

COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS

Karen Foley Roman,
Petitioner

v. Docket No. CR-23-0120

State Board of Retirement,
Respondent

Appearance for Petitioner:

Gerald A. McDonough, Esq.

Appearance for Respondent:

Alison K. Eggers, Esq.

Administrative Magistrate:

Kenneth Bresler

SUMMARY OF DECISION

Petitioner was properly denied Group 2 classification because she did not prove by a preponderance of the evidence that she spent more than 50 percent of her time caring for members of a relevant population.

DECISION

The petitioner, Karen Foley Roman, appeals the denial by the State Board of Retirement (SBR) of her application for Group 2 classification.

I held a hearing on March 12, 2025 by Webex, which I recorded. Ms. Foley Roman testified and called as witnesses Paula Burnell and Carie Miele, who had worked with Ms. Foley Roman. There were no other witnesses. I admitted nine exhibits.

Both parties submitted post-hearing briefs in July 2025.

Findings of Fact

Ms. Foley Roman's work as a development therapist in an early intervention program

1. From February 16, 1999 to June 24, 2011, Ms. Foley Roman worked as a developmental specialist/therapist in the Department of Behavioral and Developmental Pediatrics of the University of Massachusetts Medical School. (Ex. 7, p. 2; Tr. 8)

2. Ms. Foley Roman worked in one of the Commonwealth's early intervention programs, which are run by the Department of Public Health (not the Department of Developmental Disabilities (DDS)). (Tr. 12, 15)

3. A developmental therapist works with children younger than three years on five areas: motor development, communication, cognition, social and emotional skills, and adaptive development (such as a child's being able to feed and get dressed). (Tr. 9, 62)

4. In Ms. Foley Roman's opinion, a developmental disability in a child is a delay in one of those five areas of development. (Tr. 13)

5. Ms. Foley Roman could not state which percentage of the children she worked with fell into which of the five areas of development. (Tr. 24) She testified:

I'm not going to be able to tell you the percentage of what children...like, I wouldn't be able to tell you 20 percent were in for motor development. I can tell you a lot of children were in for cognitive delay. A lot of children were in for communication delay. A lot of children were in for social and emotional delay. And then a good number for a delay in their motor developments and then adaptive behavior, but I would say cognition and communication were biggies followed by motor development.

(Tr. 33-34) "Cognition was probably the majority." (Tr. 34). She also testified, "I cannot put an exact number on these kind of things." (Tr. 65-66)

6. A child was and is eligible for early intervention in one of four ways (Ex. 8, p. 11):

A. The child has certain conditions. (Tr. 17) The conditions are extensive and include sensory conditions (such as blindness and hearing loss), cancers, cardiac conditions, central nervous system disorders (such as cerebral palsy and spinal cord injury), chromosomal disorders (such as Down syndrome), metabolic disorders, and other disorders, including AIDS, cystic fibrosis, fetal alcohol syndrome, and liver disease. (Ex. 8, App. A)

B. The child is delayed in one of the five areas by 30 percent or a 0.5 standard deviation below the mean. (Tr. 17; Ex. 8, p. 12)

C. The child had four or more of 20 risk factors for developmental delay. Some of the risk factors are medical, some, environmental. Risk factors include a child's low birth weight, short gestation, severe colic, insecure attachment, infection, homelessness, and a mother's age that is younger than 17 years. (Tr. 17; Ex. 8, p. 12)

D. An interdisciplinary early intervention team could invoke its clinical judgment that a child needed or would need early intervention. If a child received early intervention under clinical judgment, the child received early intervention for six months and was retested at the end of that period. (Tr. 17-18; Ex. 8, p. 16)

7. Children receiving early intervention are not intellectually disabled *per se*. (Tr. 57)

8. When asked what percentage of the children that she worked with had intellectual disabilities, she testified, "It's hard to say....I don't know. I would say more than half. I don't feel like I could give a good solid number. I'm going to say more than half." (Tr. 57-58)¹

¹ Her testimony was not certain or authoritative enough for me to find as fact that more than half of the children that Ms. Foley Roman worked with had intellectual disabilities. In addition,

9. When asked to confirm her previous statement, Ms. Foley Roman testified, “I’m not sure if I said that. Maybe more than half of them had developmental delays” (Tr. 67) – which are not the same as development disabilities or intellectual disabilities.

Various documents related to Ms. Foley Roman’s position

10. The general summary of her position in 1990 was to “provide[] developmental assessment, developmental programming and case management to special needs children (birth – three) and their families....” (Ex. 4)²

11. The position had three major responsibilities: One, to provide “developmental programming and treatment...including: direct, ‘hands-on’ treatment, planning programs.... carrying out total developmental programs, co-leading...groups for children, siblings and parents.” Two, to provide “case management/family support services including...helping families identify other service needs and obtaining them” and “counselling...immediate and extended families.” Three, to share “expertise...with other team members....” (Ex. 4)³

12. Ms. Foley Roman’s performance measurements included whether she referred children and families to services within the required time; planned appropriate activities for group and individual sessions; enhanced parents’ and caregivers’ understanding of a child’s

her definition of intellectual disability (Tr. 13) is much broader than what the term means in Chapter 32. Furthermore, see the next factual finding.

² That is, Ms. Foley Roman did not provide those things only to children; she also provided those things to children’s *families*. This becomes significant in the Discussion section of this opinion.

³ It sounds as if co-leading groups, which is included in the first major responsibility, did not entirely involve direct care to children receiving early intervention. The second major responsibility, counseling family members, did not entail direct care to children receiving early intervention.

group experience; administered comprehensive assessments; and developed appropriate goals and strategies for the Individualized Family Service Plan (IFSP). (Ex. 9)

13. Ms. Foley Roman's 2020 performance evaluation praised Ms. Foley Roman for frequently coming in on her day off to "complete[] paperwork (IFSP, billing, transitions, and progress notes), return[] phone calls, and [conduct] online research...." (Ex. 9)

14. In an undated written statement, Ms. Foley Roman described her daily responsibilities. She wrote: "My job was to collaborate with the family to provide intervention strategies and accommodations...." The children she worked with included premature infants, children in foster care, children involved with the Department of Children and Families (DCF), infants who had been exposed to drugs, and children with autism, Down syndrome, seizure disorders, cerebral palsy, hearing and visual impairments, speech delay, gross motor delays, and global developmental delays. (Ex. 6)

A hypothetical day for Ms. Foley Roman

15. Ms. Foley Roman described a hypothetical workday in her application for Group 2 classification, as follows.

8:00 a.m.: Arrived at the home of a 10-month-old child with cerebral palsy and worked with the child on head control.⁴ She later discussed the visit with a neurologist.

9:30 a.m.: Arrived at the home of a 25-month-old with autism. Helped parents set up communication system with their child.⁵

⁴ This hypothetical child did not have an intellectual disability.

⁵ When asked if autism is an intellectual disability, Ms. Foley Roman testified, "I don't like stamping somebody with the word 'intellectual disability.'" She also testified, "[A]ny child who

11:00 a.m.: Arrived at the home of an 18-month-old with visual cortical impairment.⁶

Discussed some concerning behaviors with parents.

12:30 to 2:00 p.m.: Staff meeting. (This was the once-a-week meeting. (Tr. 23))

2:30 p.m.: Arrived at premature infant's home, assessed the infant, discussed strengths and concerns with family, developed Individualized Family Service Plan.⁷

4:30 p.m.: Arrived at home of 30-month-old with global developmental delays.⁸

Discussed the family's major goal: walking. Discussed with parents transition in six months to public school when Early Intervention ends.

Breakdown of Ms. Foley Roman's work week by hours

16. Ms. Foley Roman's work week was 40 hours. (Tr. 20)

17. Ms. Foley Roman spent six hours per week determining eligibility of children for early intervention (Tr. 20); an estimated one hour per week finding services for children and families (Tr. 38); three hours on paperwork (Tr. 40); one-and-a-half hours in a staff meeting. (Tr. 22-23); and one hour supervising other personnel. (Tr. 41)

18. Between appointments, in which she provided direct care, Ms. Foley Roman could drive between 15 to 45 minutes. (Tr. 46)

19. Ms. Foley Roman spent about 25 hours per week visiting children and their parents or caregivers. The 25 hours did not include travel. (Tr. 24, 25, 27 ("direct care with family and

has autism could be nonverbal long term or they could be brilliant and have a great job and get married and have a family." (Tr. 47)

⁶ This hypothetical child did not have an intellectual disability. (Tr. 48)

⁷ This hypothetical child did not have an intellectual disability *per se*.

⁸ This hypothetical child had an intellectual disability. (Tr. 51)

children"') During each visit, Ms. Foley Roman spent about 10 minutes with only the parent, parents, or caregiver, rather than the child. (Tr. 64-65)

Miscellaneous

20. Ms. Foley Roman was required to have spent at least 55 percent of time face-to-face with children or their parents or caregivers. (Burnell testimony: Tr. 75, 76, 78, 85; Ex. 9)

21. When asked how many children had what used to be called mental retardation, she testified, "I don't feel like I can answer that." She added, "I often said I wish I could see this child in five years because sometimes so much happens that it's just hard to predict." (Tr. 32)

When asked to clarify, she testified,

[A]re they going to hit a wall or are they going to continue to make these changes...? It's just that there's a lot of unknown.....I think we could make more predictions working with children until the age of five. The age of three, it just feels like it's such a small window to make a prediction....

(Tr. 32-33)

22. Ms. Foley Roman testified about the term intellectual disability, "[W]e just didn't really use that language for this population." (Tr. 31)

Procedure

23. On December 10, 2022, Ms. Foley Roman applied for Group 2 classification. She submitted one application and did not seek pro-rated service. (Ex. 7, p. 2)

24. She sought Group 2 classification for her work as a developmental specialist/therapist from February 16, 1999 to June 24, 2011. (Ex. 7, p. 2)

25. On January 26, 2023, SBR denied Ms. Foley Roman's application for Group 2 classification for the position of developmental therapist; on January 27, 2023, it informed her of its decision. (Ex. 1)

26. On February 5, 2023, Ms. Foley Roman timely appealed. (Ex. 2)

Discussion

For retirement purposes, Commonwealth employees fall into four groups. Group 1 is the general group. G.L. c. 32, § 3(2)(g). Group 2 is the group for various employees, including those “whose regular and major duties require them to have the care, custody, instruction or other supervision of...persons who are mentally ill or mentally defective.” G.L. c. 32, § 3(2)(g).

“Mentally defective” is the outdated term that formerly described people with developmental disabilities. *Anne Koch v. State Board Of Retirement*, CR-09-449 *2 (Contrib. Ret. App. Bd. 2014). In Chapter 32, “developmental disability” refers to the condition that was formerly called ‘mental retardation.’” *Id.* n.2. *See also Peter Forbes v. State Board of Retirement*, CR-13-146, (Contrib. Ret. App. Bd. Jan. 8, 2020) (“The term ‘mentally defective’ has been interpreted to encompass persons with mental retardation or developmental delays, receiving services from the Department of Developmental Services, formerly the Department of Mental Retardation”); *Marilyn Blake-Pease v. State Board of Retirement*, CR-01-575 (Div. Admin. L. App. March 10, 2004) (“The term ‘mental deficiency’ is most frequently defined as mild mental retardation (IQ=55-70) and includes impairment greater than this criterion”); *Deborah Herst Hill v. State Board of Retirement*, CR-07-605 (Div. Admin. L. App. June 12, 2009) (the term “mentally defective” referred to the condition that was later called “mental retardation” and still later, “developmental disability” and “intellectual disability”). (The previous parenthetical discussion was neither directly from the Findings of Fact nor from the legal discussion. Rather, it was from the petitioner’s Form 30 Detailed Statement of Duties and Responsibilities. The petitioner was an employee of what was called the Department of Mental Retardation (DMR) and is now DDS.

The former DMR's discussion of these terms was authoritative.)

The fact that what is now DDS, which used to be called DMR, has responsibility for people who used to be called mentally retarded does not necessarily mean that anyone who falls within DDS's jurisdiction and/or has what DDS defines as a developmentally disability, is what the Legislature meant by "mentally defective." Nor does it mean that every employee who provides care to people within DDS's jurisdiction is eligible for Group 2 classification.

The decisions of the Division of Administrative Law Appeals (DALA) and the Contributory Retirement Appeal Board (CRAB) generally refer to "developmental disabilities," not "intellectual disabilities." Several decisions do refer to "intellectual disabilities," including one that I wrote, which assumed that intellectual disabilities are part of developmental disabilities. *Clarence West v. State Board of Retirement*, CR-22-0591, CR-23-0197 (Div. Admin. L. App. Aug. 29, 2025). DMR, quoted in *Deborah Herst Hill*, posited that "developmental disability" and "intellectual disability" are the same.

I did ask the parties to brief the distinction, if any, between developmental disabilities and intellectual disabilities. However, I need not decide the distinction, if any.

A petitioner's "regular and major job duties" are those that they spend more than half of their working time performing. *E.g., Myriam Adrien-Carius v. State Board of Retirement*, CR-22-0063 (Div. Admin. L. App. Oct. 17, 2025).

Ms. Foley Roman's application for Group 2 classification fails for two reasons: She did not prove by a preponderance of the evidence that she cared for (1) the relevant population (2) for more than 50 percent of the time.

Ms. Foley Roman did not prove by a preponderance of the evidence that she spent

more than half of her time working with children who had developmental disabilities, as that term is understood by DALA and CRAB, not the broader DDS definitions. 115 CMR 2.01 (defining “developmental disability” and “intellectual disability”).

Ms. Foley Roman worked with premature infants, children in foster care, children involved with DCF, infants who had been exposed to drugs, and children with autism, seizure disorders, cerebral palsy, hearing and visual impairments, speech delay, and gross motor delays. (Ex. 6) These were not necessarily children with developmental disabilities under Chapter 32. Children receiving early intervention are not intellectually disabled *per se*. (Tr. 57)

When asked how many children had what used to be called mental retardation, Ms. Foley Roman could not answer. (Tr. 32) When asked about the term intellectual disability, Ms. Foley Roman testified that the term didn’t really apply to the children she cared for. (Tr. 31) That was a concession that the population that Ms. Foley Roman worked with was not intellectually disabled.

She also testified, “I cannot put an exact number on these kind of things.” (Tr. 65-66) Yet Ms. Foley Roman had to prove every element that would entitle her to a benefit under Chapter 32, *Deborah Herst Hil*, CR-07-605, and she did not do so.

Ms. Foley Roman worked with children so young (three years and under) that it was not even clear that they were going to be developmentally disabled when they grew older. (Tr. 32-33)

One of Ms. Foley Roman’s colleagues did testify, “I would say that close to 100 percent of Karen’s caseload had intellectual disabilities.” (Tr. 102) The rest of the evidence, including Ms. Foley Roman’s own testimony, does not come close to supporting this assertion.

Furthermore, Ms. Foley Roman proved by a preponderance of the evidence that she spent more than half of her time face-to-face with children, families, and caretakers, that is 55 percent. (Tr. 75, 76, 78, 85; Ex. 9) However, some of her face-to-face time was with parents, caretakers, and possibly siblings outside the presence of the children. (Tr. 27, 64-65; Ex. 4; see footnote 3 of this decision) The parents, caretakers, and siblings did not have developmental disabilities. Ms. Foley Roman did not prove by a preponderance of the evidence that once her face-to-face time with parents, caretakers, and possibly siblings, outside the presence of the children who needed early intervention, was removed from the 55 percent, the percentage remained above 50.

Conclusion and Order

The petitioner did not prove by a preponderance of the evidence that she cared for developmentally disabled people for more than half of her time. SBR's denial of her application for Group 2 classification is affirmed.

Dated: January 2, 2026

/s/

Kenneth Bresler
Administrative Magistrate
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