**COMMONWEALTH OF MASSACHUSETTS**

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| Suffolk, ss. | **Division of Administrative Law Appeals**August 11, 2017 |
| **Leslie Loomis**, Petitioner v.**Massachusetts Teachers’ Retirement System**, Respondent | Docket No. CR-15-269 |

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| **Appearance for Petitioner**:Leslie Loomis, *Pro se*23 Cambridge Terrace, #1Cambridge, MA 02140 |
| **Appearance for Respondent**:Christina L. Keefe, Esq.Massachusetts Teachers’ Retirement System500 Rutherford AvenueSuite 120Charlestown, MA 02129 |

**Administrative Magistrate**:

Bonney Cashin

**SUMMARY**

 The Massachusetts Teachers’ Retirement System’s denial of Leslie Loomis’s application to purchase prior non-public school creditable service is affirmed. The Petitioner has failed to prove that she was “engaged in teaching pupils” in her former position as a “Parent Worker” while at the Farr Academy, as required under G.L. c. 32, § 4 (1)(p).

**DECISION**

The Petitioner, Leslie Loomis, appeals the May 29, 2015 decision of the Massachusetts Teachers’ Retirement System (MTRS), denying her application to purchase non-public school service. I held a hearing on July 11, 2017, which I digitally recorded, at the Division of Administrative Law Appeals at One Congress Street, Boston, Massachusetts. The parties submitted pre-hearing memoranda. Ms. Loomis testified on her own behalf. MTRS called no witnesses. I admitted nine exhibits into evidence (Exs. 1-9). The record closed on July 11, 2017, after the parties presented oral closing arguments.

**FINDINGS OF FACT**

 Based upon the evidence in the record and the reasonable inferences from it, I make the following findings of fact:

1. Leslie Loomis is employed as a school psychologist for the Cambridge Public Schools. She continues to be an active member of MTRS. (Test., Ex. 6).
2. Ms. Loomis is certified by the Department of Elementary and Secondary Education as a School Psychologist (All Levels). (Ex. 8).
3. From September 8, 1988 until August 30, 1999, Ms. Loomis was employed as a Parent Worker at the Farr Academy, a Chapter 766 school[[1]](#footnote-1) located in Cambridge, Massachusetts. (Test., Ex. 6).
4. When she worked at the Farr Academy, Ms. Loomis was certified as a School Psychologist, School Guidance Counselor, and as a School Social Worker. (Test., Ex. 1).
5. The job description for a Parent Worker at the Farr Academy is as follows:

PARENT WORKER

I. Responsible for the initiation of and follow through on clinical family contacts, i.e. parent group meetings and individual parent meetings on a regular basis and/or as the need arises.

II. Assist in the intake process.

III. Join and assist the entire staff in planning effective therapeutic strategies for each of our students.

IV. Initiate and develop other resource placements that may benefit our students, i.e. treatment modalities such as alcoholic groups, psychiatric evaluations and treatment, summer camp placements, and other.

V. Initiate and develop clinical concepts that would be applicable to our program.

VI. Develop fund raising proposals related to our clinical needs and desires.

VII. Record and write reports based on the personal observations as well as some input from other staff.

 (Ex. 2).

1. Although Ms. Loomis’s responsibilities varied daily, her routine duties as a Parent Worker included reviewing admission packets, providing support for students, making appointments and attending meetings with parents, students, and staff, observing classes, and consulting with staff about children who may have had problems at home. (Test.).
2. Ms. Loomis described her direct interaction with Farr Academy students as “minimal and moderate.” She learned of student’s needs, particularly for psychological help, from teachers and staff members. (Test.).
3. Many of the duties Ms. Loomis performed at the Farr Academy were similar to her present duties as a psychologist at the Cambridge Public Schools. Some of these duties include interpreting psychological and achievement tests and working closely with teachers and students during the admissions process. (Test.).
4. Although at times she observed students in class, Ms. Loomis did not teach students in a classroom at the Farr Academy. (Test., Exs. 5, 6).
5. On October 16, 2013, Ms. Loomis submitted an application to MTRS to purchase creditable service for her work at the Farr Academy from September 8, 1988 to August 30, 1999, pursuant to G.L. c. 32, § 4(1)(p). (Ex. 6).
6. In her application, Ms. Loomis stated that her employer made contributions to Social Security on her behalf. She identified $2,769.00 as the “amount of retirement contributions by employer.” According to her W-2 forms for the years 1998 and 1999, the total amount of Social Security tax and Medicare tax withheld was $2,769.35. (Exs. 3, 6).
7. On May 29, 2015, the MTRS denied Ms. Loomis’s application to purchase credit for service rendered at the Farr Academy because she was not “engaged in teaching pupils” and because the Farr Academy provided her with employer-paid contributions, which are considered a retirement benefit.[[2]](#footnote-2) (Ex. 4).
8. By letter dated June 11, 2015, Ms. Loomis timely appealed the denial of her application to the Division of Administrative Law Appeals (DALA). (Ex. 5).

**DISCUSSION**

 G.L. c. 32, § 4 (1)(p) provides that certain individuals may purchase past creditable service rendered while working at a non-public school within the Commonwealth. In relevant part, G.L. c. 32, § 4 (1)(p) states:

Any member of a contributory retirement system who is engaged in teaching position…and who was previously engaged in teaching pupils in any non-public school in the commonwealth, if the tuition of all such pupils taught was financed in part or in full by the commonwealth may…establish such service as creditable service…provided, that no credit shall be allowed and no payment shall be accepted for any service for which the member shall be entitled to receive a retirement allowance, annuity or pension from any other source.

 It is well settled that the phrase “engaged in teaching pupils,” as used in G.L. c. 32, § 4 (1)(p), “has a ‘narrow interpretation’: that of ‘teaching academics.’” *Einsel v. Massachusetts Teachers’ Retirement System*, Docket No. CR-15-167 (Mass. Div. of Admin. Law App., Sept. 8, 2015) (quoting *Kraskouskas v. Massachusetts Teachers’ Retirement System*, Docket No. CR-09-288 (Mass. Div. of Admin. Law App., Sept. 26, 2014). As such, the only job functions that can qualify a member to purchase creditable service under G.L. c. 32, § 4 (1)(p) are those involving the direct teaching of “academic subjects or…vocational skills” to students. *Kraskouskas*, at \* 7; *Romano v. Massachusetts Teachers’ Retirement System*, Docket No. CR-15-260 (Mass. Div. of Admin. Law App., July 7, 2017) (family therapist providing social and emotional therapy to students is not engaged in teaching pupils); *Farnsworth v. Massachusetts Teachers’ Retirement System*, Docket No. CR-15-29, Decision (Mass. Div. of Admin. Law App., June 23, 2017) (therapy, counseling, or teaching behavior skills or life skills do not constitute teaching academics); *Carroll v. Massachusetts Teachers’ Retirement System*, Docket No. CR-15-8, (Mass. Div. of Admin. Law App., November 17, 2016) (supervisory duties, assisting teachers in the classroom and episodic substitute teaching do not qualify as having “engaged in teaching pupils”).

 As Ms. Loomis acknowledged and as is readily ascertainable from the Parent Worker job description (Ex. 4), at no point during her tenure at the Farr Academy was Ms. Loomis “engaged in teaching pupils.” Like the petitioner in *Romano*, Ms. Loomis provided important therapeutic services for students. *Romano*, at \* 5. In addition she provided services for their families. However, providing therapeutic services is not the same as teaching academic subjects or vocational skills. *Id.* Ms. Loomis’s service, thus, does not qualify for purchase pursuant to G.L. c. 32, § 4 (1)(p).

Ms. Loomis further maintains that, because her current position recognizes her a “teacher” and because the G.L. c. 32, § 1 definition of a teacher encompasses school psychologists, she satisfies the G.L. c. 32, § 4(1)(p) requirement of having “engaged in teaching pupils.” This argument, however, is inaccurate. While G.L. c. 32, § 1 defines “teacher” to include a: “school psychologist, school psychiatrist, school adjustment counsellor or director of occupational guidance and placement…principal, superintendent...or supervisor or teacher of adult civic education” this is so that these public school employees may join the Commonwealth’s teachers’ retirement system and have the right to purchase former public service. *Buonaiuto v. Massachusetts Teachers’ Retirement System*, Docket No. CR-15-26 at \* 10 (Mass. Div. of Admin. Law App., Mar. 24, 2017) *citing* *Taft v. Massachusetts Teachers’ Retirement Bd.*, Docket No. CR-02-657 (Mass. Div. of Admin. Law. App., June 4, 2004), *aff’d* (Contributory Ret. App. Bd., Nov. 15, 2004) *aff’d* *Taft v. Contributory Retirement Appeal Bd*., Civil Action No. 04-05441 (Suff. Sup. Ct., Oct. 28, 2005) (director of vocational programs not engaged in teaching pupils where she held an administrative position and occasionally filled in for absent teachers). The definition does not alter the limitation that the only former non-public school service that may be purchased involves teaching pupils.

 Ms. Loomis also asks that I rely on the sworn affidavits of Christy Pappas, Director of the Farr Academy, and David Ollivierre, Bookkeeper of the Farr Academy, neither of whom testified and were available for cross-examination at the hearing. *See Sargent v. Worcester Retirement Board*, Docket No. CR-07-953 (Mass. Div. of Admin. Law App., Oct. 22, 2010) (affidavits insufficiently reliable because affiants not subject to cross-examination). Moreover, I note that, even if I were to rely on the Pappas affidavit (Ex. 7), it fails to establish that Ms. Loomis’s duties included teaching pupils.[[3]](#footnote-3)

 For the above-stated reasons, the MTRS’s decision to deny Ms. Loomis’s application to purchase non-public school creditable service for her work at the Farr Academy from September 8, 1988 until August 30, 1999 is hereby affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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 Bonney Cashin

 Administrative Magistrate

DATED: August 11, 2017

1. Commonly referred to as “Chapter 766,” G.L. c. 71B § 4 allows school committees to enter into agreements with private schools and institutions to provide special education programs for those children whose needs cannot be met by the programs available in public schools. [↑](#footnote-ref-1)
2. The MTRS did not address its second ground for denial, that Ms. Loomis received a retirement benefit from the Farr Academy, in its pre-hearing memorandum, nor at the hearing. I do not address this basis for denial further, except to note that Ms. Loomis’s application and W-2 forms (Exs. 3 and 6), which together support David Ollivierre’s affidavit (Ex. 9), establish that the MTRS was in error. [↑](#footnote-ref-2)
3. I assigned some weight to the Ollivierre affidavit because it is supported by other documents in the record. *See* n. 2. [↑](#footnote-ref-3)