

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Division of Administrative Law Appeals

Kimberly Toupin-Fonseca,
Petitioner,

Docket No.: CR-26-0111

Dated: September 18, 2026

v.

Massachusetts Teachers' Retirement System,
Respondent.

Appearances:

For Petitioner: Kimberly Toupin-Fonseca (pro se)

For Respondent: Lori Curtis Krusell, Esq.

Administrative Magistrate:

Yakov Malkiel

SUMMARY OF DECISION

While formally employed by a private organization, the petitioner taught classes to students of a charter school. She is not entitled to purchase retirement credit for that period of work under G.L. c. 32, § 4(1)(p), which covers employees who “[taught] pupils” in a “non-public school.” It is reasonably clear from the relevant precedents that a charter school does not count as a “non-public school” in this context.

DECISION

Petitioner Kimberly Toupin-Fonseca appeals from a decision of the Massachusetts Teachers' Retirement System (board) denying her application to purchase retirement credit for a period of pre-membership work. The appeal was submitted on the papers without objection. I admit into evidence exhibits marked 1-17.

Findings of Fact

The following facts either are established by a preponderance of the record evidence or are alleged by the petitioner and taken as true for purposes of this decision.

1. Approximately in late 1995, the petitioner became an employee of the YWCA of Greater Lawrence. Around the same time, the YWCA entered into an agreement to provide physical-education classes to a newly founded charter school, the Lawrence Family Development Charter School (LFD). (Exhibits 2-4.)

2. The YWCA assigned the petitioner to work with LFD's students. Her formal job title was "charter school program coordinator." She developed and oversaw LFD's physical-education curriculum, supervising a staff of five employees. She herself taught approximately twenty-five classes per week, administered fitness assessments, and assigned grades to LFD's students. She remained in this role for five years, through 2000. (Exhibits 2, 6, 9, 10.)

3. The YWCA paid the petitioner's salary; but for the most part, she took her guidance and supervision from LFD. She participated in school staff meetings, submitted monthly reports to the school's administration, and received performance evaluations from the principal. (Exhibits 2, 3, 5, 6.)

4. In 2002, the petitioner became a teacher and a member of the retirement system administered by the board. In 2025, she applied to purchase retirement credit for her work at the YWCA. The board denied the application, and the petitioner timely appealed. (Exhibits 1, 11, 14.)

Analysis

A public employee's tally of creditable service is one of the variables that eventually determines the amount of the employee's retirement allowance. G.L. c. 32, § 5(2)(a). As a

general rule, service is creditable only if the employee performed it while working for a governmental unit and maintaining membership in a public retirement system. *Id.* § 4(1)(a).

The petitioner's work at the YWCA clearly does not satisfy the general rule, if only because she was not a member of a public retirement system at the time. The petitioner's theory is that she is entitled to "purchase" credit for her pre-membership service under G.L. c. 32, § 4(1)(p). In pertinent part, that statute authorizes credit purchases by current teachers who were "previously engaged in teaching pupils in any non-public school in the commonwealth."¹

It is convenient to proceed on the assumptions that the petitioner was working "in" LFD during the pertinent period, and that she was "engaged in teaching pupils" there. *See generally Siddle v. Massachusetts Tchrs.' Ret. Syst.*, No. CR-16-385, 2023 WL 11806177, at *6 (Contributory Ret. App. Bd. Aug. 2, 2023). The pivotal question then becomes whether LFD was a "non-public school."

The retirement law does not define the term "non-public school." The term *could* have been read as covering any school other than a "public school"—a term that the retirement law *does* define, essentially to mean a school run by an "elected school committee." G.L. c. 32, § 1.

¹ The petitioner does not claim that she was a "teacher" at the YWCA under G.L. c. 32, § 1, and 807 C.M.R. § 4.02(2)(b), with a resulting right to have been admitted into retirement-system membership in real time. *See infra* note 3 and accompanying text. The petitioner also does not claim that she is entitled to make her credit purchase under any provision other than § 4(1)(p). *See Mystic Valley Reg'l Charter Sch. v. State Bd. of Ret.*, No. CR-20-243, 2023 WL 11806164, at *2-4 (Contributory Ret. App. Bd. Sept. 8, 2023). Under *Blatt v. State Board of Retirement*, CR-20-199, 2026 WL 714126, at *3 (Contributory Ret. App. Bd. Feb. 19, 2026), the unasserted theories exceed the scope of this appeal.

A charter school *would* qualify as a “non-public school” in this sense, because it operates “independently of a school committee.” G.L. c. 71, § 89(c).

The decisional law reflects a different view. The petitioner in the key case taught at a high school run by the federal government in the Panama Canal Zone. He sought credit for “teaching pupils in a nonpublic school” under G.L. c. 32, § 3(4A), a close analogue of § 4(1)(p).² The Contributory Retirement Appeal Board (CRAB) declined to view the government-operated school as a “non-public school.” *Ryder v. Teachers’ Ret. Bd.*, No. CR-96-605 (Contributory Ret. App. Bd. Dec. 31, 1997). A panel of the Appeals Court affirmed, explaining:

The [petitioner] appears to be suggesting that “nonpublic” . . . should be read in such a way as to include any school not within G.L. c. 32, § 1. That would abuse the language of the statute and distort the statute’s design.

50 Mass. App. Ct. 1110, 2000 WL 1807402, at *1 (2000) (unpublished memorandum opinion).

The panel reasoned that the term “non-public school” instead retains its meaning in “common speech”—a meaning that doesn’t cover “[a school] operated by the United States government under civil service standards.” *Id.* Otherwise put, to qualify as non-public under *Ryder*, a school cannot feature common indicia of “public” bodies or be closely interrelated with government authorities. *Cf. Black’s Law Dictionary* 1422 (10th ed. 2014).

Charter schools cannot be viewed as “non-public” on the foregoing approach. The statute that establishes them announces that they “shall be public school[s],” open to all students, with no tuition charged. G.L. c. 71, § 89(c), (m). Charter schools are treated as state

² Section 3(4A) reaches schools located outside of Massachusetts; but it requires the work to have been performed before 1973. Because sections 3(4A) and 4(1)(p) “concern the same subject matter,” their shared language “must be presumed to have been used with the same meaning in each section.” *Eaton v. Federal Nat. Mortg. Ass’n*, 462 Mass. 569, 583 (2012).

agencies for such purposes as collective bargaining, tort-law liability, and the conflict-of-interest law. *Id.* § 89(u), (y). They are no less public in “common speech” than *Ryder’s* federally run Panamanian school.

The conclusion that charter schools aren’t “non-public” for purposes of § 4(1)(p) draws additional support from CRAB’s two opinions in the *Whipple* case. The primary statute at issue there was G.L. c. 71, § 89(y), which states that “[t]eachers employed by a charter school shall be subject to the state teacher retirement system.” The member in *Whipple* taught at a charter school under an employment contract with a private management company. Initially, CRAB saw no reason to treat her differently from teachers employed directly by a charter school’s board of trustees; as a result, CRAB concluded that the member “had a right to membership . . . while working at the charter school,” and was “entitled to purchase creditable service for that work.” *Whipple v. Massachusetts Tchrs.’ Ret. Syst. (Whipple I)*, No. CR-07-1136, 2014 WL 13121789, at *2 (Contributory Ret. App. Bd. Aug. 8, 2014).³

On a motion for reconsideration, CRAB reversed course: it was persuaded that, if a public retirement system were to admit employees of private bodies into membership, the system would lose its status as a “governmental plan” under federal law. CRAB could not believe that the Legislature intended for G.L. c. 71, § 89(y), to trigger that pitfall. CRAB reasoned further:

Where [the member] did not have the right . . . to join the [retirement system] while she taught at [the charter school], she cannot be entitled to purchase creditable service for that work. This is because

³ CRAB identified the purchase-authorizing provision as one of the clauses of G.L. c. 32, § 3(5), namely the clause starting with the paragraph’s fourth “or any.” Other potentially invokable statutes might have been § 3(5)’s preceding clause, or § 3(3), or § 20(5)(c)(2).

the right to purchase creditable service in these circumstances *depends on whether the employee was eligible for membership* at the time of the prior service.

Whipple v. Massachusetts Tchr.' Ret. Syst. (Whipple II), No. CR-07-1136, 2014 WL 13121790, at *6 (Contributory Ret. App. Bd. Dec. 19, 2014) (emphasis added). Implicit in this analysis was the premise that the member's work at the charter school was *not* purchasable as *pre-membership* service; her opportunity to acquire credit "depend[ed] on" her eligibility for membership in real time. It follows more specifically that CRAB did not view the teaching of pupils at a charter school as purchasable pre-membership service under § 4(1)(p).⁴

Conclusion and Order

For the foregoing reasons, the petitioner is not entitled to purchase credit for her work with LFD under G.L. c. 32, § 4(1)(p). The board's decision to that effect is AFFIRMED.

/s/ Yakov Malkiel

Yakov Malkiel

Administrative Magistrate

Division of Administrative Law Appeals

⁴ Section 4(1)(p) has been in effect since St. 1973, c. 760. Especially given the energy and attention devoted to the *Whipple* case, it seems unlikely that CRAB and the parties before it would have overlooked the implications of § 4(1)(p) or any other purchase-authorizing statutes.