

**COMMONWEALTH OF MASSACHUSETTS  
CONTRIBUTORY RETIREMENT APPEAL BOARD**

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**KRISTIN SIDDLE,**

**Petitioner-Appellant**

**v.**

**MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM,**

**Respondent-Appellee.**

**CR-16-385**

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**DECISION**

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Respondent Massachusetts Teachers' Retirement System appeals from a decision of an Administrative Magistrate of the Division of Administrative Law Appeals (DALA) reversing the denial of her application to purchase creditable service for pre-membership nonpublic school service pursuant to Section 4(1)(p) because she was not "engaged in teaching pupils." The magistrate heard the matter on June 20, 2019 and admitted 3 exhibits from Ms. Siddle and 2 exhibits from the MTRS. The magistrate's decision is dated November 22, 2019. MTRS filed a timely appeal to us.

After considering the arguments by the parties and after a review of the record, we incorporate the DALA decision by reference and adopt its Findings of Fact 1–29 as our own. We affirm the DALA magistrate's decision that Ms. Siddle was not entitled to a separate retirement benefit based on her work at McGrath Educational Center. Based on our decisions in *Lukasik v. Massachusetts Teachers' Retirement System*, CR-15-668 (CRAB Feb. 2020) and *Galanti v. Massachusetts Teachers' Retirement System*, CR-15-566 (CRAB Dec. 2022), we reverse the DALA magistrate's decision determining that Ms. Siddle can purchase creditable service for her nonpublic school work at the McGrath Educational Center from September 1, 1999 through July 26, 2002. Ms. Siddle was not "engaged in teaching pupils" pursuant to G.L. c. 32, § 4(1)(p) and therefore, is not entitled to purchase creditable service for that work.

***Background***

Ms. Siddle, an MTRS member employed as a Guidance Counselor by the Foxborough Public Schools, applied to purchase prior private school creditable service for work as a school clinician at the McGrath Educational Center (McGrath)/YOU, Inc., a Chapter 766 private alternative school for students with social-emotional diagnoses and learning difficulties—a position she had served in from September 1, 1999 through July 26, 2002. MTRS denied her application because it determined that she had not “engaged in teaching pupils” as required for the purchase of creditable service under G.L. c. 32, § 4(1)(p).<sup>5</sup>

As a school clinician, Ms. Siddle served primarily as a “liaison” between students, teachers, administrators, and parents and as a learning facilitator.<sup>1</sup> Each day, Ms. Siddle notified teachers of any changes in students’ behavioral or emotional states, greeted students with the principal as teachers prepared in their classrooms, and, throughout the day, supported teachers and individual students, helping the latter understand course material by providing them with checklists and social and behavioral strategies, such as calming and focus techniques.<sup>2</sup>

Ms. Siddle also served as a counselor and was responsible for “therapeutic programming” and assisted students in “engaging and accessing the curriculum” in individual or small-group meetings by instructing them using techniques such as “wait time,” “talk and share,” role-playing, videos, checklists, and flip-charts.<sup>3</sup> This assistance encompassed both some ‘direct instruction’ of classroom concepts as well as instruction in social, intellectual, and behavioral techniques to help students process and retain material. This counseling was a significant aspect of Ms. Siddle’s job: she testified that she conducted sessions “two to three” times each day and that she was “specifically hired” to “support” students by helping them access the curriculum.<sup>4</sup>

In addition, Ms. Siddle stated that “one of [her] major roles” and an “important part of” her job involved “working with teachers,” especially inexperienced ones, to identify the most effective strategies for conveying material to, and interacting with, students based on their IEPs (Individualized Educational Plans).<sup>5</sup> Ms. Siddle also frequently consulted with students’ school

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<sup>1</sup> FF 13, Tr. 15.

<sup>2</sup> FF 15, Tr. 15-16.

<sup>3</sup> See MTRS Exhibit 4 for the quotation on “therapeutic programming.” See Tr. 30 for the quotation regarding “engaging and accessing the curriculum.” See FF 24, Tr. 32-35 for Ms. Siddle’s instruction techniques.

<sup>4</sup> Tr. 34.

<sup>5</sup> Tr. 36.

districts regarding their IEPs, conducted peer mediations and weekly family counseling, performed behavioral assessments of prospective and current students, organized school celebrations, dispensed students' medications, and worked with students' probation officers.<sup>6</sup> Notably, many of these duties were conducted outside of school hours.<sup>7</sup>

Ms. Siddle also performed some work in the classroom aside from her typical duty of providing students with intellectual, emotional, and behavioral strategies to help them better understand course content. She helped formulate aspects of the health and culinary arts curricula and would sometimes present the lesson plans she helped create in front of students.<sup>8</sup> Additionally, during her spring semesters at McGrath, Ms. Siddle instructed students on career readiness several times per week during English class periods for 12-14 week intervals, explaining to them, for example, how to write resumes and draft cover letters.<sup>9</sup> Ms. Siddle would "follow up" these lessons "on [her] own outside of the English classroom" through her counseling sessions.<sup>10</sup>

### ***Discussion***

#### ***1. Entitlement to a separate retirement benefit.***

We agree with the magistrate that there is no evidence in the record to establish that Ms. Siddle was entitled to a separate retirement benefit based on her service at McGrath Educational Center. You, Inc. has a 403(b) voluntary employee contribution retirement plan. This plan is available to eligible regular full and part-time employees and employees who work 1,000 hours within a calendar year.<sup>11</sup> Ms. Siddle noted in her application that the school made employer contributions to her retirement plan. However, she marked that she was not vested in a defined contribution plan, such as a 403(b) plan.<sup>12</sup> You, Inc. did not indicate that Ms. Siddle was a participant in its 403(b) retirement plan. Further, in response to a question asked by MTRS as to whether Ms. Siddle was vested in the 403(b) plan, there was no response from You, Inc.<sup>13</sup> Since this is a voluntary

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<sup>6</sup> For school district consultation, see Tr. 36. For peer mediations, family counseling, behavioral assessments, organizing celebrations, and dispensing medications, see MTRS Exhibit 4. For working with probation officers, see Tr. 36-38, 40-41, 44.

<sup>7</sup> (Tr. 20, 36, 39-41, 56).

<sup>8</sup> Tr. 25-28

<sup>9</sup> FF 17, Tr. 22

<sup>10</sup> Tr. 23

<sup>11</sup> Ex. 5.

<sup>12</sup> Ex. 1

<sup>13</sup> Ex. 5.

employee contribution plan and You, Inc. did not indicate that Ms. Siddle was a participant in the plan or that she was vested in the plan, there is insufficient evidence to conclude that Ms. Siddle was entitled to a separate retirement benefit based on her service at McGrath. Accordingly, MTRS has failed to meet its burden to prove that Ms. Siddle was entitled to a separate retirement benefit as required in G.L. c. 32, § 4(1)(p) to preclude the purchase of creditable service for prior nonpublic school work.

## **2. Interpreting ‘Teaching Pupils’ to Mean Academic and Vocational Instruction.**

We first address whether we should overturn our previously held interpretation of §4(1)(p) that defines ‘teaching pupils’ as performing “academic and vocational instruction in subjects typically taught for credit in the public schools, generally in the classroom,” and classify the special education services Ms. Siddle provided (such as giving individual students calming and focus strategies) as ‘teaching.’<sup>14</sup> As we concluded in *Lukasik*, and affirmed in *Galanti*, *Marble* CR-15-567 (CRAB 2022), and *Hogan* CR-15-565 (CRAB 2022), the choice of the words “engaged in teaching pupils” in a non-public “school” in enacting § 4(1)(p) was intended by the Legislature to include instruction in the academic and vocational subjects that are typically taught for credit in public schools, generally in the classroom, but not the myriad of other special education services that are provided in alternative day and residential schools.<sup>15</sup> We explained that the Legislature meant to distinguish between the teaching of academic and vocational subjects to special needs students, comparable to traditional subjects taught in public schools, and the broad array of supportive services that were required by the newly-enacted special education law, Chapter 766.<sup>16</sup> We were asked in *Galanti* to reconsider our interpretation of “engaged in teaching pupils” in a non-public “school” under §4(1)(p) to broaden the scope of subjects considered as “engaged

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<sup>14</sup> *Lukasik* at \*12.

<sup>15</sup> *Ibid.*

<sup>16</sup> See *Lukasik* at \*2-7; St. 1972, c. 766, § 11 (approved July 1, 1972; effective September 1, 1974, codified at G.L. c. 71B); St. 1973, c. 760 (approved Sept. 11, 1973; enacting G.L. c. 32, § 4(1)(p)). See generally 34 C.F.R. § 300.34 (describing “related services” under the Individuals with Disabilities Education Act as including such “supportive services as are required to assist a child with a disability to benefit from special education”); 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) (describing related services as “essentially any service that is necessary for a student to learn”).

in teaching pupils” to include functional academics. *Galanti v. MTRS*, CR-15-566 (Dec. 2022). We declined to do so for reasons explained below.

In *Galanti*, we reiterated that the absence of any mention of these other services in §4(1)(p), including the teaching of functional academics—despite the fact that these other services were so central to the contemporary reform of the special education laws which occurred just prior to the enactment of this provision—strongly suggests that the Legislature intended to allow teachers to purchase only prior teaching in traditional subjects, such as those taught for credit in public schools, and only when taught in a “school” setting. Had the Legislature intended there to be a more expansive view, it would have explicitly provided for it.<sup>17</sup> See *Galanti* at \*6-7. Instead, Section 4(1)(p) remained limited to those “engaged in teaching pupils” in a non-public “school.” *Limoliner v. Dattco, Inc.*, 475 Mass. 420, 425 (2016) (where limitations are present in one related statute and absent in another, it is fair to conclude that the Legislature knew how to enact them and that difference was intentional).

Further, we noted that CRAB has historically maintained a narrow interpretation to “teaching pupils.”<sup>18</sup> This narrow interpretation is also warranted because this provision provides an enhanced benefit that is generally not permitted—the purchase of creditable service for private

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<sup>17</sup> G.L. c. 32, § 3(4a) permits the purchase of prior private sector service when “engaged in teaching pupils or as an administrator in a non-public school” prior to January 1, 1973. See *Rosing v. Teachers’ Retirement Syst.*, 458 Mass.283, 287 (2010). The Legislature also allowed teachers to purchase out of state public school teaching, which includes service as teachers, principals, supervisors, superintendents or presidents. G.L. c. 32, § 3(4).

<sup>18</sup> See *Murray v. Mass. Teachers’ Retirement Syst.*, CR-08-646 (DALA May 2013, *aff’d* CRAB June 2014)(work was not fundamentally education involving traditional school subjects where primary goal was career development rather than “engaged in teaching pupils”); *Kraskoukas v. MTRS*, CR-09-288 (DALA Sept. 2014)(fundamental duties of the Director of Social Services for nonpublic school was not “engaged in teaching pupils”); *Anderson v. Mass. Teachers’ Retirement Syst.*, CR-15-182 (DALA Nov. 2015, *aff’d* CRAB Sept. 2016)(duties of child and family counseling, case management, development of staff-in-service training, individual and group counseling, teacher trainings and home/school consultations did not constitute “teaching pupils”); and *Joyner v. Boston Retirement Bd.*, CR-14-542 (CRAB May 2017)(member not engaged in teaching pupils while employed at nonpublic schools). See also *Buindo v. Mass. Teachers’ Retirement Syst.*, CR-15-416 and CR-15-417 (DALA Dec. 2018, *aff’d* CRAB Feb. 2020) (decision on the merits was not reached but, petitioner was denied service purchase because work providing adaptive physical education in different settings did not qualify as “teaching pupils”); *Fisher v. Mass. Teachers’ Retirement Syst.*, CR-13-276, CR-13-443, CR-13-516

sector work—which is an exception to the general rule that creditable service is available only for work in a governmental unit or for other public service.<sup>19</sup>

The legislative history of the bill itself also suggests that legislators intended that the bill limit eligibility for benefits. An early version of the bill had contained ambiguous language potentially qualifying for benefits teachers who had taught a limited number of pupils whose tuition was partially paid for by the state. During drafting, however, then-governor Francis Sargent wrote a letter to legislators stating his hope that they would clarify that only teachers who had taught exclusively students receiving state tuition assistance were eligible for benefits. Governor Sargent emphasized that, by adopting this amendment, the legislature would be affirming that the bill’s scope was limited only to those “whose work most closely resembled that of teachers at public institutions.” Soon after, the legislature promptly adopted, without alteration or dissent, the Governor’s proposed amendment, suggesting that they intended to carve out only a narrow expansion of existing Massachusetts pension law, excluding those “whose work” did not “most closely resemble[] that of teachers at public institutions.”<sup>20</sup>

Lastly, we re-emphasized that the overall structure of the Massachusetts retirement law supports the narrow interpretation of § 4(1)(p). The retirement law was enacted in 1945 to increase the financial soundness of the retirement systems by establishing a contributory system. *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”). A narrow application of § 4(1)(p) best supports this purpose. We noted that the purchase of creditable service is expensive to retirement systems. 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.<sup>21</sup> Limiting creditable service purchases for prior service in a nonpublic school to work in traditional concepts of teaching pupils in a school

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<sup>19</sup> *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).

<sup>20</sup> Passed Acts 1775 to 2019. Acts 1973, Chapter 760, including Senate Bill No. 1577. SC1/series 229. Massachusetts Archives. Boston, Massachusetts.

<sup>21</sup> 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).

and excluding the broad array of other services that were ultimately mandated when Chapter 766 took effect would assist in maintaining the financial soundness of the retirement systems.<sup>22</sup>

For all of these reasons, and consistent with our prior decisions, we find that many of the duties Ms. Siddle performed at McGrath, such as working with individual students on strategies to “engage[] and access[] the curriculum” and advising teachers on how to accommodate students’ learning differences, should not, for the purposes of obtaining benefits under of § 4(1)(p), be classified as ‘teaching.’

**3. *Interpreting ‘Engaged in Teaching’ to Mean that Teaching was One’s Primary or Fundamental Responsibility.***

Unlike in cases such as *Galanti* and *Marble*, however, the petitioner here has at least a claim that some of the work she performed should be classified as ‘teaching,’ even under the narrower interpretation of the term adopted by the Board. While Ms. Siddle has not provided evidence that her roles developing curricula and instructing students during health and culinary arts classes and presenting career readiness lessons during some English classes meet the standard of “academic and vocational instruction in subjects typically taught for credit in the public schools, generally in the classroom,” at least the former two subjects (health and culinary arts) are often taught for credit in public schools (Ms. Siddle has presented no evidence, and we are unaware of any, that career readiness is typically taught as a course for credit in public schools).<sup>23</sup> We therefore consider, at least *arguendo*, whether, if we were to classify Ms. Siddle’s work in health and culinary arts as ‘teaching’ (as defined by the statute), she would be eligible for benefits.

This matter is most similar to a case decided by a DALA magistrate and affirmed by both CRAB and the Massachusetts Superior Court, *Taft v. MTRS*, CR-02-657 (DALA June 2004) (*aff’d* CRAB Nov. 2004) (*aff’d Taft v. CRAB*, Civil Action No. 048CV05441, Superior Court, Oct. 28, 2005). In *Taft*, the magistrate determined that a Director of Vocational Programs at a school that served only special needs students was not “engaged in teaching pupils” even though she frequently substitute-taught academic subjects (including for teachers on leaves of absence), and

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<sup>22</sup> See St. 1972, c. 766, § 11 (effective September 1, 1974).

<sup>23</sup> For the magistrate’s findings of fact regarding Ms. Siddle’s duties in McGrath’s health and culinary arts classes and her presentation of career readiness lessons, see FFs 17-22. For our previously held standard, see *Lukasik* at \*12.

helped “develop[]” and “implement[]” the school’s curriculum.<sup>24</sup> The magistrate reasoned that because Ms. Taft’s job of directing vocational programs

“was not fundamentally a teaching function, but an oversight and supervisory function. The fact that she not infrequently engaged in teaching work and had the background to do that effectively, does not alter this conclusion. I conclude that if the Legislature had wanted to include for availability of this benefit, supervisors of teachers, or superintendents of schools or principals, etc., then there would have been some indication of that in the language. Being “engaged in teaching pupils” is too specific in meaning to being a person who was hired to teach pupils, that it cannot be stretched to encompass someone hired to supervisor teachers and to direct an educational program who also at times did teach pupils.”<sup>25</sup>

On appeal, both CRAB and the Massachusetts Superior Court affirmed this decision. While the Superior Court’s decision is only binding on the parties, the *Taft* decision is binding on CRAB.

The parallels between *Taft* and Ms. Siddle’s case are noteworthy. Both cases involve a petitioner who performed a variety of tasks that were generally related to administration and instruction in functional academics—such as providing individual students with intellectual, emotional, or behavioral strategies to assist them in processing and retaining material, planning special education curricula and helping teachers better accommodate students, and “serv[ing] as a liaison with social service agencies for the students”—but who also “not infrequently” informally instructed students in subjects traditionally taught in public schools.<sup>26</sup> However, as the magistrate concluded in *Taft*, the specificity of the term “engaged in teaching pupils,” the fact that the Legislature sought to distinguish those who were engaged in administrative functions from those who were engaged in teaching pupils, and the context surrounding the provision suggesting the Legislature intended to only narrowly expand pension benefits, indicate that teaching had to have been one’s primary responsibility, rather than merely an incidental component of an otherwise different job, for one to be eligible.

#### **4. *Determining that Teaching was not Ms. Siddle’s Primary or Fundamental Responsibility at McGrath.***

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<sup>24</sup> *Taft*

<sup>25</sup> *Taft v. MTRS*, CR-02-657 (DALA 2004)

<sup>26</sup> *Ibid.*

Applying the standards discussed above, we must now turn to the facts of this case to determine if teaching was Ms. Siddle’s primary responsibility at McGrath. Even assuming that the Board classified some of Ms. Siddle’s responsibilities (namely, her contributions to the health and culinary arts curricula) as ‘teaching,’ she has presented no evidence or testimony demonstrating that these duties were her primary responsibility at McGrath, and thus has not met the evidentiary burden necessary for CRAB to agree with her on this question. Further, the available evidence suggests that Ms. Siddle regularly performed numerous other duties that, combined, occupied a significant majority of her time and that were much more central to her job than her teaching responsibilities. As previously noted, according to Ms. Siddle’s testimony, her daily routine involved working with teachers to help them better accommodate students’ behavioral and emotional needs— a duty she described as a “major role” and an “important part” of her job, conducting behavioral assessments of students— a role that took up at least 20 percent of her time, and assisting individual students in “engaging and accessing the curriculum”—a duty she was “specifically hired to” perform and in fact performed “throughout the day” every day.<sup>27</sup> Further, according to Ms. Siddle’s resume and a 2001 letter of recommendation, she frequently performed other non-teaching duties, such as dispensing medication to students, liaising with parents, teachers, students, and administrators, hosting “weekly family counseling sessions,” and reviewing students’ IEPs.<sup>28</sup> Notably absent from either of these documents is any mention of Ms. Siddle’s duties developing or presenting lesson plans for health or culinary arts courses, suggesting that, even to the extent the Board classifies these duties as ‘teaching,’ they were not, either in Ms. Siddle’s own view or in that of her supervisors, her “primary” or “fundamental” responsibility at the school.

### *Conclusion*

The DALA magistrate’s decision is reversed in part. We affirm the DALA decision that Ms. Siddle was not entitled to a separate retirement benefit based on her service at McGrath Educational Center. We reverse the DALA decision that Ms. Siddle is entitled to purchase creditable service for her prior nonpublic school work from September 1, 1999 through July 26,

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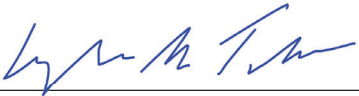
<sup>27</sup> For this characterization of Ms. Siddle’s interactions with teachers to better accommodate students’ needs, see Tr. 36. For this characterization of her behavioral assessments, see Tr. 39. For these characterizations of her counseling duties, see Tr. 30 and 19, 21.

<sup>28</sup> MTRS Exhibit 4.

2002 at the McGrath Educational Center for the reasons stated herein and in our decisions in *Lukasik* and *Galanti*. Ms. Siddle was not “engaged in teaching pupils” pursuant to G.L. c. 32, § 4(1)(p) and therefore, is not entitled to purchase creditable service for that work.

SO ORDERED.

CONTRIBUTORY RETIREMENT APPEAL BOARD



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Assistant Attorney General  
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Date: August 2, 2023