COMMONWEALTH OF MASSACHUSETTS

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

**Stephen Rose,**

Petitioner

v. Docket No.: ­­­CR-16-43

 Date issued: Jul. 21, 2017

**Massachusetts Teachers’**

**Retirement System**

Respondent

**Appearance for Petitioner:**

*Pro se*

90 Bowers Ave.

 Malden, MA 02148

**Appearance for Respondent:**

 James C. O’Leary, Esq.

 MTRS

500 Rutherford Ave #210

Charlestown, MA 02129

**Administrative Magistrate:**

 **Kenneth J. Forton, Esq.**

**SUMMARY OF DECISION**

 The Massachusetts Teachers’ Retirement System determined that Petitioner was ineligible to purchase creditable service for his employment at Compass, Inc., the Walker Home, and the Italian Home for Children because he was not “engaged in teaching pupils,” as required under G.L. c. 32, § 4(1)(p). Rather, he was responsible for behavior management and program oversight. MTRS’s decision is therefore affirmed.

**DECISION**

The Petitioner, Stephen Rose, appealed under G.L. c. 32, § 16(4) the January 12, 2016 decision of the Respondent, Massachusetts Teachers’ Retirement System, which determined that he was ineligible to purchase creditable service for his pre-membership employment as a Caseworker or Head Caseworker at Compass, Inc., as a Child Care Intern and Child Care Worker at the Walker Home School, and as a Child Care Worker at the Italian Home for Children.

 On March 6, 2016, the Petitioner waived his right to a hearing and elected to proceed on written submissions under 801 CMR 1.01(10)(c). DALA issued a scheduling order on March 21, 2016. On April 20, 2016, the Petitioner submitted his argument and supporting documents. MTRS filed its argument and supporting documents on June 1, 2016.

 I have marked the following exhibits.

 Ex. 1 MTRS Letter from Jennifer Percoco, dated January 2, 2016, denying Petitioner’s request to purchase creditable service;

 Ex. 2 Petitioner’s letter of appeal, dated January 26, 2016;

 Ex. 3 Petitioner’s creditable service application for Compass, Inc. for 1984-1986;

 Ex. 4 Petitioner’s creditable service application for Walker Home School for 1982 to 1983 and 1987;

 Ex. 5 Petitioner’s creditable service application for Italian Home for Children for 1986-1987;

 Ex. 6 Petitioner’s certificate of completion from the CASPAR Alcohol and Education Program, dated July 12, 1985.

 Ex. 7 Petitioner’s letter to MTRS, dated December 21, 2015, providing further details pertaining to Petitioner’s job descriptions at the request of MTRS;

 Ex. 8 Compass’s job descriptions for the Caseworker and Head Caseworker positions;

Ex. 9 Walker Home School’s job descriptions for the Child Care Intern position;

 Ex. 10 Walker Home School’s job posting for the Child Care Intern position; and

 Ex. 11 Italian Home for Children’s webpage describing programs and services accessed on May 27, 2016.

**FINDINGS OF FACT**

 Based on the documents submitted by the parties, I make the following findings of fact:

1. As of January 1, 2013, Stephen M. Rose was employed by Wellesley Public Schools and was a member of MTRS. (Exs. 1, 3, 4, 5.)
2. Mr. Rose worked for Compass, Inc. from October 1, 1984 through July 25, 1986. (Exs. 1, 3, 7.)
3. Mr. Rose was employed as a Caseworker at Compass from October 1, 1984 through June 30, 1985 and as the Head Caseworker from August 26, 1985 and July 25, 1986. (Exs. 1, 7.)
4. At Compass, Mr. Rose’s duties included “manag[ing] a caseload of adolescents referred through Boston Juvenile Court” as well as providing “Individual and Group Counseling, Home Visits, Behavior Management plans, Classroom Assistance and Tutoring, and Recreational Activities.” (Ex. 7.)
5. Compass was a Chapter 766 non-public school while Mr. Rose worked there. (Exs. 3, 7.)
6. Mr. Rose worked for the Walker Home School from July 1, 1982 through June 30, 1887. (Exs. 1, 4, 7.)
7. Mr. Rose was employed as a Child Care Intern from July 1, 1982 through January 15, 1983 and as a Child Care Worker from July 1, 1983 through August 15, 1983 and then again from May 26, 1987 through June 25, 1987. (Exs. 4, 7.)
8. At the Walker Home School, Mr. Rose’s duties included providing “Group Activities and Behavioral Management support within a therapeutic milieu for emotionally and behaviorally disordered boys.” (Ex. 7.)
9. The Walker Home School was a Chapter 766 non-public school while Mr. Rose worked there. (Ex. 4.)
10. Mr. Rose worked for the Italian Home for Children from July 1, 1986 through January 31, 1987 as a Child Care Worker. (Exs. 1, 5, 7.)
11. While employed as a Child Care Worker at the Italian Home for Children, Mr. Rose’s responsibilities were largely the same as they were at the Walker Home School. (Ex. 7.)
12. The Italian Home for Children was a Chapter 766 non-public school while Mr. Rose worked there. (Ex. 5.)
13. In January 2013, Mr. Rose applied to purchase his Compass and Walker Home School service. (Exs. 3, 4.) In February 2013, he applied to purchase his Italian Home service. (Ex. 5.)
14. By letter dated January 12, 2016, MTRS denied Mr. Rose’s applications because it concluded that he was not “engaged in teaching pupils” in these jobs. (Ex. 1.)
15. By letter dated January 26, 2016, which was received on January 29, 2016, Mr. Rose appealed the decision to DALA. (Ex. 2.)

**CONCLUSION AND ORDER**

 After careful consideration of the evidence presented by both parties, MTRS’s denial of Mr. Rose’s creditable service applications is affirmed. He is ineligible because he was not “engaged in teaching pupils” in those jobs, as required under G.L. c. 32, § (4)(1)(p).

When a member retires from public service, he is entitled to a superannuation retirement allowance that is based on age, years of creditable service, the highest thirty-six consecutive months of regular compensation, and group classification. G.L. c. 32, § 5(2)(a). The issue in this case has to do with creditable service, which G.L. c. 32, § 1 defines as “all membership service, prior service and *other service* for which credit is allowable to any member under the provisions of sections one to twenty-eight inclusive.” (Emphasis added).

One form of “other service” that can qualify as creditable service is teaching in a Massachusetts non-public school that serves students with special needs. Eligibility to purchase creditable service for employment at a non-public school is determined by G.L. c. 32, § 4(1)(p), which states, in relevant part:

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.)

As a Caseworker and Head Caseworker at Compass, Mr. Rose’s responsibilities included teaching recreational activities, counseling, conducting home visits, tutoring, and developing and creating behavioral management plans. At the Walker Home School where Mr. Rose was both a Child Care Intern and a Child Care Worker, Mr. Rose’s responsibilities included organizing group activities and supporting students with their behavioral management disorders. Although Mr. Rose includes no job description of his responsibilities at the Italian School for Children, he claims that he did largely the same duties there as he did at the Walker Home School. Undoubtedly, Mr. Rose’s work contributed to the overall education of the children at the schools where he worked. But, these duties do not meet the requirement of having been “engaged in teaching pupils.” *See* G.L. c. 32, § 4(1)(p).

Recent decisions confirm that Mr. Rose’s duties at these schools fall outside of the historically narrow interpretation of “engaged in teaching pupils.” In *Kraskouskas v. Mass. Teachers’ Retirement System*, CR-09-288 (DALA 2014), the Petitioner, a Director of Social Services at a Chapter 766 school, was not eligible to purchase her service. Many of Ms. Kraskouskas’s duties were similar to Mr. Rose’s duties: counseling, conducting home visits, developing behavior management techniques, and coordinating treatment planning. *Id.* at \*2. As is the case with Mr. Rose, Ms. Kraskouskas “never had an essential job duty to directly teach the students any academic subjects or any vocational skills, and did not create any academic or vocational learning curricula.” *Id.* at \*7. Accordingly Mr. Rose’s employment at the three schools does not qualify for purchase under G.L. c. 32, § 4(1)(p) because he was not “engaged in teaching pupils.”

Additionally, *Shields v. Mass. Teachers’ Retirement System*, CR-05-1098 (DALA 2011) confirms that any of Mr. Rose’s arguably administrative duties at the schools similarly fall outside the requirements for creditable service under G.L. c. 32, § 4(1)(p). Ms. Shields’s duties as Educational Coordinator were administrative, and therefore did not qualify as “teaching pupils.” *Id.* at \*9. In that decision, the magistrate wrote, “§ 4(1)(p) does not allow the purchase of service based on work as an administrator or in any position with primarily administrative duties.” *Id.* Mr. Rose’s duties of developing and creating behavior management plans are administrative and consequently do not qualify as “teaching pupils.”

For the reasons cited above, MTRS’s denial of Mr. Rose’s application to purchase creditable service is AFFIRMED.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS

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Kenneth J. Forton, Esq.

Administrative Magistrate

DATED: Jul. 21, 2017