

**COMMONWEALTH OF MASSACHUSETTS
CONTRIBUTORY RETIREMENT APPEAL BOARD**

COLLEEN LUKASIK,

Petitioner-Appellee

v.

MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,

Respondent-Appellant.

CR-15-668

DECISION

Respondent Massachusetts Teachers' Retirement System (MTRS) appeals from a decision of an administrative magistrate of the Division of Administrative Law Appeals (DALA), reversing the MTRS's denial of petitioner Colleen Lukasik's application to purchase creditable service for her work as an adjustment counselor at a non-public school pursuant to G.L. c. 32, § 4(1)(p). The DALA magistrate heard the matter on November 2, 2017 and admitted seven exhibits. The magistrate's decision is dated February 2, 2018. The MTRS filed a timely appeal to us. We adopt the magistrate's Findings of Fact 1-8 as our own.

Summary

We reverse. A member of a retirement system who is currently teaching may purchase creditable service under § 4(1)(p) for prior teaching in a non-public school at which the tuition of all students is paid at least in part by the Commonwealth, but only where, in the prior position, the member was "engaged in teaching pupils" in the non-public "school." Interpretation of this phrase has presented difficulties because of the varied special needs of the students who attend such alternative private schools. Typically, these alternative schools provide not only academic and vocational instruction in a school setting, but also a broad array of other services such as behavioral therapy, counseling, after-school homework help, and training in life skills. Because the Legislature limited service purchases to work where the member was actually "engaged in teaching pupils" in a "school," however, we conclude

that the phrase was intended to distinguish between prior work that was essentially providing a related or supportive service, and the teaching of academic or vocational subjects in a school setting. In reaching this conclusion, we are mindful of the skill required to provide supportive services and of their value to these students.

Background

Colleen Lukasik, an MTRS member employed by the Monson Public Schools, applied to purchase ten years of prior private school teaching at the Valley West School, an alternative school in Chicopee, Massachusetts in which all students receive some funding from the Commonwealth. Lukasik was permitted to purchase six years of service, from 1998 to spring of 2004, during which she taught English language arts and mathematics, but was not permitted to purchase the following four years of service, from fall of 2004 to spring of 2006, during which her title was adjustment counselor.¹

As an adjustment counselor, Lukasik worked in the students' classrooms, teaching social and life skills, both one-on-one and in small groups. The goal of this work was to help these special needs students, who had been unable to attend public school due to severe social and emotional challenges, learn to manage their emotional needs and develop coping skills. By learning these skills, it was hoped that the students could transition to a less restrictive setting.²

Lukasik also acted as a substitute teacher, spending about twenty percent of her time as a substitute, with a three-week stint as a full-time substitute teacher. She participated in other activities that were similar to those of a teacher, including assisting in developing Individual Education Plans, developing assessment tools, and arranging parent-teacher conferences.³

Discussion

Section 4(1)(p) of the retirement law, G.L. c. 32, was enacted in 1973 following the 1972 adoption of the special education law, Chapter 766.⁴ The relevant portion of Section

¹ Findings 1-7; Tr. 6-7.

² Finding 4; Ex. 4; Tr. 17.

³ Finding 4.

⁴ See St. 1972, c. 766, § 11 (special education law; approved July 1, 1972; effective September 1, 1974, now codified at G.L. c. 71B); St. 1973, c. 760 (approved Sept. 11, 1973; enacting G.L. c. 32, § 4(1)(p)).

4(1)(p) provides:

Any member of a contributory retirement system who is engaged in a teaching position and holds a certificate issued by the department of education or is exempted from the requirement of certification *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 purchase such service], with the maximum credit for service in such non-public schools not to exceed ten years; 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.

G.L. c. 32, § 4(1)(p) (in pertinent part, emphasis added). The provision allows those currently in a “teaching position”⁵ to purchase prior service in private sector employment, but only if in the prior position they were “engaged” in “teaching pupils” in a non-public “school.”

Because of this choice of words, and given the enactment of this provision shortly after passage of the Massachusetts special education law, requiring both specialized teaching and the provision of related, supportive services, we conclude that the Legislature intended to limit this exception to the teaching of academic or vocational subjects in a school setting and did not intend to include the wide array of other services that are provided to children with special needs.

“Related services,” as distinguished from academic classroom instruction, have been a

⁵ The parties do not dispute that Lukasik held a teaching position at the time of her application. We note, without reaching the issue, that caselaw has generally interpreted “teaching position” to include those defined as “teachers” under the retirement law, G.L. c. 32, § 1, as well as those falling outside that definition but whose major duties involve teaching. *See MacKay v. Contributory Retirement Appeal Bd.*, 56 Mass. App. Ct. 924, 925 (2002) (school social workers within definition of “teacher” and entitled to service purchase); *Lally v. Contributory Retirement Appeal Bd.*, 83 Mass. App. Ct. 1117 (Mar. 11, 2013, unpublished Rule 1:28 decision) (college counselor not in “teaching position”); *O’Connor v. Massachusetts Teachers’ Retirement Sys.*, CR-17-202 (DALA Aug. 9, 2019) (occupational therapist eligible for service purchase where within definition of “teacher”); *Orsini v. Norfolk County Retirement Sys.*, CR-13-228 (DALA July 1, 2015) (teaching assistant in “teaching position”); *Ogden v. State Bd. of Retirement*, CR-10-198 (DALA Oct. 31, 2014) (college financial aid director not in “teaching position”); *Sharac v. State Bd. of Retirement*, CR-03-638 (DALA Sept. 17, 2004) (college disability coordinator not in “teaching position”); *Quirk v. State Bd. of Retirement*, CR-92-213 (DALA Aug. 15, 1994) (DET trainer not in a “teaching position”). *But see Happ v. Massachusetts Teachers’ Retirement Sys.*, CR-16-130 (DALA Sept. 29, 2017) (public school adjustment counselor not in “teaching position” despite inclusion in definition of “teacher”).

fundamental component of special education from its inception. Chapter 766 referred to “special classes, instruction periods, *or other special education services*” and required provision of “teaching *or treatment*” in public schools, day schools, or residential schools. St. 1972, c. 766, § 11. It was the failure of public schools to provide supportive services and accurately diagnose special needs, so that all children could access education, that influenced the adoption of Chapter 766 in Massachusetts in 1972.⁶ The focus on the need for supportive services was recognized by Congress in the Education for All Handicapped Children Act of 1975, P.L. 94-142 (Nov. 29, 1975) and in its successor, the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (“IDEA”), both of which recognized and defined “related services.”⁷ The current Massachusetts special education law and regulations also

⁶ See generally Task Force on Children Out of School, *The Way We Go to School: The Exclusion of Children in Boston* (Beacon Press Oct. 14, 1970) at 63, 38, 54, 61 <https://archive.org/details/ERIC_ED046140/page/n1>.

⁷ See P.L. 94-142, § 4(17) (Education for all Handicapped Children Act); 20 U.S.C. § 401(26) (Individuals with Disabilities Education Act or IDEA). Regulations under the IDEA state:

Related Services means transportation and such developmental, corrective, and *other supportive services as are required to assist a child with a disability to benefit from special education*, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

34 C.F.R. § 300.34 (emphasis added). See also Yael Cannon, Michael Gregory, & 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):

Acknowledging that the educational success of students with disabilities often depends on more than the receipt of specialized instruction from their classroom teachers, the law makes available to students a wide array of “related services” that may be necessary to help them access and make progress in the general curriculum. These services can include psychological counseling, behavioral support, social work services, speech and language therapy, occupational therapy, adaptive physical education, transportation, therapeutic recreation, family therapy, and transition services--*essentially any service that is necessary for a student to learn.*

Id. (emphasis added).

require and define “related services.”⁸

The timing of the enactment of Section 4(1)(p) of the retirement law in 1973, shortly after passage of Chapter 766, leaves little doubt that it was a response to the anticipated changes and expansion in special education in the Commonwealth.⁹ The Legislature wished to provide those who became members of a retirement system and were working in a teaching position the opportunity to purchase up to ten years of prior teaching service in a private school located in the Commonwealth, if the tuition of all students was at least partially funded by the Commonwealth. That some public funding was provided to all students indicated that such a school would be one providing special education services.¹⁰ The Legislature, however, did not seek to allow teachers to purchase *any* prior work providing special education in a private school – it limited such purchases to work when the teacher was “engaged in teaching pupils” in a non-public “school.”

Where the Legislature was creating an unusual exception allowing public retirement benefits to be enhanced by purchase of creditable service for work in the private sector, we construe “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. There could be no doubt, even in 1973, that many supportive services, including residential services, life skills training, and emotional counseling would be required to assist special needs students in accessing an academic curriculum, and that these children would need more than just specialized instruction in regular public school subjects.¹¹ But the absence of any mention of these other services, where they were so central to the contemporary reform of the special education laws, strongly suggests that the Legislature intended to allow teachers to purchase

⁸ See G.L. c. 71B, § 1 (defining “Free appropriate public education” as including “special education and related services”); 603 C.M.R. § 28.02 (adopting above Federal definition of “related services”); see generally Yael Cannon, et al., *supra*, 41 Fordham Urb. L.J. at 405 (2013) (giving real life examples of harm that can result when children with emotional disabilities are not provided appropriate support).

⁹ See *Rosing v. Teachers' Retirement Sys.*, 458 Mass. 283, 285-286 (2010) (noting enactment of Section 4(1)(p) shortly after special education law).

¹⁰ See St. 1973, c. 766, § 11 (providing for reimbursement of excess special education costs); G.L. c. 71B, § 5A (current provisions).

¹¹ E.g., Task Force on Children Out of School, *The Way We Go to School: The Exclusion of Children in Boston* (1970), *supra*, at 38 (multi-specialists), 54 (special services for full educational development), 61 (counselors), 63 (psychologists).

only prior teaching in traditional subjects, such as those taught for credit in public schools, and only when taught in a “school” setting.¹² For instance, the Legislature could have used the words “engaged in teaching or in providing special education services,” or could have specified that the services could be provided in a non-public “school or program” or simply in a “special education program or facility.”¹³ The limitation to “pupils” could have been omitted or broadened to include “pupils, clients, or residents.”

The overall structure of the Massachusetts retirement law also supports a narrow interpretation of Section 4(1)(p). The law was enacted in 1945 to increase the financial soundness of the retirement systems by requiring that they be contributory. *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”). Section 4(1)(p) was the first, and remains nearly the only, provision allowing for purchase of creditable service for work in the private sector.¹⁴ As discussed in

¹² *See generally Plymouth Retirement Bd. v. Contributory Retirement Appeal Bd.*, 483 Mass. 600, 605 (2019) (significance of Legislative silence). We have interpreted academic and vocational subjects to include physical education and health classes, when taught in a school setting, since those are also traditional subjects taught for credit in public schools. *See Fitzgerald v. Massachusetts Teachers' Retirement Sys.*, CR-15-607, at *5 n. 22 (CRAB Feb. 21, 2020).

¹³ For example, the Legislature later adopted a similar provision, allowing purchase under somewhat different circumstances of prior private sector service when “engaged in teaching pupils or as an administrator in a non-public school” prior to January 1, 1973. G.L. c. 32, § 3(4A) (emphasis added). The provision was evidently adopted on behalf of former nuns who had been ineligible for social security prior to 1973. *See Rosing*, 458 Mass. at 287. Also broader is the provision for purchase by teachers of out of state public school teaching, which allows purchase of service as, inter alia, a teacher, principal, supervisor, superintendent, or president. G.L. c. 32, § 3(4). The definition of “teacher” also casts a wide net, including, inter alia, school psychologists, psychiatrists, adjustment counsellors, social workers, directors of occupational guidance, principals, supervisors, and superintendents. G.L. c. 32, § 1. In contrast with these provisions, Section 4(1)(p) has remained limited to those “engaged in teaching pupils” in a non-public “school.” *Cf. 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 Legislature knew how to enact them and that difference was intentional).

¹⁴ As noted above, in 1993, twenty years after the enactment of Section 4(1)(p), a similar provision was enacted allowing purchase of non-public school service, under certain conditions, prior to 1973. *See* G.L. c. 32, § 3(4A) (St. 1992, c. 333, § 1, approved Jan. 7, 1993). In 2005, G.L. c. 32, § 4(1)(h ½) was enacted, allowing vocational teachers who worked for ten years to purchase of three years of work experience. The many other

the hearing transcript, purchase of creditable service is expensive to retirement systems because the member is charged “buyback interest” on her back contributions, which is half of “regular interest,” or the actuarially assumed rate of return on investments.¹⁵ Moreover, 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 \$30,000.¹⁶ Thus, it makes sense that the Legislature in 1973 would be cautious in seeking to limit creditable service purchases for prior service in a non-public school to work that would be subsumed in traditional concepts of teaching pupils in a school, and to exclude the broad array of other services that were about to be mandated when Chapter 766 took effect the following year.¹⁷ That Section 4(1)(p) should be construed narrowly is also supported by traditional guidelines for statutory interpretation, since the provision is an exception to the general rule that creditable service is available only for work in a governmental unit or for other public service.¹⁸

The DALA decision noted that teaching students how to overcome their emotional challenges and to learn social and life skills was a form of “teaching” and that Lukasik’s work with individual students and small groups occurred in a classroom setting, during school hours, and in a Chapter 766 school that also taught traditional academic subjects to pupils. The magistrate also emphasized that teaching life skills was “as essential as the proverbial RRRs” to this population of pupils.¹⁹ But learning how to manage an emotional disability, how to communicate with peers and adults to form positive relationships, and how to cope in less restrictive settings are not traditional public school subjects; they are more akin to

provisions for purchase of prior service relate to state or federal public service. *See* G.L. c. 32, § 4(1) (e)-(s).

¹⁵ Tr. 10; *see* G.L. c. 32, § 1.

¹⁶ 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).

¹⁷ *See* St. 1972, c. 766, § 11 (effective September 1, 1974).

¹⁸ *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).

¹⁹ DALA Decision at 5.

supportive or related services. Although in this case the record supports that much of Lukasik's instruction occurred in a classroom setting, her services were as close to counseling as to teaching, especially when she was handling individual cases.²⁰ If teaching life skills were considered part of being "engaged in teaching pupils in a . . . school," then virtually all employees of alternative schools who are providing special education services directly to children could be considered eligible for creditable service purchases, as some instruction is involved in nearly all the ancillary services provided to children in alternative day and residential schools. Both based on the Legislature's choice of words, requiring that the teacher be "engaged" in teaching, that she teach "pupils" rather than clients, individuals, or residents, and that the teaching occur in a "school" rather than a program or facility, as well as the context of the enactment of this provision, we cannot agree that Lukasik's work as an adjustment counselor, however valuable and critical to these students, falls within the exception for purchase of non-public school teaching under G.L. c. 32, § 4(1)(p).²¹

Despite several recent DALA decisions relying on the magistrate's decision in this case, some of which we have also reviewed on appeal (as discussed below), our holding is consistent with the great majority of prior administrative decisions construing Section 4(1)(p). Numerous prior decisions have held that work teaching social and life skills in a non-public school is not eligible for creditable service purchase.²² Teaching various skills in a non-public

²⁰ Tr. 6, 17; Exs. 2, 4, 6, 7.

²¹ That in her position as an adjustment counselor Lukasik spent about twenty percent of her time serving as a substitute teacher of academic subjects does not change the essential characteristics of her position. Prior work that is not fundamentally or primarily academic teaching has not been considered "teaching pupils" in a "school." See, e.g., *Schnider v. Massachusetts Teachers' Retirement Sys.*, CR-14-772 (DALA June 21, 2019) (school director who sometimes taught was not "fundamentally" engaged in teaching pupils); *Stebbins v. Massachusetts Teachers' Retirement Sys.*, CR-13-234 (DALA Feb. 9, 2018, CRAB Feb. 21, 2020) (counselor at alternative school who provided behavioral intervention during class and occasionally took over class, not primarily engaged in teaching pupils); *Taft v. Contributory Retirement Appeal Bd.*, Civil Action No. 04-05441 (Suffolk Super. Ct. Oct. 28, 2005) (vocational program director not engaged in teaching pupils where duties primarily administrative, despite occasional substitute teaching, supervision of teachers, and other interaction with students).

²² See, e.g., *Sadowski v. Massachusetts Teachers' Retirement Sys.*, CR-14-763 (DALA Mar. 8, 2019, CRAB Feb. 21, 2020) (Head Start coordinator who supervised in classroom and coached students on social skills not fundamentally engaged in teaching pupils academic lessons); *Biundo v. Massachusetts Teachers' Retirement Sys.*, CR-15-416, 417 (DALA Dec.

school to prepare children to enter public school has also been held ineligible for purchase.²³ Similarly, counseling and help with behavioral and emotional issues in a non-public school have been held ineligible.²⁴ And non-public after-school programs, including tutoring, have

14, 2018) (DALA Dec. 14, 2018, CRAB 2020) (behavior coordinator teaching social skills, independent living skills, and work functioning to autistic children outside classroom not teaching pupils); *Turco v. Massachusetts Teachers' Retirement Sys.*, CR-12-681 (DALA May 18, 2018), *affirmed with clarification*, (CRAB Feb. 21, 2020) (residential counselor teaching life skills and social skills to youth with Prader-Willi syndrome, not primarily engaged in classroom teaching of “academic subjects or vocational skills”); *DiRubio v. Massachusetts Teachers' Retirement Sys.*, CR-12-212 (DALA Jan. 26, 2018) (teacher-counselor at island school permitted to purchase academic classroom teaching; extra time denied for after-school life skills, homework help, and GED tutoring); *Happ v. Massachusetts Teachers' Retirement Sys.*, CR-16-130 (DALA Sept. 29, 2017) (child development counselor who taught life skills and assisted in classroom not engaged in teaching pupils); *Farnsworth v. Massachusetts Teachers' Retirement Sys.*, CR-15-29 (DALA Jun. 23, 2017) (counseling and instructing students in life and social skills that helped them learn academics not teaching pupils); *Kaylor v. Massachusetts Teachers' Retirement Sys.*, CR-14-22 (DALA Jan. 22, 2016) (after-school program at Boys and Girls Club was not a “school” and petitioner also not engaged in teaching pupils where more time was spent teaching life skills than academic subjects); *David v. Massachusetts Teachers' Retirement Sys.*, CR-09-640 (DALA Dec. 4, 2015) (residential program worker and director who taught living, social, and emotional skills not comparable to public school programs and not intended by legislature to qualify as teaching pupils); *Kraskouskas v. Massachusetts Teachers' Retirement Sys.*, CR-09-288 (DALA Sept. 26, 2014) (director of social services who taught daily living skills and assisted academic teachers not engaged in teaching pupils). *Cf. Baker v. Massachusetts Teachers' Retirement Sys.*, CR-08-51 (DALA Jul. 20, 2012) (teacher and math specialist “teaching pupils” where spent majority of time teaching academics to students in the classroom and creating related curriculum; administrative work and life skills teaching not her primary role).

²³ See, e.g., *Sadowski, supra* (Head Start coordinator); *Buonaiuto v. Massachusetts Teachers' Retirement Sys.*, CR-15-26 (DALA Mar. 24, 2017) (position as special educator in an early intervention program did not qualify for purchase where program was not a school and skills taught were not academic subjects); *Bentley v. Teachers' Retirement Bd.*, Middlesex Super. Ct. No. 0181CV02675 (Nov. 28, 2005) (operator of private preschool functioning like a Kindergarten not teaching pupils in a non-public school because program she taught was not similar to that of a public school), *affirming* CR-00-907 (CRAB May 25, 2001); *Vieira v. Teachers' Retirement Bd.*, CR-03-189 (DALA Aug. 10, 2004) (Head Start teacher not teaching pupils because she was preparing children for Kindergarten rather than teaching public school subjects); *Morrill v. Teachers' Retirement Bd.*, CR-95-928 (DALA Nov. 5, 1996, CRAB Apr. 23, 1997) (teaching in private preschool in RI ineligible for purchase under G.L. c. 32, § 3(4A) because not comparable to public school teaching).

²⁴ See, e.g., *Biundo, supra* (behavior coordinator); *Turco, supra* (residential counselor); *Stebbins, supra* (counselor at alternative school); *Loomis v. Massachusetts Teachers' Retirement Sys.*, CR-15-269 (DALA Aug. 11, 2017) (Parent Worker who provided therapeutic

been excluded from purchase.²⁵

Prior to the DALA decision in this case, only one prior administrative decision had squarely stated, in dictum, that teaching of life skills could constitute being “engaged in teaching pupils” in a non-public “school.” In *Dunning v. Teachers' Retirement Bd.*, CR-04-580 (DALA Feb. 16, 2006, CRAB Jun. 26, 2006), the magistrate considered a request pursuant to G.L. c. 32, § 3(4A) to purchase creditable service for pre-1973 work at a private preschool for retarded children in Westchester, New York. Where the preschool was not comparable to a public school, the magistrate concluded that it did not qualify as a “school” under prior caselaw and denied the request. She opined in dictum, however, that where the instruction in social and communication skills was necessary to prepare these children for public school or other future schooling, it should be considered “teaching pupils” under Section 3(4A).²⁶ We distinguished this dictum in our decision in *Bellevue v. Massachusetts Teachers' Retirement Sys.*, CR-11-467 (CRAB June 26, 2014), noting that Bellevue’s duties were purely to screen and diagnose children who may qualify for special education, whereas the preschool teacher in *Dunning* who taught life skills was providing direct instruction to the children and that the magistrate had concluded that the skills were “useful and needed in their future lives.” *Id.* The issue of life skills teaching, however, was not at issue in *Bellevue* and

services and observed in classroom not engaged in teaching pupils); *Romano v. Massachusetts Teachers' Retirement Sys.*, CR-15-260 (DALA Jul. 7, 2017) (family therapist who provided therapy in alternative school not “engaged in teaching pupils”); *Farnsworth, supra*; *Joyner v. Boston Retirement Bd.*, CR-14-542 (DALA Sept. 8, 2015, CRAB May 18, 2017) (caseworker and clinical coordinator positions entailed support and behavior management and were not teaching pupils); *Carroll v. Massachusetts Teachers' Retirement Sys.*, CR-15-8 (DALA Nov. 17, 2016) (supervising teacher at alternative residential school who worked on curriculum, provided behavioral support in classroom, did substitute teaching, and helped teach social skills and English arts in classroom was not fundamentally engaged in teaching pupils); *Einsel v. Massachusetts Teachers' Retirement Sys.*, CR-15-167 (DALA Sept. 18, 2015) (coaching teachers in classroom and providing counseling and help with behavioral issues not teaching pupils); *Skeffington v. Teachers' Retirement Sys.*, CR-05-950 (DALA Aug. 17, 2007) (clinician providing therapy and behavior management at private facility for DYS committed youth not teaching pupils).

²⁵ See *DiRubio, supra* (teacher-counselor at island school); *Kaylor, supra*, (after-school program at Boys and Girls Club).

²⁶ *Dunning* (DALA Feb. 16, 2006) at *8-9.

our discussion of the case was meant to emphasize that evaluating children for placement or services could not be considered “teaching pupils.”²⁷

Following the release of the DALA decision in the instant case, a divergence of holdings emerged in subsequent DALA decisions. In four subsequent cases, magistrates denied service purchases for teaching life, social, and behavioral skills. *See Stebbins v. Massachusetts Teachers' Retirement Sys.*, CR-13-234 (DALA Feb. 9, 2018, CRAB Feb. 21, 2020) (counselor at alternative school who provided behavioral intervention during class and occasionally took over class, not primarily engaged in teaching pupils); *Turco v. Massachusetts Teachers' Retirement Sys.*, CR-12-681 (DALA May 18, 2018), *affirmed with clarification*, (CRAB Feb. 21, 2020) (residential counselor teaching life and social skills to youth with Prader-Willi syndrome, rather than classroom teaching of “academic subjects or vocational skills,” not teaching pupils); *Biundo v. Massachusetts Teachers' Retirement Sys.*, CR-15-416, 417 (DALA Dec. 14, 2018) (DALA Dec. 14, 2018, CRAB Feb. 21, 2020) (behavior coordinator teaching social skills, independent living skills, and work functioning to autistic children outside classroom not teaching pupils); *Sadowski v. Massachusetts Teachers' Retirement Sys.*, CR-14-763 (DALA Mar. 8, 2019, CRAB Feb. 21, 2020) (Head Start coordinator who supervised in classroom and coached students on social skills not fundamentally engaged in teaching pupils academic lessons). In two of these cases, the DALA magistrates discussed and distinguished the DALA decision in the instant case. *See Turco* (DALA) at *6-7 (teaching independent living skills in residence not “direct instruction of academic subjects or vocational skills” in classroom); *Sadowski* (DALA) at *6 (Head Start teacher not “primarily involved in teaching academic lessons”).

In an additional four subsequent cases, however, magistrates relied on the DALA decision in the instant case to allow a service purchase. *See Siska (Fisher) v. Massachusetts Teachers' Retirement Sys.*, CR-13-443 (DALA Sept. 21, 2018) (relying in part on DALA decision in *Lukasik*, magistrate holds that teaching life skills in residential and after-school

²⁷ In another case decided prior to the DALA decision in the instant case, a DALA magistrate denied a service purchase under G.L. c. 32, § 4(1)(p) where a counseling intern’s major duties were counseling, rather than teaching. *See Anderson v. Teachers' Retirement Sys.*, CR-15-182 (DALA Nov. 20, 2015). The magistrate also opined in a brief dictum that the intern’s part-time teaching of a course called “Developing Understanding of Self and Others,” described as therapy for emotionally disturbed children, could qualify as “teaching pupils.” *Id.* at *3, 7. The decision does not provide any further discussion of this dictum.

program qualified as teaching pupils), *disapproved in part*, *Fisher v. Massachusetts Teachers' Retirement Sys.*, CR-13-443 (CRAB Feb. 21, 2020) (holding, on appeal by petitioner of denial of one portion of her prior service, that purchase was properly denied both because she received a separate retirement benefit for the same service and also because the job fundamentally involved teaching life and independent living skills in residence); *Rosenberg v. Massachusetts Teachers' Retirement Sys.*, CR-15-549 549 (DALA Aug. 16, 2019) (relying in part on DALA decision in *Fisher*, magistrate holds that school psychologist who taught social and behavioral skills to deaf children with severe emotional disabilities was teaching pupils), *reversed*, (CRAB Feb. 21, 2020); *Fitzgerald v. Massachusetts Teachers' Retirement Sys.*, CR-15-607 (DALA Sept. 20, 2019) (relying in part on *Lukasik*, magistrate allows service purchase for life skills instruction, after-school tutoring, and field and camping trips as well as for later position teaching academics in classroom), *reversed in part*, (CRAB Feb. 21, 2020); *Siddle v. Massachusetts Teachers' Retirement Sys.*, CR-16-385 (DALA Nov. 22, 2019) (relying in part on DALA decision in *Lukasik*, magistrate holds that school clinician's counseling and teaching of social and coping skills, career readiness, and some co-teaching of health classes constituted "teaching pupils").

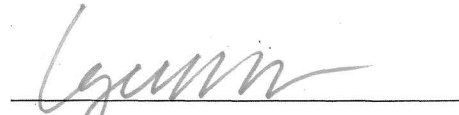
We now resolve the issue by holding, for all the reasons stated above, that "engaged in teaching pupils" in a non-public "school" was intended by the Legislature to include instruction in the academic and vocational subjects that are typically taught for credit in the public schools, generally in the classroom, but not the myriad of other special education services that are provided in alternative day and residential schools, including instruction in life, coping, social, and emotional skills.²⁸ Although we do not believe the Legislature intended to allow creditable service for such services under G.L. c. 32, § 4(1)(p), we wish to emphasize our agreement and understanding of the value of both therapy and instruction in the myriad of life skills that are necessary for children with disabilities to access traditional education and to transition to public school or to a less restrictive environment.

²⁸ Cf. *Fitzgerald*, *supra*, at *5 n. 22 (CRAB Feb. 21, 2020) (physical education and health classes considered within "academic" curriculum where included in traditional public school subjects, generally taught for credit).


Conclusion

The decision of the DALA magistrate is reversed. Lukasik is not entitled to purchase creditable service under G.L. c. 32, § 4(1)(p) for her four years of work as an adjustment counselor at the Valley West School.

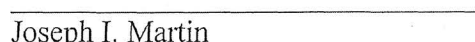
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Nicolle M. Allen
Governor's Appointee



Joseph I. Martin
Public Employee Retirement Administration Commission
Appointee

Date: February 21, 2020

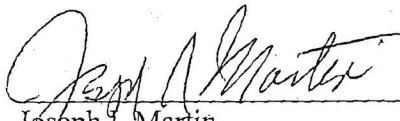
Conclusion

The decision of the DALA magistrate is reversed. Lukasik is not entitled to purchase creditable service under G.L. c. 32, § 4(1)(p) for her four years of work as an adjustment counselor at the Valley West School.

CONTRIBUTORY RETIREMENT APPEAL BOARD

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