COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Division of Administrative Law Appeals**

**Colleen Lukasik**,

Petitioner

v. Docket No. CR-15-668

 Date: February 2, 2018

**Massachusetts Teachers’**

**Retirement System**,

Respondent

**Appearance for Petitioner**:

 *Pro Se*.

 97 Orchard Road

 East Longmeadow, MA 01028

**Appearance for Respondent**:

 James H. Salvie, Esq.

 Massachusetts Teachers’ Retirement System

 500 Rutherford Avenue, Suite 210

 Charlestown, MA 02129

**Administrative Magistrate**:

 Judithann Burke

**SUMMARY OF DECISION**

 The Massachusetts Teachers’ Retirement System’s denial of the Petitioner’s application to purchase prior non-public school creditable service is reversed. The Petitioner met her burden of proving that she was “engaged in teaching pupils” while she worked as an adjustment counselor at the Valley West School, a private “alternative school” located in Chicopee, MA, as required under G.L. c. 32, § 4(1)(p). The skills she taught were as essential to this student population as the standard academic subjects.

**DECISION**

 The Petitioner, Colleen Lukasik, who was previously employed as an adjustment counselor/teacher at the Valley West “alternative school” from September 1998 through June 2008, appealed the December 11, 2015 denial of her application to purchase non-public school service by the Massachusetts Teachers’ Retirement System. *See* G.L. c. 32, § 16(4). (Exhibit 1.) She filed a timely appeal on December 23, 2015. (Exhibit 2.)

I held a hearing on November 2, 2017 at the offices of the Worcester Registry of Deeds, 90 Front Street, Worcester MA. The Petitioner testified and argued in her own behalf. The Respondent presented no witnesses. I marked Exhibits 1-7. The hearing was digitally recorded. Both parties filed pre-hearing memoranda. (Respondent-Attachment A; Petitioner-Attachment B.)

**FINDINGS OF FACT**

Based on the evidence presented by the parties, I make the following findings of fact:

1. The Petitioner, Colleen Lukasik, born in 1973, was employed at the Valley West School, a private “alternative school” located in Chicopee, MA from September 1998 through June 2008. (Petitioner Testimony; Exhibit 3.)

2. The tuition of all of the pupils at Valley West was paid by the Commonwealth or its cities or towns. (Attachment A.)

3. From 1998 through the 2003-04 school year (six years), the Petitioner was a teacher of English Language Arts (ELA). From September 2004 to June 2008 (four years), the Petitioner was a “Counselor” or an “Adjustment Counselor” at Valley West. (Petitioner Testimony and Exhibit 5.)

4. From September 2004 to June 2008, the Petitioner worked as an adjustment counselor and sometimes did substitute teaching when needed. As an adjustment counselor, she helped special education pupils with social skills and life skills. She taught social skills in the classroom and she worked with small groups and individuals. She assisted the pupils in identifying and managing their social and emotional needs and developing coping skills with the goal of helping them transition into a less restrictive placement in the public school systems. She also organized parent-teacher conferences, gave input for and helped design IEPs and helped create student assessment tools. She spent approximately twenty (20) per cent of her time serving as a substitute teacher. During one three-week period, she acted as a substitute teacher for the entire school day. (Petitioner Testimony, Exhibit 7 and Attachment A.)

5. On or about January 17, 2013, the Petitioner applied to purchase credit for her years of service at Valley West School. (Exhibits 4 and 5.)

6. The MTRS invoiced the Petitioner for her first six (6) years when she was an ELA teacher. (Exhibit 3.)

7. On or about December 11, 2015, the MTRS denied the Petitioner’s application with respect to her final four years at Valley West on the basis that she was not “engaged in teaching pupils.” (Exhibit 1.)

8. The Petitioner filed a timely appeal on December 23, 2015. (Exhibit 2.)

 **CONCLUSION**

 The decision of the Massachusetts Teachers’ Retirement System denying the Petitioner’s application to purchase prior non-public school service is reversed. She has met her burden of proving that she was “engaged in teaching pupils” while she was an adjustment counsel at the Valley West School.

 Under G.L. c. 32, § 4(1)(p), a member of a contributory retirement system may be eligible to purchase employment at a state-funded non-public school. In relevant part, § 4(1)(p) states:

Any member of a contributory retirement system who is engaged in a 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, before the date any retirement allowance becomes effective for him, establish such service as creditable service . . . provided that no credit shall be allowed and no payment made for any service for which the member shall be entitled to receive a retirement allowance, annuity or pension from any other source.

(Emphasis added.)

MTRS denied the Petitioner’s application because it concluded that she was not engaged in teaching pupils at the school. Her ability to purchase her service as an adjustment counselor from September 2004 through June 2008 turns on whether or not she was engaged in teaching pupils.

 There is a body of case law in which “engaged in teaching pupils,” as used in § 4(1)(p), has often been interpreted narrowly. Pursuant to these cases, one must have been “fundamentally engaged in teaching pupils academics.” *See* *Kraskouskas v. Mass. Teachers’ Retirement System*, CR-09-288 (DALA 2014). It has been held that using therapy to foster academic skills does not count as teaching, even if these skills are essential to transfer back to a regular public school. *See* *id; Kathleen Farnsworth v. Mass. Teachers Retirement System,* CR-15-29 (DALA June 23, 2017). Additionally, teaching social skills, developing behavior management techniques, and coordinating treatment planning do not count as being engaged in teaching pupils. *Joyner v. Boston Retirement Bd.*, CR-14-542 (DALA 2015).

I find that another body of retirement case law addressing the issue of whether one is “engaged in teaching pupils” is more applicable in this case. These cases reflect a broader view of the phrase. In *Baker v. Mass. Teachers’ Retirement System*, CR-08-51 (DALA July 20, 2012), the magistrate stated *in dictum* that “engaged in teaching pupils” could encompass teaching life skills. *Id.* at pp. 8-9. In *Dunning v. Mass. Teachers’ Retirement Board,* CR-04-580 (DALA February 6, 2006) an educator who taught “social and communication skills” was found to have been “engaged in teaching pupils.” *Id.* at p. 8. The Contributory Retirement Appeal Board affirmed the broader interpretation of “engaged in teaching pupils” in *Bellevue v. Mass. Teachers’ Retirement System,* CR-11-467 (DALA August 9, 2013) aff’d (CRAB June 21, 2014). The *Bellevue* case involved a teacher who was providing direct instruction to pupils in skills and behaviors that were useful and needed in their future lives, whether or not they eventually entered public schools. The Petitioner in this case was directly teaching the pupils those skills, not merely evaluating them for placement elsewhere. *Id.*, pp 6-7.

The Petitioner in the present case had a very large classroom presence both during her time as an ELA teacher and after she transitioned into her role as an adjustment counselor. She was a regular substitute teacher, albeit twenty (20) per cent of her time, but her work as an adjustment counselor involved her providing in-classroom instruction on matters essential to their learning essential life skills, as essential as the proverbial RRRs to this population of pupils. She also performed other duties performed by teachers, i.e. parent teacher parent conferences and participation in IEP sessions. I find that her regular and major duties were performed from September 2004 through June 2008 while she was “engaged in teaching pupils.”

The Petitioner’s case here is distinguishable from cases that fall within the framework of the narrower “academic subjects” interpretation to the meaning of “teaching pupils. The Petitioner in *Kraskouskas, supra,* spent 25% of her time performing administrative work involving the case management intake/exiting reports, about 40% of her time doing direct transitioning work with the students, and about 30% of her time working and preparing with other staff members. The Petitioner in *Farnsworth, supra,* spent much more time on administrative duties and individual and/or small group counseling sessions and not very much time at all being a presence in the classroom where one in “engaged in the teaching of pupils.”

In contrast, the Petitioner in this case was both primarily and directly classroom teaching students the behavioral, coping, social and other essential life skills needed in order to be able to participate in a public school classroom or another appropriate special education setting, among other skills, both in the classroom or in a small group, or one-on-one. This instruction was as essential to this student population as the traditional academic subjects. She has met the requisite for G.L. c. 32, § 4(1)(p) service in that she was “engaged in teaching pupils.”

So Ordered.

Division of Administrative Law Appeals,

BY:

Judithann Burke

Administrative Magistrate

DATED: February 2, 2018