COMMONWEALTH OF MASSACHUSETTS
Division of Administrative Law Appeals

SPRINGFIELD EMPOWERMENT ZONE PARTNERSHIP, INC. & COLLEEN CURRAN, *Petitioners*	:	Docket No. CR-22-0297
v.	:	Date: May 23, 2025
MASSACHUSETTS TEACHERS' RETIREMENT SYSTEM, *Respondent*	:	

Appearances:

For Petitioners: Elizabeth (Bettina) Toner, Esq. and Jill Meixel, Esq.
For Respondent: Ashley Freeman, Esq.

Administrative Magistrate:

Eric Tennen

SUMMARY OF DECISION

Colleen Curran is the executive director of a novel entity: the Springfield Empowerment Zone Partnership. It was created to oversee the management of several underperforming schools in Springfield. The Zone operates in all ways like a government unit, and I find that it is indeed one. However, even though it is, Ms. Curran is not entitled to membership in MTRS because she does not meet the separate statutory and regulatory requirements to join that system.

INTRODUCTION

The Petitioners are two parties: the Springfield Empowerment Zone Partnership, Inc. ("the Zone") and Colleen Curran. The Zone is a non-profit corporation organized to have managerial and operational control over certain underperforming schools in the Springfield public school system. Ms. Curran is a co-executive director at the Zone. Ms. Curran tried to

enroll into the Massachusetts Teachers Retirement System ("MTRS"). MTRS, however, declined that request. This appeal followed.

I held a hearing on October 29, 2024. I admitted exhibits 1-18 into evidence. The Petitioners presented the testimony of three witnesses: Ms. Curran, Matthew Brunell, the other co-executive director of the Zone, and Keisha Morgan, chief of student support services at the Zone. The parties submitted closing briefs on January 24, 2025. After reviewing the pleadings, I had some additional questions for the parties. I held a further status conference on February 6, 2025, after which I asked the parties to brief one further issue. The Petitioners submitted their response on March 7, 2025 and the MTRS on March 28, 2025, at which point I closed the administrative record.

FINDINGS OF FACT

1. The Commissioner of the Department of Elementary and Secondary Education ("DESE") may declare certain schools as "underperforming" or "chronically underperforming." G.L. c. 69, § 1J(a).
2. When that occurs, the superintendent for that school district and others create a "turnaround plan." G.L. c. 69, § 1J(b).
3. The superintendent may then select an "external receiver to operate the school and implement the turnaround plan." G.L. c. 69, § 1J(h).
4. Between 2010 and 2014, not one, but eight, Springfield middle schools were designated as underperforming ("Target Schools"). (Ex. 4.) The commissioner of DESE wrote to the Springfield superintendent suggesting the schools be placed in receivership. Instead, "[s]eeing an opportunity to do something innovative and meaningful," Springfield tried something different. (Ex. 6.)

5. The superintendent looked for an alternative to a receivership and decided on an "empowerment zone." (Brunell.)

6. An empowerment zone is an entity that manages and supervises a group of schools, normally underperforming schools. It differs from a receivership in that, in an empowerment zone, the school district maintains a role in the schools' management. (Brunell.)

7. The idea of an empowerment zone is not totally novel. It is used in some states such as Colorado, Delaware, Indiana, Minnesota and Texas. There, employees of "empowerment zones" are considered public employees. (Brunell.)

8. To implement this idea in Springfield, the Zone was formed in 2014 as a non-profit Massachusetts corporation. (Exs. 4 & 7.)

9. Per the by-laws, the Zone has a board of directors made up of seven people appointed by the commissioner of DESE, the mayor of Springfield, the superintendent of the Springfield public schools, and the vice chair of the Springfield school committee. (Ex. 5.)

10. The board, in turn, hires staff to run the organization and implement its goals. Colleen Curran was hired as an executive director in 2017. Her co-executive director is Matthew Brunell; he was hired in 2018. Before that, he was the Zone's project director/senior adviser. There are other employees of the Zone with different roles, such as Kisha Morgan, who has been chief of student support and services since 2021. (Exs. 1, 2, & 18.)

11. One month after the Zone was formed, it, the superintendent, the Springfield school

committee, and DESE, all entered into a Memorandum of Understanding ("MOU"). The MOU gives the Zone full managerial and operational control of the Target Schools, as provided by G.L. c. 69, § 1J. The Zone is accountable only to the superintendent and DESE's commissioner. (Ex. 4.)

12. The MOU sets out very specific guidelines for how the Zone will be funded, organized, and governed. (Ex. 4.)

13. The Zone is intended to operate similarly to a local education agency, which is just another term for the local public body that oversees or manages a local school.[1] (Brunell.)

14. DESE treats the Zone like a governmental agency. The Zone is subject to the same rules and regulations applicable to other local education agencies within DESE's jurisdiction. (Brunell.)

15. For example, local education agencies are eligible to apply directly to DESE for certain grants only available to public school districts. The Zone does this. (Brunell.)

16. Also, on an annual basis, the Zone must submit a "student opportunity plan," which every other local education agency also is required to submit. This process applies only to public school districts. G.L. c. 69, § 1S. (Brunell.)

17. Springfield also treats the Zone as a public entity since it is financed by the Springfield

[1] This term appears to derive from a federal regulation under the Department of Education. It is defined as a "public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools." 34 Code Fed. Regs., § 303.23.

public schools, federal grants, and private grants—just like all public schools. (Ex. 4; Brunell.)

18. The Zone is subject to public procurement rules that apply to Springfield public schools. (Brunell.)

19. The Zone has the authority to select, retain, evaluate and renew staff at Target Schools including, for example, their principals. It also negotiates collective bargaining agreements with the teachers' unions. (Ex. 4; Brunell.)

20. The Zone must comply with various government oversight laws:

- the Uniform Procurement Act, G.L. c. 30B, G.L. c. 71, 603 Code of Mass. Regs. § 1.00;
- federal, state, and municipal laws relating to diversity, protecting rights and interests of students and staff, expenditure of public funds, and education reform;
- Springfield public schools' civil rights policies;
- Conflict of Interest Law, G.L. c. 268A;
- Open Meeting Law, G.L. c. 30A, §§ 18-25;
- Public Records Law, G.L. c. 4, § 7, G.L. c. 66, § 10;
- Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g; and
- Massachusetts Student Records Law, 603 Code of Mass. Regs. § 23.00.

(Ex 4.)

21. The Zone also received an independent opinion from the State Ethics Commission that it considered the Zone to be a municipal agency for purposes of the conflict-of-interest laws. (Ex. 16.)

22. The Zone provides services only to the Target Schools. Its main goal is to implement the turnaround plans and help the schools shed the "underperforming" designation. It has had some success as at least one school met that goal the day before the hearing in this

matter. (Brunell).

23. Prior to working at the Zone, Ms. Curran was licensed by DESE as a principal/assistant principal for several years. In 2023, she received her license as a superintendent/assistant superintendent for all grades. (Ex. 8; agreed facts.)

24. Mr. Brunell, on the other hand, has never been licensed by DESE. Nevertheless, the Zone does not require its executive director(s) to be licensed by DESE. (Ex. 9; agreed facts.)

25. In her role as co-executive director, Ms. Curran is responsible, with Mr. Brunell, for running the Zone. They act like superintendents and/or assistant superintendents. To give but one concrete example, superintendents conduct job evaluations of principals in their district; Ms. Curren and Mr. Brunell conduct job evaluations of principals under the Zone's control. (Brunell and Curran.)

26. Obviously, Ms. Curran (and other Zone employees) have some contractual agreement for employment. However, it is entirely unclear what that is. No written agreements were entered into evidence and the witnesses only vaguely referred to their employment agreements.[2]

[2] Petitioners argue they are covered by a contractual agreement "by virtue of the memorandum of understanding." I do not understand that argument. The MOU is not a contract between the Zone and its employees, and it does not define any terms of employment. Obviously, the Zone has the power to hire employees, but that process is not spelled out in the MOU.

DISCUSSION

1. Ms. Curran has standing to appeal.

Prior to the hearing, a different magistrate raised the issue of whether the parties had standing to appeal. Neither party disputes Ms. Curran has standing, and I agree. She is clearly an aggrieved party because MTRS's decision directly impacts her by causing her a "substantial injury"—namely, the denial of government retirement benefits. *See e.g. Drake v. MTRS*, CR-23-0119, 2024 WL 4010774 (Div. Admin. Law App. Jul. 5, 2024) (deciding appeal by charter school, non-teaching employee, who was denied entrance into retirement system). *Mystic Valley Regional Charter School and Robert Kravitz v. State Bd. of Ret. & PERAC*, CR-20-0243, 2023 WL 11806164 (Div. Admin. Law Apps. Nov. 10, 2020) (Contributory Ret. App. Bd. Sep. 8, 2023) (same). That is enough to allow the case to proceed.[3]

2. The appeal was timely.

At the hearing, I raised the issue of whether the appeal was timely. Although questions about timeliness usually mean a party appealed too late, here the Petitioners appealed too early. They requested an action on July 1, 2022. On July 6, 2022, MTRS replied informally, indicating that they considered the request and were taking no action; further they did not issue an appeal letter pursuant to *Barnstable Cty. Ret. Bd. v. PERAC*, No. CR-07-163 (Contributory Ret. App. Bd. Feb. 17, 2012). The Petitioners then appealed to DALA on July 22, 2022.

[3] Whether the Zone independently has standing is largely academic since Ms. Curran has standing and I am rendering a decision in the case. Also, because only "persons" have standing, but because a person includes "all political subdivisions of the Commonwealth," G.L. c. 32, § 16(4), deciding whether the Zone has standing involves deciding the ultimate issue in this case—is it a government entity. As discussed below, I find the Zone is a government entity. For standing purposes, the remaining question would be whether the Zone suffered a "substantial injury." It is not entirely clear that it did but, again, resolution of this is unnecessary since this case is about Ms. Curran and not the Zone itself.

When an agency fails to take action, the time to appeal begins to run after 30 days from the request to act. G.L. c. 32, § 16(4). Here, the request to act was on July 1, so the time to appeal began to run on August 1. However, as noted, the Petitioners appealed before then, on July 22.[4] Yet, unlike a late appeal, a premature appeal does not normally deprive a reviewing body of jurisdiction. *Becton v. State Tax Commission*, 374 Mass. 230, 234 (1978), *quoting Tanzilli v. Casassa*, 324 Mass. 113, 115 (1949) ("where a statute required action within a certain time 'after' an event… the action may be taken before that event. Such statutes have been construed as fixing the latest, but not the earliest, time for the taking of the action."); *McLeod v. Malden Ret. Sys.*, CR-22-625, 2023 WL 9190008, at *2, n.2 (Div. Admin. Law App. Dec. 15, 2023); *Corliss Landing Condominium Trust v. North Attleborough Planning Bd, et al.*, MS-15-661, 2016 WL 3476351 (Div. Admin. Law App. Mar. 16, 2016); *see also Bowles v. Russell*, 551 U.S. 205, 214 (2007) ("certain premature appeals do not prejudice appellee" and therefore do not "extinguish" the appeal). Therefore, the premature notice of appeal here does not deprive DALA of jurisdiction to hear the matter.

3. The Zone is a government unit.

Chapter 32 applies only to persons who work for a "governmental unit." G.L. c. 32, § 1.[5] MTRS denied Ms. Curran's request because it did not find the Zone to be a governmental unit.

[4] Presumably, the 30 day period for the appeal period to start is intended to give the entity some time to respond to the request. But here, MTRS indicated it would not be taking any further action within that 30-day window. It was only then that the Petitioners filed the notice of appeal.

[5] "Governmental unit" is defined as the commonwealth or any "political subdivision thereof." "Political subdivision" is further defined as including "any other public unit in the commonwealth." An employee, in turn, is defined as, *inter alia*, anyone whose regular compensation is paid by any "political subdivision of the commonwealth." *Sowden, supra*, at *3-4, *citing* G.L. c. 32, § 1. I therefore use the term "governmental unit" in this case as shorthand for these various definitions.

DALA has evaluated whether an entity is a governmental unit most often in the context of a current member seeking to purchase prior creditable service. The question in those cases was whether the entity that previously employed the individual was considered a "governmental unit." DALA has also evaluated whether someone was entitled to join a retirement system, but those cases do not focus on whether the employer was a "governmental unit." *See e.g. Dorsey v. Milton Bd. of Ret.*, CR-11-705, 2017 WL 11905787 (Contributory Ret. Apps. Bd. Oct. 18, 2017); *Drake, supra*. Thus, while not perfectly on point, the creditable service cases provide the best guidance in this case.

That said, those cases are not entirely consistent in the factors they evaluate. Understanding that, one case is the most applicable: *Sowden* v. *Norfolk County Ret. Sys,* CR-06-0246, 2008 WL 7555807 (Div. Admin. Law App. Feb. 6, 2008) (affirmed by Contributory Ret. App. Bd. Nov. 3, 2009). In *Sowden*, DALA assessed whether a member who previously worked at a Bi-County Collaborative program was entitled to purchase this service. The question was simple: was the Collaborative a "governmental unit"? *Id.* at *2. The answer, while more complicated, was yes.[6]

The "Bi-County Collaborative was formed by a group of towns (each of which is a political subdivision) to act in concert to meet certain educational needs that each town independently would not have been able to meet, and that it was funded in part by funds from the member school committees, and state and federal grants." *Id.* at *4. Confirming it was a

[6] As noted, DALA and CRAB have considered this same question in other cases. *See, e.g, Filkins v. State Bd. of Ret.*, CR-11-0715 (Contributory Ret. Appl. Bd. Jan. 8, 2010) (Greater New Bedford Workforce Investment Board); *Roy* v. *Springfield Ret. Sys.*, CR-06-590 (Div. Admin. Law App. Apr. 18, 2008) (Mass. Career Development Institute). Because those cases evaluated entities that were less like the Zone, I rely on *Sowden*. Moreover, those cases did not look to the exact same factors. If anything, the *Sowden* factors are more comprehensive.

"governmental unit" involved several factors: the collaborative (i) was engaged in educational activities similar to those undertaken by a school district; (ii) "was formed by a group of towns" or similar jurisdictions; (iii) was designed "to meet certain educational needs that each town independently would not have been able to meet"; and (iv) was "funded in part by funds from the member school committees, and state and federal grants." *Id.* The Zone easily clears these four factors.

First, the Zone operates similarly to a local education agency and has full managerial and operational control of at least eight Springfield middle schools. Second, although the Zone was not formed by a group of towns, it was formed by a group of city and state officials. Like the towns in *Sowden*, these officials act in concert to provide better education for their area's schoolchildren. Third, by being declared underperforming, the Target Schools were categorically not able to meet the educational needs of Springfield-area schoolchildren—indeed that failure to meet Springfield's educational needs is the Zone's very reason for existence. *Id*. And fourth, the Zone is financed exactly like the Bi-County Collaborative program in *Sowden*. *Id.* (entity "was funded in part by funds from the member school committees, and state and federal grants"). In sum, the Zone meets all four of the *Sowden* factors to qualify as a governmental unit.

There is another case that merits discussion: *Whipple v. MTRS*, CR-07-1136, 2014 WL 13121790 (Contributory Ret. App. Bd. Dec. 19, 2014). *Whipple* involved determining whether a teacher who previously taught in a charter school could purchase her service at that school. CRAB addressed MTRS's concern that the teacher was not employed by an instrumentality of the state, i.e. the charter school, but instead a private management company. MTRS argued that allowing her to purchase that service would run afoul of federal tax law. But as the *Whipple* decision made clear, "even if a teacher is hired by a private management company, the teacher

could be considered an 'employee' of the [public] trustees if the trustees exercised sufficient control over the teacher's duties and performance." *Id.* at *6, n.37. Thus, the issue was who controlled her work, the private management company or the public board of trustees? There, the answer was the private management company, and the Petitioner was not entitled to purchase her service. *Id.* But in a later case, a different teacher working at a different charter school was controlled by the trustees and thus was entitled to purchase her prior service. *Marley v. MTRS*, CR-20-0103, 2023 WL 11806163 (Contributory Ret. App. Bd. Dec. 20, 2023).

Importantly, *Whipple*—which itself was concerned with running against the federal government's test for what constitutes a governmental plan—took into account "the various factors that the [U.S.] Internal Revenue Service (IRS) has applied in" determining whether an educational entity ought to "be deemed an 'instrumentality' of a state." *Whipple*, at *13. And "of the various factors that the Internal Revenue Service has applied in making this determination, control by the state over the entity's day-to-day operations is paramount." *Id*. While the Zone's functioning is not exactly the same as a charter school, it does not run afoul of the IRS's concerns: the Zone's board of directors are appointed entirely by government officials and the Zone is accountable to the superintendent and DESE's commissioner.[7]

Finally, further confirmation that the Zone is indeed a governmental unit can be found in the State Ethics Commission's opinion that it considered the Zone to be a municipal agency for

[7] The IRS has various rules and guidance that list a host of factors to consider when evaluating if an entity is an instrumentality of the state. *See e.g.* 76 Fed. Reg. 69172 (f)(2); Rev. Rul. 89-49, 1989-1 C.B. 117, 1989 WL 572035 (Apr. 10, 1989). The various factors are too numerous to repeat but essentially capture the same concepts considered in *Sowden* and referenced in *Whipple*.

purposes of conflict-of-interest laws.[8] These laws apply only to public entities, not private ones; as such, they apply to school districts. *See McMann v. State Ethics Com'n*, 32 Mass. App. Ct. 421 (1992) (school districts are municipal agencies as defined by the Massachusetts state conflicts-of-interest law). The purpose of the conflict-of-interest law is to "'strike at corruption in public office, inequality of treatment of citizens and the use of public office for private gain.'" *Id.* at 427, *quoting Everett Town Taxi, Inc. v. Everett*, 366 Mass. 534, 536 (1974). Put simply, if the Zone were not a "public office," there would be no need to protect it from "private gain."

4. Ms. Curran does not qualify for membership into MTRS

Although I find the Zone is a government entity, that does not end the inquiry. "Generally, only teachers and certain administrators are eligible to join the Massachusetts Teachers' Retirement System. Other school department employees are generally eligible to join the retirement system to which their town, city, or district pertains." *Dorsey v. Milton Bd. of Ret.*, CR-11-705, *1 n.1, 2017 WL 11905787 (Contributory Ret. Apps. Bd. Oct. 18, 2017), citing G.L. c. 32, §§ 1-2.; *see e.g. Foley v. Springfield Ret. Sys.*, CR-16-0222 (Div. Admin. Law Apps. Feb. 28, 2018) (school janitor, a non-teaching employee, was member of Springfield retirement system). Thus, the remaining question is, does Ms. Curran qualify for entry specifically into MTRS?

Ms. Curran's first argument is that she is entitled to MTRS membership by title. Indeed, "a teacher, as defined in section one, *shall* be included in the teachers' retirement system." G.L.

[8] The State Ethics Commission looks at four factors when making its determination as to whether an entity is subject to public conflict-of-interest laws: (1) The nonprofit was created by governmental action; (2) the nonprofit performs an essentially governmental action; (3) the nonprofit will receive funds from a local government; and (4) the nonprofit will be under the authority of a public official. (Ex. 16). The Commission found all four factors were met in this case.

c. 32, § 2 (emphasis added). As one might expect, "teacher" is defined as anyone who is employed as a teacher, but also other positions: for example, a principal or superintendent. G.L. c. 32, § 1.[9] The list of specific titles means only those enumerated positions automatically qualify. *Cf. Gaw v. Contributory Retirement App. Bd.*, 4 Mass. App. Ct. 250, 254 (1976) ("[T]he Legislature has consistently described employees falling within Group 4 by naming their positions or titles rather than by describing the type of work they perform."). The statute does not list "executive director," which is no surprise since that is a unique position in a unique entity like the Zone. Thus, the absence of "executive director" within the definition of teacher means Ms. Curran's title does not provide her with automatic entry.

Ms. Curran accepts that her title is not superintendent; rather, she argues that she functions as one (she specifically argues she functions as an assistant superintendent). But functioning like someone in an enumerated position is not the same as being employed in that enumerated position. Otherwise, instead of listing specific titles, the statute would list descriptions of the kind of work that qualifies for membership. *C.f. Bowdridge v. State Bd. of Ret.*, CR-22-0377, 2024 WL 4582640 (Div. Admin. Law. App. June 28, 2024), *citing Gaw*, at 254 (Group 4 statute focuses on "positions or titles rather than . . . the type of work [members]

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9 I highlight only what is relevant above. The full definition follows:

> "'Teacher", any person who is employed by one or more school committees or boards of trustees or by any combination of such committees and boards on a basis of not less than half-time service as a teacher, school psychologist, school psychiatrist, school adjustment counsellor or school social worker appointed under section forty-six G of chapter seventy-one, director of occupational guidance and placement appointed under section thirty-eight A or thirty-eight D of chapter seventy-one, principal, supervisor or superintendent in any public school as defined in this section, or as a supervisor or teacher of adult civic education, but excluding any person serving as an exchange teacher in any such public school unless he is a member of the teachers' retirement system at the time of entry into such service."

perform."). It is also unlikely the Legislature made a list of specific positions that warranted automatic membership into MTRS but also meant to include a position (executive director of an empowerment zone) which had yet to be created when the legislation passed.[10]

Alternatively, if an educator does not automatically qualify for membership through their title, they may qualify for membership if they meet other criteria. However, Ms. Curran does not meet all these criteria, and she does not readily mount an argument otherwise. Of the various criteria, two are relevant here:

- The individual is covered by a contractual agreement for employment with one or more school committees or boards of trustees or by any combination of such committees and boards; and

- The contractual agreement requires that the individual be licensed by the DESE as a condition of employment.

807 Code of Mass. Regs. § 4.02(1)(a) & (d).

I infer that Ms. Curran has a contract for employment, even though I have no specific information about it. I also infer that the contract is with the Zone. Even so, I would still have to determine whether the Zone is a "school committee" or "board of trustees" as contemplated in the regulation. MTRS forcefully argues it is not. Regardless, the other, clearer obstacle to Ms. Curran is that the Zone does not require that her position as executive director be licensed by DESE. *See*

[10] Ms. Curran argues that titles should not matter too much because the Zone could just change her title. Perhaps. *But Cf. Pysz v. Contributory Ret. Appl. Bd.*, 403 Mass. 514 (1988) (employee may not be entitled to group classification if position is merely a "sham"). However, it seems unlikely the Zone would call her a "superintendent" when that title applies to persons employed by a school committee and compensated in a certain way. *See* G.L. c. 71, §§ 59-64. Here, Ms. Curran was hired by the empowerment zone, not a school committee, and there is already a superintendent in Springfield. Also, no person can be a superintendent without being certified by DESE. G.L. c. 71 § 38G. If Ms. Curran and Mr. Brunell hold the same position, and he is not licensed, then it is not clear how they could be considered superintendents. In any event, for purposes of this appeal and record, Ms. Curran's title is "executive director" and that is not an enumerated title.

Drake, supra (among other things, food service director was not required to be licensed by DESE and thus not entitled to membership in MTRS).

CONCLUSION

The decision denying Ms. Curran's request to join the MTRS is **affirmed**.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Eric Tennen

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Eric Tennen
Administrative Magistrate