

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals
14 Summer St., 4th Floor
Malden, MA 02148
(781)397-4700
Fax: (781)397-4720
www.mass.gov/dala

Kathleen Stockwell

Petitioner

Docket No: CR-23-0177

v.

Massachusetts Teachers' Retirement System

Date: August 1, 2025

Respondent

ORDER OF DISMISSAL

The Massachusetts Teachers' Retirement System ("MTRS") denied Kathleen Stockwell's application to purchase creditable service for the time she spent working as an instructional assistant at the Abby Kelley Foster Charter School from 2020 to 2004. Ms. Stockwell evidently applied under G.L. c. 32, § 3(5), which allows purchase of creditable service for certain service in a Massachusetts "governmental unit." MTRS explained its position in a letter to her stating that the charter school statute, G.L. c. 71, § 89(y) "provides only for the purchase of service [in a charter school] by a teacher."

Ms. Stockwell appealed the MTRS's decision to the Division of Administrative Law Appeals ("DALA"). I thereafter issued an Order to Show Cause asking why her appeal should not be dismissed for failure to state a claim on which relief could be granted. Ms. Stockwell filed a timely response.

The focus of Ms. Stockwell's argument is that, although her job was as an instructional assistant to a teacher, she in fact was teaching. In her response she stated that as an instructional assistant, per her job description, she had:

Primary teaching responsibilities for students in a particular reading and math group, including developing lesson plans, assessing student performance, communicating with parents as necessary, and providing status reports to teachers at the grade level regarding student progress.

DISCUSSION

Ms. Stockwell has failed to state a claim on which relief may be granted. Taking the statements in Ms. Stockwell's response to the Order to Show Cause as true, she worked as an instructional assistant to a teacher, not as a teacher herself. 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).

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. Stockwell is not entitled to the relief that she seeks, and her appeal is therefore dismissed.

B. Ms. Stockwell was a Not a Teacher at the Abbey Kelley Foster Charter Public School

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:

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 applying only to teachers. Thus:

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)...[T]hus, 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).

CRAB’s *Whipple* decision clarifies that only teachers who are employed in charter schools that 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 her response to the Order to Show Cause, Ms. Stockwell was an

instructional assistant, not a teacher at the charter school where she worked. Although many of her tasks were those a teacher might do, she was not hired by the charter school as a teacher and as she acknowledged in her response to the Order to Show Cause, she was not yet a licensed teacher at the time. Because she was not a teacher at the 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). *See Scibelli v. Massachusetts Teachers' Retirement System*, CR-23-0335 (Div. of Admin. Law App., Feb. 28, 2025.)

For the reasons discussed above, Ms. Stockwell is ineligible to purchase the time during which she worked at the Abby Kelley Foster Charter Public School from 2002 to 2004. Her appeal is dismissed for failure to state a claim on which relief may be granted.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Melinda E. Troy

Melinda Troy

Administrative Magistrate

Order sent to: Kathleen Stockwell

James O'Leary for the Massachusetts Teachers' Retirement System