THE COMMONWEALTH OF MASSACHUSETTS

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

Beth Romano,

 **Petitioner**

v. Docket No. CR-15-260

 DATED: July 7, 2017

Massachusetts Teachers’

Retirement System,

 **Respondent**

**Appearance for Petitioner:**

Ryan P. Dunn, Esquire

Massachusetts Teachers’ Association

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Quincy, MA 02171

**Appearance for Respondent:**

Salvatore Coco, Esquire

Massachusetts Teachers’ Retirement System

500 Rutherford Avenue, Suite 210

Charlestown, MA 02129-1628

**Administrative Magistrate:**

Judithann Burke

 **Case Summary**

The Petitioner, who applied to purchase her pre-membership non-public school service as a Family Therapist at the Lighthouse School, Inc. from October 1990 through August 1992, has failed to prove that she was “engaged in teaching pupils” in that role as is required by G.L. c. 32 § 4(1)(p). As such, she is not entitled to purchase the service.

 **DECISION**

The Petitioner, Beth Romano, is appealing from the May 28, 2015 decision of the Respondent, Massachusetts Teachers’ Retirement System (MTRS), denying her request to purchase pre-membership serviced rendered as a Family Therapist at the Lighthouse School from October 1990 through August 1992. (Exhibit 1.) Her timely appeal was received on June 11, 2015. The appeal letter was post marked on June 8, 2015. (Exhibit 2.) I held a hearing on November 29, 2016 at the offices of the Worcester Registry of Deeds, 90 Front Street, Worcester, MA. I marked Exhibits 1-5. The Petitioner testified in her own behalf. The MTRB presented no witnesses. The hearing was digitally recorded. The parties submitted pre-hearing and post-hearing memoranda of law. (MTRS-Attachment A & D; Petitioner-Attachments B & C.) The last of the submissions was received on February 6, 2017, thereby closing the record.

 **FINDINGS OF FACT**

 Based upon the testimony and documents submitted at the hearing in the above-entitled matter, I hereby render the following findings of fact:

1. The Petitioner, Beth Romano, has been an active member of the Massachusetts Teachers’ Retirement System since 1993. She currently works in the North Middlesex Regional School District. (Petitioner Testimony.)
2. In March 2013, the Petitioner applied to purchase approximately one (1) year and eleven (11) months of creditable service pursuant to G.L. c. 32, § 4(1)(p) for her work at the Lighthouse School, Inc. as a Family Therapist from October 1990 through August 1992. (Exhibit 3.)
3. In her application, the Petitioner indicated that, as a Family Therapist, she “was responsible for individual and small group therapy sessions with students in school, as well as appointments in their homes for family therapy.” (*Id.*)
4. In Part 2, Section 2 of the application, the Petitioner’s superior at the Lighthouse School indicated that, as a Family Therapist, the Petitioner’s duties were to provide “therapeutic services to students and their families.” (*Id.*)
5. The Lighthouse School, Inc. is a private, non-profit school for students with severe disabilities that prevent them from being able to learn adequately in a conventional school setting or participate in the regular academic programs in their public school districts. (Petitioner Testimony.)
6. The Lighthouse School is a Chapter 766-approved private school in Massachusetts, meaning that it is eligible to receive public funds to educate disabled and other special needs students pursuant to Individualized Education Plans (IEPs.) (*Id.*)
7. Tuition for students at a Chapter 766-approved school may be paid by local school districts from which students are sent or by other state sources. (*Id.*)
8. While the Petitioner worked at the Lighthouse School, she served only publicly-funded students from Massachusetts and New Hampshire. (*Id.*)
9. In her role as a Family Therapist, the Petitioner served a caseload of as many as twenty-eight (28) students between the ages of three (3) and twenty-two (22) in individual and group settings during the regular school day. She also delivered social and emotional therapy pursuant to students’ IEPs, and assessed those students’ progress toward benchmark goals. The underlying conditions for which the Petitioner provided therapy services were the same social and emotional conditions that prevented those students from being able to participate in their home school districts’ regular education programs. (*Id.*)
10. All services the Petitioner delivered to students were pursuant to their legally required IEPs and for the purpose of enabling those students to participate in the academic program of Lighthouse School. Social and emotional therapy and social norm training were a central part of the social curriculum of the Lighthouse School, and the services she delivered were integral to the social curriculum. (*Id.*)
11. On May 28, 2015, the MTRS denied the Petitioner’s application to purchase her service at the Lighthouse School on the grounds that she was not “engaged in teaching pupils” within the meaning of G.L. c. 32, § 4(1)(p.) (Exhibit 1.)
12. The Petitioner’s timely appeal was received on June 11, 2015. (Exhibit 2.)

**CONCLUSION**

 The Petitioner is not entitled to prevail in this appeal. G.L. c. 32, § 4(1)(p) permits the purchase of up to ten (10) years of creditable service for “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.” (Emphasis added.)

 While school administrators, school adjustment counselors, or guidance counselors are entitled to MTRS membership, the § 4(1)(p) requirements for the purchase of non-public service are more stringent. DALA and CRAB have interpreted the “engaged in teaching pupils” criteria in § 4(1)(p) as pertaining to whether an essential job duty was to directly teach the students academic subjects or vocational skills. *See Kraskouskas v. Massachusetts Teachers’ Retirement System*, CR-09-288 (Division of Administrative Law Appeals 9/26/14; no Contributory Retirement Appeal Board Decision.) The Petitioner in *Kraskouskas, supra,* was a Director of Social Services who performed one-on-one and group therapy and provided oversight to staff, and, was not found to be “engaged in teaching pupils.”

 Phrased another way, DALA and CRAB have focused on the issue of whether the “primary goal” of the position was “fundamentally education or some other purpose. *See Murray v. Massachusetts Teachers’ Retirement System*, CR-08-646 (Division of Administrative Law Appeals 5/17/13; Contributory Retirement Appeal Board 6/26/14.) *Murray, supra* involved a specialist whose primary goal was career development and not education involving traditional school subjects.

 Retirement case law has consistently stood for the proposition that providing therapeutic services to students through individual and group therapy and family therapy, identical to the functions that the Petitioner in this case performed as part of the Lighthouse School’s social curriculum, falls short of satisfying the narrow interpretation of “engaged in teaching pupils.” *See Skeffington v. Massachusetts Teachers’ Retirement System*, CR-05-950 (Division of Administrative Law Appeals 8/17/07; no Contributory Retirement Appeal Board Decision) (a Clinical Coordinator/Assistant Director of Clinical Services who provided clinical services, including individual and group therapy, was determined not to be “engaged in teaching pupils) and *Einsel v. Massachusetts Teachers’ Retirement System,* CR-15-167 *(*Division of Administrative Law Appeals 9/18/15; no Contributory Retirement Appeal Board Decision.) (Assistant Principal/School Psychologist who provided direct services to students through individual and group counseling regarding educational issues was not “engaged in teaching pupils.”)

 Ergo, while the Petitioner played a very valuable role in providing therapeutic services to Lighthouse students and their families, she had no role in directly teaching any academic or vocational curriculum. As such, she has not established that her Lighthouse service meets the requirements of G.L. c. 32, § 4(1)(p).

 Accordingly the decision of the MTRS denying the Petitioner’s request to purchase her non-public Lighthouse School service is affirmed.

So ordered.

BY:

Division of Administrative Law Appeals,

Judithann Burke

Administrative Magistrate

DATED: July 7, 2017