

COMMONWEALTH OF MASSACHUSETTS

Middlesex, s.s.

Division of Administrative Law Appeals
14 Summer Street, 4th Floor
Malden, MA 02148
www.mass.gov/dala

Sara Scibelli,
Petitioner

v.

Docket No. CR-23-0335

Massachusetts Teachers' Retirement System,
Respondent

Date: February 28, 2025

ORDER OF DISMISSAL

The Massachusetts Teachers' Retirement System ("MTRS") denied Sara Scibelli's application to purchase creditable service for the time she spent working as a paraprofessional at the SABIS International Charter School ("SICS") from August 16, 2000 to August 15, 2002. Ms. Scibelli evidently applied under G.L. c. 32, § 3(5), which allows purchase of creditable service for certain service in a Massachusetts "governmental unit." The MTRS explained its position in a letter to her that stated, in part, "[w]e must deny your request to purchase creditable service because a charter school is not a 'governmental unit' within the meaning of G.L. c. 32..."

Ms. Scibelli appealed the MTRS's decision to the Division of Administrative Law Appeals ("DALA"). While the appeal was pending, DALA issued an Order to Show Cause why her appeal should not be dismissed for failure to state a claim on which relief could be granted. Ms. Scibelli responded on her own behalf.

The focus of Ms. Scibelli's argument is that because the SICS was a public school, she should be entitled to purchase this time as creditable service. In addition, she

argues that a charter school “acts as a governmental unit.” Subsequently, counsel at the Massachusetts Teachers' Association (“MTA”) notified DALA that the MTA would represent Ms. Scibelli. Ultimately, however, in January 2025, counsel declined to submit any additional evidence or argument on her behalf.

DISCUSSION

As explained below, Ms. Scibelli has failed to state a claim on which relief may be granted. First, taking the statements in Ms. Scibelli's appeal letter and her response to the Order to Show Cause as true, she worked as a paraprofessional at SICS. As a matter of law, a paraprofessional working in a charter school is not eligible for MTRS membership and is not eligible to purchase creditable service under G.L. c. 32, § 3(5). Second, again taking Ms. Scibelli's well-pled allegations as true, she has not shown that SICS was a “governmental unit” as would be required to purchase creditable service under G.L. c. 32, § 3(5).

A. Applicable Legal Standard

An appeal is properly dismissed if it “fail[s] . . . to state a claim upon which relief can be granted.” 801 CMR 1.01(7)(g)(3). In the posture of a motion to dismiss, “the matters pleaded [by the petitioner] . . . [are] taken as true.” *White v. Somerville Retirement Board*, CR-17-863, at *4 (Div. Admin. Law Appeals 2018). This principle is borrowed from the judicial courts. *Mattei v. State Board of Retirement*, CR-23-0428 at *1 (Div. Admin. Law Appeals 2024). In that context, the courts have clarified that they “look beyond the conclusory allegations in the complaint and focus on whether the factual allegations plausibly suggest an entitlement to relief.” *Curtis v. Herb Chambers I-95, Inc.*, 458 Mass. 674, 676 (2011). See *Gill v. Armstrong*, 102 Mass. App. Ct. 733,

735 (2023). With those parameters in mind, and for the reasons discussed below, I conclude that as a matter of law Ms. Scibelli is not entitled to the relief that she seeks, and her appeal is therefore dismissed.

B. Ms. Scibelli was a Paraprofessional at SICS

There is no dispute that charter schools are public schools. G.L. c. 71, §89(c) (“A commonwealth charter school shall be a public school, operated under a charter granted by the board, which operates independently of a school committee and is managed by a board of trustees...”). Notwithstanding that broad declaration, the rights and benefits that charter school employees have under G.L. c. 32 are more limited. Otherwise qualifying charter school teachers are members of the MTRS by statute. Pursuant to G.L. c. 71, § 89(y),

Teachers employed by a charter school shall be subject to the state teachers’ retirement system under chapter 32 and service in a charter school shall be creditable within the meaning thereof.

Additionally, in certain circumstances, public employees who qualify may purchase prior non-membership service as creditable service. General Laws c. 32, § 3(5), provides, in pertinent part,

(5) Credit for Members for Intra–State Service in Governmental Units Where No System Existed. — Any member of any system who had rendered service as an employee of any governmental unit other than that by which he is presently employed, for any previous period during which the first governmental unit had no contributory retirement system or during which he had inchoate rights to a non-contributory pension or in a position which was not subject to an existing retirement system, or which was specifically excluded therefrom but which would be covered under the law now in effect...may, before the date any retirement allowance becomes effective for him, pay into the annuity savings fund of the system in one sum, or in instalments, upon such terms as the board may prescribe, an amount equal to that which would have been withheld as regular deductions from his regular compensation for such previous period, or most recent portion thereof, as he may elect, in no event aggregating more than twenty years, had such service been rendered in the governmental unit by which

he is presently employed and in a position subject to the provisions of this chapter, or to corresponding provisions of earlier laws.

For charter school employees, the second phrase of G.L. c. 71, §89(y) – “and service in a charter school shall be creditable service” – has been interpreted as only applying to teachers:

a clarification of what is meant by ‘subject to the state teachers retirement system,’ to emphasize that such teachers may both join and receive creditable service for their work in a charter school. We do not infer from the inclusion of that phrase an intent to permit purchase of creditable service outside of the requirements of § 3(5)...thus, only teachers who are employed by the charter school's trustees are eligible to join the MTRS or to purchase prior creditable service for charter school teaching under G.L. c. 71, §89(y).

Whipple v. Massachusetts Teachers' Retirement System, CR-07-1136, at *15

(Contributory Ret. App. Bd. Dec. 19, 2014) (Decision on Reconsideration).

The *Whipple* case clarifies that only teachers who are employed in charter schools which are governmental units (a point further discussed below) are eligible for MTRS membership and are eligible to purchase creditable service under G.L. c. 32, § 3(5). Subsequent case law has further reinforced that non-teacher employees of charter schools are not eligible for membership in a contributory retirement system governed by G.L. c. 32. *Flanagan v. Massachusetts Teachers' Retirement System*, CR-15-650 (Div. Admin. Law Appeals 2017) (“Section 89(y) provides that teachers, and only teachers, will be members of a contributory retirement system and earn creditable service.”); *Mystic Valley Regional Charter School (Robert Kravitz) v. State Board of Retirement*, CR-20-0243, 2023 WL 11806164, slip op. at *2 (Contributory Ret. App. Bd. Sept. 8, 2023 (noting that the applicable law extends retirement system membership only to charter school teachers and stating, “[w]e do not believe there was any intention on the part of the Legislature to allow the vast array of individuals, in this case non-

teaching employees of [the charter school], to be eligible for membership in a retirement system without specifying it.”)

According to both her appeal letter and her response to the Order to Show Cause, Ms. Scibelli was a paraprofessional, not a teacher, at SICS. As a paraprofessional working in a charter school, she was not eligible for MTRS membership when she worked there and she is not now eligible to purchase creditable service under G.L. c. 32, § 3(5).

C. The SICS Was Not a Governmental Unit

Ms. Scibelli’s appeal must be dismissed for a second reason. The MTRS argues that Ms. Scibelli cannot purchase her employment at SICS as creditable service because a charter school is not a “governmental unit” as G.L. c. 32, § 3(5) requires. In response, Ms. Scibelli asserts that “a charter school acts as a governmental unit.”

Teachers who are hired and whose employment is managed by a private management company operating a charter school are ineligible to become MTRS members. *Whipple, supra at *10*. Likewise, they may not purchase creditable service because they are not employees of a “governmental unit” as G.L. c. 32, § 3(5) requires. *Id.* at *10-11. (“While under Massachusetts law, even a privately managed charter school is considered a public school, and its trustees are considered a state agency, a teacher who is hired and controlled exclusively by a private company cannot be deemed an employee of a state or governmental entity.”)

As discussed above, to decide whether Ms. Scibelli has stated a claim, I take her well-pled factual allegations, but not her conclusory statements, as true. Ms. Scibelli makes a conclusory statement that a charter school acts as a governmental entity. Ms.

Scibelli has not, however, provided any factual allegations which, if true, would establish that it was a governmental unit.

The burden of proof is on Ms. Scibelli to demonstrate that she is entitled to the relief that she seeks. *Blanchette v. Contributory Retirement Appeal Board*, 20 Mass. App. Ct. 479, 483 (1985) (to receive a particular benefit, the member has the burden of proof to show she satisfies each required element of the particular statutory provision under consideration). Even if a paraprofessional at a charter school could purchase creditable service, Ms. Scibelli has not met her burden to show that she was employed at a "governmental unit" during the time she worked at SICS. Like the petitioner in *Whipple*, she is not eligible to either join the MTRS or purchase creditable service under G.L. c. 32, § 3(5).

For the reasons discussed above, Ms. Scibelli is ineligible to purchase the time during which she worked at the SICS from August 16, 2000 to August 15, 2002 as creditable service. This appeal is dismissed for failure to state a claim on which relief may be granted.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda E. Troy

Administrative Magistrate

Order sent to:

Mark Hickernell, Esq.

James O'Leary, Esq.