

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Mary Sullivan,
Petitioner,

No. CR-23-0371

Dated: September 13, 2024

v.

**Massachusetts Teachers' Retirement
System,**

Respondent.

Appearances:

For Petitioner: Mary Sullivan (pro se)

For Respondent: Salvatore Coco, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

The petitioner, a member of the teacher's retirement system, is not entitled to purchase credit for her pre-membership work as a speech-language pathologist.

DECISION

Petitioner Mary Sullivan appeals from a decision of the Massachusetts Teachers' Retirement System (MTRS) denying her application to purchase credit for a period of pre-membership service. The appeal was submitted on the papers under standard rule 10(c).¹ I admit into evidence Ms. Sullivan's exhibits marked 3-4² and MTRS's exhibits marked 1-3.

Findings of Fact

I find the following facts.

¹ In accordance with G.L. c. 30A, § 9, the "standard rules" in this context are the provisions of 801 C.M.R. § 1.01.

² I have considered Ms. Sullivan's proposed exhibits 1-2 as non-evidentiary memoranda.

1. Ms. Sullivan is a speech-language pathologist. During 2011-2014, she was employed in that capacity by Dearborn Academy, a non-public Massachusetts school.

(Petitioner exhibit 3; respondent exhibits 1-3.)

2. At Dearborn, Ms. Sullivan devoted approximately 80% of her time to classic speech-pathology work: she assisted individual students and small groups with language and social skills, prepared individualized education programs, and implemented assistive technologies. (Petitioner exhibit 3; respondent exhibits 2, 3.)

3. During the remaining 20% of her time, Ms. Sullivan co-taught reading and writing alongside classroom teachers. This component of Ms. Sullivan's work was not articulated in her formal job description. The topics of the lessons she planned and delivered included grammar, vocabulary, and comprehension. (Petitioner exhibits 3, 4.)

4. At some point, Ms. Sullivan became an employee of a charter school and a member of MTRS. In February 2022, she filed an application to purchase retirement credit for her pre-membership service at Dearborn. MTRS denied the application in July 2023. Ms. Sullivan timely appealed. (Respondent exhibit 1; administrative record.)

Analysis

The retirement benefits of a Massachusetts public employee depend in part on the length of the employee's "creditable service." G.L. c. 32, § 5(2). A member is ordinarily credited with the service she performed for Massachusetts governmental units while maintaining membership in Massachusetts retirement systems. *Id.* § 4(1)(a).

A provision specially applicable to teachers allows them to purchase credit for pre-membership periods during which they were "engaged in teaching pupils in any non-public school in the commonwealth." § 4(1)(p). The case law has interpreted the term "teaching pupils" strictly. The Contributory Retirement Appeal Board (CRAB) recently explained:

[T]he choice of the words “engaged in teaching pupils” . . . was intended by the Legislature to include instruction in the academic and vocational subjects that are typically taught for credit in public schools . . . but not the myriad of other special education services that are provided in alternative day and residential schools.

Siddle v. Massachusetts Teachers' Ret. Syst., No. CR-16-385, 2023 WL 11806177, at *3 (CRAB Aug. 2, 2023). The types of services that do not qualify as “teaching pupils” include “therapeutic programming,” instruction on “social and behavioral strategies,” and “advising teachers on how to accommodate students’ learning differences.” *Id.* at *2-4.

Ms. Sullivan concedes that the work she performed during approximately 80% of her time did not satisfy the foregoing definition of “teaching pupils.” Her primary argument is that, because she “spent at least 20% of [her] time at Dearborn engaged in [English] teaching,” she should be permitted to “purchase 20% of [her] service time.”

A similar issue arose in *Siddle, supra*. The petitioner there was a guidance counselor who “also performed some [teaching] work in the classroom.” 2023 WL 11806177, at *2. At least some of her instructional work involved “subjects typically taught for credit in the public schools.” *Id.* at *5. CRAB held:

[T]he specificity of the term “engaged in teaching pupils,” the fact that the Legislature sought to distinguish those who were engaged in [other] functions from those who were engaged in teaching pupils, and the . . . [Legislature’s intent] 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.

Id. (emphasis added). By way of implementing this “primary responsibility” test, CRAB assessed the degree to which the member’s position revolved around her instructional duties; CRAB observed that the member in *Siddle* “regularly performed numerous other duties that, combined, occupied a significant majority of her time and . . . were much more central to her job than her teaching responsibilities.” *Id.* at *6.

Ms. Sullivan's teaching duties at Dearborn represented a significant component of her job. Even so, that component was not Ms. Sullivan's "primary responsibility" within the meaning that *Siddle* ascribes to that term. Ms. Sullivan's more traditional speech-language pathology work "occupied a significant majority of her time." 2023 WL 11806177, at *6. That work was, on balance, the most "central to her job." *Id.* The result is that Ms. Sullivan's service at Dearborn did not amount to "teaching pupils" for purposes of G.L. c. 32, § 4(1)(p).

Conclusion and Order

In view of the foregoing, MTRS's decision is AFFIRMED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate