443, CR-13-516 (DALA Sept. 2018, *aff’d* CRAB Feb. 2020)(while petitioner was not eligible for service purchase due to receipt of a separate retirement benefit, she was not engaged in “teaching pupils” for her work as a residential counselor); *Rosenberg v. Mass. Teachers’ Retirement Syst.*, CR-15-549 (CRAB Feb. 2020)(petitioner was not engaged in teaching pupils when she taught social and behavioral skills); *Sadowski v. Mass. Teachers’ Retirement Syst.*, CR-14-763 (DALA March 2019, *aff’d* CRAB Feb. 2020)(evaluation of special needs students was not “teaching pupils”); and *Stebbins v. Teachers Retirement System*, CR-13-234 (DALA Feb. 2018, *aff’d* CRAB Feb. 2020)(petitioner’s work as a counselor and therapist was not “teaching pupils”).

<sup>22</sup> *See LeClair v. Town of Norwell*, 430 Mass. 328, 336 (1999) (exceptions to statutory provisions are construed narrowly); *Martin v. Rent Control Bd. of Cambridge*, 19 Mass. App. Ct. 745, 747-749 (1985) (one reason for narrow construction of exception is to prevent statute’s purposes from being subverted).

<sup>23</sup> G.L. c. 32, § 22(1)(b),(b½). The additional two percent applies to those hired on or after January 1, 1979. G.L. c. 32, § 22(1)(b½).

<sup>24</sup> *See* St. 1972, c. 766, § 11 (effective September 1, 1974).

As we noted in *Galanti*, this matter is similar to that of *Turco v. MTRS*, CR-12-681 (CRAB Feb. 2020), where a residential counselor's work teaching life skills was not construed to be "engaged in teaching pupils." In *Turco*, we maintained that "engaged in teaching pupils" in a "school" to refer to the teaching of academic or vocational subjects, generally in the classroom and during the school day. The students that Ms. Hogan instructed received academic teaching by a teacher in the main academic building from 8:30 a.m. to 2:30 p.m.<sup>25</sup> Ms. Hogan was not engaged in teaching academic or vocational subjects, but provided instruction in functional academics, social skills, activities of daily living and human development. Her instruction did not occur in the classroom or during the school day, but rather, much of Ms. Hogan's instruction occurred outside of the normal classroom in the dormitory and after the normal school day.<sup>26</sup> Further, the job description for Child Care Worker – Days does not reflect teaching as a job duty and was designated in the Residential Department. A college degree was not required for this position, nor was a teaching certificate. Additionally, the job summary for this position states "Ensures that residents receive a high level of care in a well-maintained and secure environment."<sup>27</sup> This is consistent with the listed job duties and Ms. Hogan's testimony regarding her tasks and job functions. Ms. Hogan confirmed that the job description accurately reflected her duties and responsibilities.<sup>28</sup> All of the above supports the determination that Ms. Hogan was not "engaged in teaching pupils," for the purpose of purchasing creditable service pursuant to § 4(1)(p).

Finally, with respect to the tuition payments of her students, Ms. Hogan testified that all her students were from Massachusetts.<sup>29</sup> Mr. Kozaryn confirmed that the students' tuitions were paid in whole or in part by the Commonwealth or Massachusetts Public School systems.<sup>30</sup> MTRS did not present any evidence to refute this certification. Deferring to the magistrate's credibility finding and based on the evidence in the record, we find that the tuition payments of Ms. Hogan's students were paid at least in part by the Commonwealth or Massachusetts Public School systems.

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<sup>25</sup> Tr. 45, 116.

<sup>26</sup> Tr. 105, 107.

<sup>27</sup> Hogan Ex. 1 (a-h), MTRS Ex. 1.

<sup>28</sup> Tr. 173.

<sup>29</sup> FF 7; Tr. 156.

<sup>30</sup> FF 8; Hogan Ex. 1.

Nevertheless, for the reasons discussed in our decision issued today in *Galanti*, although we recognize the importance of her duties in providing instruction to students with significant social, emotional, and intellectual disabilities to transition to less restrictive living environments, we conclude that Ms. Hogan's work as a child care worker at the Cardinal Cushing Center did not constitute "teaching pupils" within the meaning of G.L. c. 32, § 4(1)(p).

***Conclusion***

We affirm the DALA decision that Ms. Hogan is not entitled to purchase creditable service under G.L. c. 32, § 4(1)(p) for her prior work at the Cardinal Cushing Center, both for the reasons stated in the magistrate's decision and for the reasons stated in our decisions in *Lukasik*, CR-15-668 (CRAB Feb. 21, 2020) and *Galanti*, CR-16-566 (Dec. 2022).

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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