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**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC SCHOOL EMPLOYEE'S RETIREMENT BOARD**

**IN RE:   Account of Kathleen Maylath,  
  
          Claim of Kathleen Maylath**

**Docket No. 2023-07**

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**PROPOSED OPINION AND RECOMMENDATION**

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**Peter D. Kovach  
Hearing Officer**

**Date of Hearing:   September 18, 2024  
Hearing Officer:   Peter D. Kovach  
For Claimant:     Kathleen Maylath, *pro se*  
For PSERS:        Christine M. Trout, Esquire**

## **BACKGROUND AND PROCEDURAL HISTORY**

This matter comes before the Public School Employees' Retirement Board ("Board") based upon the November 8, 2023 appeal and request for hearing filed by Kathleen Maylath ("Claimant"). In summary, by way of letter dated April 20, 2021 (received April 26, 2021), Claimant requested that the Board, among other things, direct the Public School Employees' Retirement System ("PSERS") to make several corrections and adjustments to her credited service such that Claimant would be considered a vested member and eligible for retirement benefits.

By way of letter dated October 6, 2023, the Executive Staff Review Committee ("ESRC") advised Claimant that it had reviewed Claimant's request at its December 21, 2022 meeting; however, it had denied her requests regarding service adjustments. On November 6, 2023, Claimant filed an *Appeal and Request for Administrative Hearing* ("Appeal") of the ESRC decision. Claimant included in her appeal allegations that she had been advised in a December 2020 email, and a subsequently January 28, 2021 estimate, that she had sufficient credits to vest and receive a retirement benefit; however, when Claimant attempted to schedule a retirement counseling session two (2) days later, Claimant was told she had not vested.

On November 12, 2023, the Public School Employees' Retirement System ("PSERS") filed its Answer to Claimant's appeal. In summary, PSERS' Answer denied that Claimant was entitled to a retirement benefit because, as PSERS asserts, Claimant's service credits were properly calculated based upon the information available to PSERS. That calculation indicated that Claimant does not have sufficient credits to vest.

By letter dated May 17, 2024, Board Secretary Terrill J. Sanchez ("Secretary Sanchez") appointed Jason Giurintano, Esquire as the Hearing Examiner for Claimant's administrative appeal. The same day, a notice of administrative hearing was transmitted to Claimant, advising

her that the hearing regarding Claimant's appeal was scheduled for Wednesday, September 8, 2024, at the offices of PSERS in Harrisburg.

At the end of July 2024, Hearing Examiner Giurintano accepted a new position within the Commonwealth. Consequently, on August 5, 2024, Secretary Sanchez appointed the undersigned as the Hearing Examiner for the previously scheduled hearing.

The hearing was held, as scheduled, on September 18, 2024. Claimant attended the hearing and elected to proceed *pro se*. Christine M. Trout, Esquire appeared on behalf of PSERS. Claimant testified on her own behalf and offered into evidence seven (7) exhibits. PSERS presented its case through 32 exhibits, as well as the testimony of Steven Foremny ("Foremny"), a retirement administrator for the account verification section of PSERS.

At the end of the hearing, PSERS indicated on the record a desire to file a post-hearing brief (Notes of Testimony ("N.T." at 90), while Claimant indicated that she would waive the filing of her initial brief (N.T. 92). The parties were advised that a briefing scheduling order would be issued after the hearing officer was advised that the transcript had been received, and that specific due dates would be included in the briefing order.

On October 16, 2024, the hearing examiner was advised that the transcript had been received by PSERS' docket clerk. A *Briefing Scheduling Order* (the "Briefing Order") was issued on October 17, 2024, which set forth the briefing requirements, noted that Claimant had waived the filing of a primary brief, set November 18, 2024 as the date by which PSERS brief was due, and further established December 9, 2024 as date by which Claimant's reply brief (or notice that no brief would be filed) was due.

PSERS filed its post-hearing brief on November 14, 2024, entitling Claimant (as the party with the burden of proof), the opportunity to file a reply brief.<sup>1</sup> Claimant did not file a reply brief by December 9, 2024, as permitted in by the Briefing Order, or otherwise provide notice that a reply brief would not be filed. Therefore, the record was deemed closed the next business day after the reply brief was due – in this case, the record was deemed closed on Tuesday, December 10, 2024. Accordingly, the matter is now ripe for disposition.

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<sup>1</sup> Pursuant to Rule 35.191 of the General Rules of Administrative Practice and Procedure, 1 Pa. Code § 35.191, “...In no proceeding, whether briefs are to be filed simultaneously or otherwise, shall a participant upon whom rests the burden of proof be denied the right to file a reply brief.”

## **FINDINGS OF FACT**

1. Claimant became a member of PSERS in February 2002 by virtue of her employment with the People For People Charter School ("P4PCS"). (Notes of Testimony ("N.T.") 16; Exhibit PSERS-19).

2. Claimant was an active contributing Class T-D member of PSERS on July 1, 2011. (N.T. 16; Exhibit PSERS-22, Exhibit PSERS-29).

3. Claimant intermittently qualified for PSERS' membership through her employment with public school employers through the 2013-2014 school year. (N.T. 16; 37-38, 41-43; Exhibit PSERS-19).

4. Service credit for members working in a per diem or salaried position is reported in days, while an hourly employee's service credit is reported in hours. (N.T. 17-18).

5. On February 4, 2021, Claimant requested a *Breakdown of Service*. (N.T. 14-15; Exhibit PSERS-18).

6. When PSERS receives a request for a *Breakdown of Service*, PSERS reviews every employer and year that service was reported to ensure it is accurate. (N.T. 15).

7. On March 24, 2021, PSERS mailed Claimant a *Breakdown of Service*, notifying Claimant that she has 4.84 years of credited service. (N.T. 15-16; Exhibit PSERS-19).

8. No employer has reported any other service to PSERS since the *Breakdown of Service* was created. (N.T. 49).

9. Claimant's service credits on her *Breakdown of Service* were different than the credits reflected on her *Statement(s) of Account*. (N.T. 21-22, 24-25; Exhibit PSERS-I-Exhibit PSERS-17, Exhibit PSERS-19).

10. A member's *Statement of Account* is sent to the member yearly and displays, *inter alia*, the member's service credit information as it was provided to PSERS by the employer. (N.T. 21).

11. Employers enter an employee's work history as a contract record, and the employer is able to make adjustments to the contract record at any time to correct reporting errors. (N.T. 22, 25, 27; Exhibit PSERS-29).

12. PSERS does not immediately verify the information that is reported by the employer and subsequently reflected on a *Statement of Account*. (N.T. 21-22).

13. A *Breakdown of Service* is different than a *Statement of Account*; a *Breakdown of Service* is more thorough. (N.T. 21).

14. PSERS makes service adjustments to an account if it determines that the service was reported incorrectly. (N.T. 25; 24 Pa.C.S § 8534(b)).

15. On the cover letter which accompanies the *Statement(s) of Account*, members are advised to review their *Statement(s) of Account* and report discrepancies to their employer or PSERS. (N.T. 22; Exhibit PSERS-13, Exhibit PSERS-15-Exhibit PSERS-17).

16. Claimant never reported any issues or discrepancies to PSERS until the summer of 2020, despite receiving her yearly *Statement(s) of Account*,. (N.T. 25-26, 64-69).

17. PSERS *Statement(s) of Account* mailed to Claimant in October 2014 and November 2015 listed Claimant's years of service credit as 5.08. (Exhibit PSERS-12 & Exhibit PSERS-13).

18. PSERS *Statement(s) of Account* mailed to Claimant in October of 2017, 2018 and 2019 listed Claimant's years of service as 4.99, as of June 30 of the respective year. (N.T. 69-70; Exhibit PSERS-15 through Exhibit PSERS-17).

19. In the summer of 2020, Claimant called PSERS with questions about her account because she noticed her service credits and vesting status changed. (N.T. 26, 66-68).

20. PSERS' account maintenance division contacted some of Claimant's employers to verify the information they previously reported to PSERS. (N.T. 26).

21. PSERS contacted the Wallingford-Swarthmore School District ("Wallingford-Swarthmore SD") because PSERS identified a potential discrepancy with Claimant's contract record. (N.T. 26).

22. The Wallingford-Swarthmore SD originally reported that Claimant rendered 43 days of service in the 2005-2006 school year. (Exhibit PSERS-4).

23. After being contacted, the Wallingford-Swarthmore SD reported to PSERS that Claimant rendered 61 days of service in the 2005-2006 school year. (N.T. 28-29).

24. In December of 2020, based on new reporting from the Wallingford-Swarthmore SD, PSERS made an adjustment to Claimant's account to credit her with the additional 18 days of service for the 2005-2006 school year. (N.T. 29; Exhibit PSERS-29).

25. The Wallingford-Swarthmore SD originally reported that Claimant rendered 48 days of service in the 2006-2007 school year. (Exhibit PSERS-5).

26. After review, it was determined that the Wallingford-Swarthmore SD should have reported to PSERS that Claimant rendered 49 days of service in the 2006-2007 school year. (N.T. 29).

27. In December of 2020, based on new reporting from the Wallingford-Swarthmore SD, PSERS made an adjustment to Claimant's account to credit her with an additional 1 day of service for the 2006-2007 school year. (N.T. 29-30; Exhibit PSERS-29).

28. The adjustments PSERS made to Claimant's account in December 2020 increased Claimant's total service credits, and it appeared that Claimant had enough service credits to be vested. (N.T. 30).

29. On December 2, 2020, PSERS notified Claimant that, with the service credits added due to the adjustments made for service provided to the Wallingford-Swarthmore SD, Claimant had sufficient service credits to be vested. (N.T. 30).

30. On December 3, 2020, Claimant submitted a *Phone Estimate Request* to PSERS for a retirement estimate. (N.T. 30; Exhibit PSERS-30).

31. When a member requests a retirement estimate, staff begin the account verification process, which includes contacting prior employers to confirm service credit. (N.T. 13-14, 30-33).

32. The Account Verification Section reviewed Claimant's account and identified additional 'red flags' that required PSERS to inquire with some of Claimant's other employers; the results of this inquiries resulted in additional adjustments to Claimant's account. (N.T. 31-32, 34, 37).

33. In January 2021, during the account verification process, PSERS made an adjustment to Claimant's account that removed 48 days of service rendered during the 2004-2005 school year. (N.T. 31-32; Exhibit PSERS-29).

34. The adjustment was made because the Wallingford-Swarthmore SD informed PSERS that Claimant had not been employed by the Wallingford-Swarthmore SD in the 2004-2005 school year; instead, she been hired after classes had concluded and the services rendered occurred during the summer. (N.T. 31- 32).



35. During the account verification process in January 2021, PSERS also contacted P4PCS because Claimant received service credit representing a school year for which PSERS did not have information to believe she was employed. (N.T. 32-33, 35).

36. Balance of contract payments are payments owed for work rendered in the prior school year and occur when employees defer some of their paycheck in order to be paid during the summer. (N.T. 34).

37. After inquiry, it was determined that P4PCS had erroneously reported balance-of-contract payments for service actually rendered during the 2002-2003 SY as having been credited service rendered in the 2003-2004 school year. (N.T. 33-34, 73; Exhibit PSERS-31).

38. Claimant was already credited with a full year of service for the 2002-2003 SY, consequently, the 30 days credited to the 2003-2004 SY could not be added to the 2002-2003 SY. (N.T. 34-35; Exhibit PSERS-19).

39. Claimant admits that she did not render service in the 2003-2004 school year. (N.T. 73).

40. PSERS made an adjustment to Claimant's account that removed the 30 days of incorrectly reported credited service (equivalent to 0.17 service credits) from the 2003-2004 school year. (N.T. 34; Exhibit PSERS-31).

41. PSERS also made an adjustment to Claimant's account regarding her service credit for the 2001-2002 SY because the P4PCS informed PSERS of an error in the method by which they had originally reported Claimant's credited service. (N.T. 36, 50; Exhibit PSERS-32).

42. The P4PCS originally reported that Claimant rendered 616 hours of credited service, but should have reported the credited service as 86 days of service for the 2001-2002 SY. (N.T. 36-37).

43. The adjustment from reporting Claimant's employment at P4PCS as an hourly employee to a daily employee reduced the calculated amount of service at P4PCS by 0.08 credits. (N.T. 37; Exhibit PSERS-32).

44. Following the adjustments made during the account verification process, PSERS calculated that Claimant did not have the necessary service credits to be considered vested. (N.T. 37, 52-53; Exhibit PSERS-19).

45. Non-qualifying part-time ("NQPT") service is uncredited service rendered in a year where the member did not meet the qualifications for membership in PSERS. (N.T. 38; Exhibit PSERS-22).

46. Claimant rendered NQPT service in the 2004-2005 and the 2009-2010 school years. (N.T. 37-38, 41-43; Exhibit PSERS-28, Exhibit PSERS-29).

47. Claimant's NQPT service was not reflected as service credit on her *Statement(s) of Account*. (Exhibit PSERS-3, Exhibit PSERS-8).

48. On November 10, 2011, PSERS mailed a letter to Claimant explaining that due to recent pension legislation, Claimant had a limited window of opportunity to purchase NQPT public school service, and that her deadline to purchase NQPT was June 30, 2014. (N.T. 40-41; Exhibit PSERS- 22).

49. The November 10, 2011 letter stated, in pertinent part:

*As noted in the newsletters that the Public School Employees' Retirement System (PSERS) sends to you, the passage of pension reform legislation limits the window of opportunity to purchase non-qualifying part-time (NQPT) Pennsylvania public school service. NQPT service is any part-time hourly or part-time per diem school employment in which the service within a given year (July 1 - June 30) was fewer than 500 hours or 80 days. NQPT service can be counted towards your retirement benefit. Members who were active on July 1, 2011, have until June 30, 2014 to file an application to purchase this type of service.*

*Because you were an active member on July 1, 2011, your window to purchase NQPT service expires on June 30, 2014. If you do not have any NQPT service to purchase or you have already purchased your previously acquired NQPT service, there is nothing more that you need to do.*

*If you wish to purchase NQPT service, you must be an active contributing member and you must submit your application prior to June 30, 2014. You will never have another opportunity to apply to purchase NQPT service beyond this date. If you have terminated your public school employment, retired or are no longer an active member, you are not eligible to apply for NQPT service unless you become an active contributing member.*

\* \* \* \* \*

(Exhibit PSERS-22 (emphasis in original)).

50. Claimant did not submit an application to PSERS prior to June 30, 2014 to purchase her NQPT. (N.T. 39, 41, 43; Exhibit PSERS-27).

51. On April 15, 2021, Claimant submitted a *Purchase of Former Part-Time Uncredited Service* form to PSERS requesting to purchase service credit for four (4) days of service rendered to the Colonial School District in the 2004-2005 school year. (N.T. 41-42; Exhibit PSERS-26).

52. On April 30, 2021, Claimant was notified that her request to purchase the service was denied because it was not received by the June 30, 2014 deadline, and Claimant was not an active and contributing PSERS member. (N.T. 42-43; Exhibit PSERS-27).

53. The Upper Merion School District ("Upper Merion SD") reported that Claimant rendered 29.5 days of service in the 2009-2010 school year. (N.T. 37-38; Exhibit PSERS-8, Exhibit PSERS-19).

54. Claimant did not render enough service to qualify for PSERS membership for the 2009-2010 school year; consequently, the service and her contributions were partially refunded from her account. (N.T. 38, 51-52; Exhibit PSERS-8, Exhibit PSERS-19, Exhibit PSERS-28).

55. By letter dated January 28, 2011, PSERS informed Claimant that her contributions were refunded to her and informed her that "[i]f you qualify for PSERS membership in a subsequent year, you may apply to purchase credit for the 2009-2010 school service by completing an *Application to Purchase Credit for Part Time Service (PSRS-100)*." (Exhibit PSERS-28).

56. Claimant never submitted an application to purchase credit for her 2009-2010 school service. (N.T. 39).

57. Former Uncredited Part-time service is service that should have been reported and credited at the time it was rendered because the member qualified for PSERS membership, but for some reason was not properly reported to PSERS by the employer. (N.T. 44).

58. Claimant rendered Former Uncredited Part-time service in the 2005-2006 and 2006-2007 school years. (N.T. 44-45, 48-49; Exhibit PSERS-19, Exhibit PSERS-21, Exhibit PSERS-25).

59. It appeared to PSERS that during the 2006-2007 school year, the Upper Merion SD likely did not know Claimant had qualified for PSERS membership though her other employment with the Wallingford-Swarthmore SD, and therefore the Upper Merion SD did not report Claimant's information to PSERS. (N.T. 44).

60. On February 22, 2011, Claimant was notified by letter that she would be charged a debt and credited with 0.38 service credits for the Former Uncredited Part-time Service that she rendered for the Upper Merion SD in the 2006-2007 school year. (N.T. 44-45, Exhibit PSERS-19, Exhibit PSERS- 21).

61. On August 11, 2014, PSERS received a *Purchase of Former Part-Time Uncredited Service* form from Claimant requesting to purchase credit for service rendered for the Upper Merion SD in the 2005-2006 and 2006-2007 school years. (N.T. 46; Exhibit PSERS-23).

62. By letter dated August 13, 2014, PSERS sent Claimant a letter acknowledging receipt of her *Purchase of Former Part-Time Uncredited Service* and explained that PSERS needed to determine whether the service was NQPT or Uncredited Part-Time Service. (N.T. 47; Exhibit PSERS-24).

63. Claimant has already been credited for the requested time for the 2006-2007 school year. (N.T. 44-45; Exhibit PSERS-21).

64. By letter dated January 13, 2016, Claimant was notified that she would be charged a debt and credited with 0.18 service credits for the Former Uncredited Part-time Service that she rendered for the Upper Merion SD in the 2005-2006 school year. (N.T. 48, Exhibit PSERS-19, Exhibit PSERS- 23, Exhibit PSERS-25).

65. As of the date of the hearing, Claimant had not filed an *Application for Retirement* with PSERS. (N.T. 50, 70).

66. Through her employment with the Wallingford-Swarthmore SD, Claimant rendered six (6) more days of service in the 2006-2007 school year than she is credited with on the *Breakdown of Service*. (N.T. 56, 59-60, 78; Exhibit Claimant-4).

67. Claimant rendered the six (6) days of service during June of 2007, but was not paid for the service until July 6, 2007. (N.T. 59-60; Exhibit Claimant-4).

68. It is PSERS understanding that the additional six (6) days of service credit will not cause Claimant to vest and be eligible for a retirement benefit. (N.T. 50-51, 56, 78; Exhibit PSERS-20).

69. PSERS did not credit Claimant with the six (6) days, because she would need to pay a debt for the service that would then be refunded back to Claimant because she is not yet vested and eligible for a pension. (N.T. 17, 56).

70. The other 20 days of service Claimant rendered for the Wallingford-Swarthmore SD during the summer of 2007 were properly credited to the 2007-2008 school year. (N.T. 59-60, 85, 87-88; Exhibits PSERS-20, PSERS-29, Claimant-7).

71. During the 2007-2008 school year, Claimant worked more than 180 days, so her credit was "leveled" to one (1) full year of service credit. (N.T. 18).

72. After receiving her *Breakdown of Service*, Claimant appealed the determination to PSERS' ESRC. (N.T. 19).

73. By letter dated October 6, 2023, the ESRC denied Claimant's requests to waive a service adjustment that was made to her account, make additional adjustments to her account, and to have uncredited NQPT service credited to her account. (N.T. 20; Exhibit PSERS-20).

74. On November 6, 2023, Claimant filed an *Appeal and Request for Administrative Hearing*. (Docket at 2023-07).

75. On November 22, 2023, PSERS filed an *Answer* to Claimant's appeal. (Docket at 2023-07).

76. On September 18, 2024, an administrative hearing was held before Hearing Examiner Peter D. Kovach, Esq.; Claimant appeared and elected to proceed *pro se*; Claimant was provided the opportunity to testify on her own behalf, call and examine witnesses, and to offer her own exhibits into evidence, and was provided the opportunity to object to the testimony and exhibits offered by PSERS; Claimant was advised of the opportunity to file a post-hearing brief and after PSERS indicated its intent to file a post-hearing brief, was advised of the date on which Claimant's responsive brief would be due. (N.T. *passim*; Docket at 2023-07 at *Briefing Order*).

## CONCLUSIONS OF LAW

1. Claimant was afforded notice of ESRC's determination and was provided an opportunity to be heard in connection with her appeal. (N.T., passim; Findings of Fact ("F.F.") 42-45).
2. Claimant has the burden of proof in this proceeding. (*Wingert v. State Employees' Retirement Board*, 589 A.2d 269 (Pa. Cmwlth. 1991)).
3. The burden of proof to be applied in this administrative action is the preponderance of the evidence standard. (*Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A. 2d 600 (Pa. Cmwlth. 1990), petition for allowance of appeal denied, 602 A. 2d 863 (Pa. 1998); *Suber v. Pennsylvania Commission on Crime and Delinquency*, 885 A. 2d 678 (Pa. Cmwlth. 2005)).
4. Claimant has only those rights recognized by statute and none beyond. (*Bittenbender v. State Employees' Retirement Board*, 622 A. 2d 403 (Pa. Cmwlth. 1992); *Forman v. Pub. Sch. Emps.' Ret. Bd.*, 778 A.2d 778, 780 (Pa. Cmwlth. 2001)).
5. An individual qualifies for membership in PSERS by working for a Pennsylvania public school employer in a full-time or part-time salaried position or by working 500 hours or 80 days in a school year. See, 24 Pa.C.S. § 8301(a).
6. As a Class T-D member, Claimant needs at least 5.0 years of service credit to vest and be eligible for a pension. (24 Pa.C.S. §§ 8307(b), 8308).
7. An employee may only earn one (1.0) service credit per year. (24 Pa.C.S. § 8302(a); 22 Pa. Code§ 211.2 at School year).
8. In school districts other than school districts of the first-class, a school year begins on the first day of July of one year, and ends on the 30<sup>th</sup> day of June the following year. (24 P.S. § 1-102 at School year).

9. A full-time salaried school employee shall receive one (1) year of credit for each school year or the corresponding fraction of a school year worked. (24 Pa.C.S. § 8302(a)).

10. A part-time salaried employee is credited with the fractional portion of the year which corresponds to the service actually rendered and for which contributions are or would have been made to the fund except for the limitations under the Internal Revenue Code in relation to the service required as a comparable full-time salaried employee. (24 Pa.C.S. § 8302(a)).

11. A per-diem or hourly school employee receives one (1) credited service year after working at least 180 days or 1,100 hours. (24 Pa.C.S. § 8302(a)).

12. A per-diem or hourly school employee who works less than 180 days or 1,100 hours is credited with a fractional portion of a year determined by the ratio of the number of full-day sessions or hours of service actually rendered to 180 full-day sessions or 1,100 hours, as the case may be. (24 Pa.C.S. § 8302(a)).

13. Members who were active on July 1, 2011 and who had NQPT service could file an application to purchase that NQPT service until June 30, 2014. (24 Pa.C.S. § 8303(d)).

14. Prior to November 23, 2020, public school employees had to qualify for PSERS membership every school year. (*See*, 24 Pa.C.S. § 8301(a)(2) prior to amendments made by the act of November 23, 2010, P.L. 1269, No. 20 (effective Nov. 23, 2010) (“Act 20 of 2010”)).

15. On and after November 23, 2023, public school employees are generally not required to requalify for PSERS membership each year. (24 Pa.C.S. § 8301(a)(2); 24 Pa.C.S. § 8102 at Member).

16. In that Claimant did not submit an application to purchase her NQPT prior to June 30, 2014, Claimant is not eligible to purchase her NQPT. (F.F. 50; 24 Pa.C.S. § 8303(d)).



17. In that Claimant did not submit an application to purchase her Former Part-time Unaccredited Service prior to June 30, 2014, Claimant is not eligible to purchase her four (4) days of service rendered to the Colonial SD in the 2004-2005 SY and 29.5 days of service rendered to the Wallingford-Swathmore SD in the 2009-2010 SY. (F.F. 51-52; 24 Pa.C.S. § 8303(d)).

18. Claimant is eligible for adjustment of her account, upon payment of the respective debt, by 0.03 service credits to reflect six (6) additional days of eligible credit earned by rendering service to the Wallingford-Swathmore SD during the 2006-2007 SY, but for which she was paid in the 2007-2008 SY. (F.F. 66-69; Conclusion of Law 12).

19. In that Claimant only has 4.87 years of creditable service, Claimant is not yet a vested member of PSERS and is not yet eligible for a retirement benefit. (F.F. 1-70; Conclusions of Law 1-18).

## **DISCUSSION**

### **BURDEN AND DEGREE OF PROOF**

It is well established that Claimant bears the burden of proving the facts necessary to sustain her claim. *See, Gierschick v. State Employees' Ret. Bd.*, 733 A.2d 29, 32 (Pa. Cmwlth. 1999); *Wingert v. State Employees' Ret. Bd.*, 589 A.2d 269, 271 (Pa. Cmwlth. 1991). Further, it is well established that the PSERS is a creature of the legislature, and its members only have those rights created by the Retirement Code and none beyond. *See, e.g., Burris v. State Employees' Ret. Bd.*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender*, 622 A.2d at 405; *Hughes v. Public Sch. Employees' Ret. Bd.*, 662 A.2d 701, 706 (Pa. Cmwlth. 1995), *allocator denied*, 668 A.2d 1139 (Pa. 1996).

While a member is entitled to a liberal construction of the Retirement Code, PSERS has no authority to grant rights beyond those specifically set forth in the Retirement Code. *Bittenbender*, 622 A.2d at 405; *Forman*, 778 A.2d at 779. Equitable relief is not an available remedy under the Retirement Code. *Finnegan v. Public School Employees' Ret. Bd.*, 560 A.2d 848, 851 (Pa. Cmwlth. 1989), *aff'd*, 591 A.2d 1053 (Pa. 1991).

The degree of proof required to establish a case before an administrative tribunal is a preponderance of the evidence standard. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is "the lowest degree of proof recognized in civil judicial proceedings," *Id.* citing *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). It is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the proponent's case must weigh slightly more than the opposing evidence. *Se-Ling Hosiery*, 70 A.2d at 856.

### **DEMEANOR AND CREDIBILITY**

The witness of PSERS, Steven Foremny testified first.<sup>2</sup> Foremny presented well and appeared poised, knowledgeable, and confident during his testimony. Claimant also testified and her testimony was also credible and generally well prepared, although she did appear slightly less confident when testifying than Foremny. That small disparity appeared to be attributable to Foremny likely having a greater understanding of the hearing process, instead of any byproduct of Claimant attempting to be deceptive.

### **EVALUATION OF CLAIMANT'S CLAIM**

The Public School Employees' Retirement Code<sup>3</sup> ("Retirement Code") generally requires school employees who hold a full-time or a part-time salaried position, and those who work in excess of 500 hours or 80 days in a school year, to be a member of PSERS. *See*, 24 Pa.C.S. § 8301(a)(2). Beginning in 2010, upon gaining membership in PSERS, an individual does not need to requalify for membership each year. *See*, 24 Pa.C.S. § 8301(a)(2). However, prior to the enactment of Act 120 of 2010, a public school employee had to qualify for PSERS membership every school year. Creditable service is gained by rendering service as a school employee. The Retirement Code defines a school employee as:

*Any person engaged in work relating to a public school for any governmental entity and for which work he is receiving regular remuneration as an officer, administrator or employee excluding, however, any independent contractor or a person compensated on a fee basis.*

24 Pa.C.S. § 8102 at School Employee.

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<sup>2</sup> While Claimant has the burden of proof in this matter, PSERS offered to present its case first. Claimant did not object, and PSERS was then permitted to present its case in chief first.

<sup>3</sup> 24 Pa.C.S. Part IV

Service credits are utilized to determine whether a member has vested in the retirement system. For members of Class T-D, like Claimant, at least five (5) points are needed to vest and be eligible to receive a retirement annuity benefit. See, 24 Pa.C.S. §§ 8305(c), 8307(b) & 8308.

The Retirement Code provides, in pertinent part, as follows with regard to how service credits may be earned:

***Section 8302. Credited school service.***

*(a) Computation of credited service.--In computing credited school service of a member for the determination of benefits, a full-time salaried school employee shall receive one year of credit for each school year or the corresponding fraction thereof, in accordance with the proportion of the full school year for which the required regular member contributions have been made to the fund, or for which such contributions otherwise required for such service were not made to the fund solely by reason of any provision of this part relating to the limitations under IRC § 401(a)(17) or 415. A per diem or hourly school employee shall receive one year of credited service for each nonoverlapping period of 12 consecutive months in which he is employed and for which contributions are made to the fund, or would have been made to the fund but for such limitations under the IRC, for at least 180 full-day sessions or 1,100 hours of employment. If such member was employed and contributions were made to the fund for less than 180 full-day sessions or 1,100 hours, he shall be credited with a fractional portion of a year determined by the ratio of the number of full-day sessions or hours of service actually rendered to 180 full-day sessions or 1,100 hours, as the case may be. A part-time salaried employee shall be credited with the fractional portion of the year which corresponds to the service actually rendered and for which contributions are or would have been made to the fund except for the limitations under the IRC in relation to the service required as a comparable full-time salaried employee. In no case shall a member receive more than one year of credited service for any 12 consecutive months or a member who has elected multiple service receive an aggregate in the two systems of more than one year of credited service for any 12 consecutive months.*

\* \* \* \* \*

24 Pa. C.S. § 38302(a).

For all but first-class school districts (i.e., school districts having a population of one million (1,000,000), or more) the term “school year,” is defined under both the Retirement Code

and the Public School Code of 1949<sup>4</sup> as lasting from the first day of July of one year until the 30<sup>th</sup> day of June of the following year. (See, 24 P.S. § 1-102 at School year; 24 Pa.C.S. § 8102 at School year.)

In summary, a full-time school employee may earn one year of credit for each year worked, while part-time employees earn a fractional proportion of credit. Similarly, a per diem or hourly employee may be eligible to earn credit based upon the respective fraction of 180 full-day sessions, or 1,100 hours, as the case may be. Service credit is earned based upon the school year in which the service was rendered – generally July 1 through June 30 of the following year – not the school year in which the employee received their payment for the service. Finally, a member may earn no more than one (1) credit per school year.

In this matter, Claimant comes before the Board requesting that her years of creditable service be adjusted so that Claimant would be considered vested. Claimant's concern that her service credits have not been properly calculated is certainly understandable. She received Statements of Account in 2015 and 2016 indicating that she had 5.08 credits of service. Those years of credit were subsequently updated in her 2017, 2018, and 2019 *Statements of Account* to reflect that she only had 4.99 credits of service – just one hundredth of a credit short of being considered vested.

Claimant began making inquiries with PSERS about her credited service in the summer of 2020. Eventually, Claimant was advised by e-mail in December 2020 that she had sufficient credits to be vested, only to be told a month or two later that she did not have sufficient credits. Even at the time of hearing, there was testimony which indicates that Claimant should be credited

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<sup>4</sup> 24 P.S. § 1-101 through 1-134

for an additional six (6) days (0.03 credits) more than is in the most recent total provided to her prior to the hearing.

While the ever-evolving service credit information provided to Claimant does raise concerns about whether the information, even as of the date of the hearing is fully accurate, it is Claimant's burden to produce sufficient evidence to show that she has sufficient credits to vest. For the reasons more fully set forth below, the Hearing Examiner and Board are bound by the information presented at the hearing, which indicates that as of the date of hearing, Claimant is only properly credited with 4.87 credits of service. Therefore, as far as her appeal relates to whether she is a vested member of PSERS, that appeal must fail.

The credible testimony from the hearing indicated that while member statements of account are generated by PSERS on an annual basis, those statements are essentially automatically generated. They are based solely upon the raw information reported to PSERS by the various school employers, and are not an audited calculation. PSERS does not regularly check the accuracy of the service credit information provided to it and is not required to audit claimant's account and certify creditable service until after the member has retired and final salary and service information had been received from the member's employer. (*See*, 24 Pa.C.S. § 8505(g). *See also, Hughes*, 662 A.2d at 706, fn. 8.) However, when the Board determines that an error has been made and credits have been improperly reported or improperly calculated, the Board is required to correct the member's record. (*See*, 24 Pa.C.S § 8534(b)). It must do so regardless of the nature of any intent which may have caused the error. *Id.*

With those basic concepts as background, the evidence produced at hearing indicated that Claimant first inquired about the accuracy of her service credit, as reported on her recent

*Statements of Account*, in the summer of 2020. At that time, PSERS began investigating the information provided to it by Claimant's various school employers.

The initial correction to her record involved revised information received from the Wallingford-Swarthmore SD regarding Claimant's work during the 2005-2006 SY and 2006-2007 SY. The Wallingford-Swarthmore SD had originally reported to PSERS that Claimant had rendered 43 days of service in the 2005-2006 school year. However, after being contacted by PSERS and reviewing its records, the Wallingford-Swarthmore SD reported to PSERS that Claimant had actually rendered 61 days of service in the 2005-2006 school year – resulting in an additional 18 days of service credit for the 2005-2006 school year.

The Wallingford-Swarthmore SD further determined that it had underreported Claimant's service in the 2006-2007 SY by an additional one (1) day. PSERS then updated Claimant's record to reflect 19 additional days of service –slightly over 0.10 additional service credits. Those adjustments then made it appear that Claimant had the minimum five (5) credits to be considered vested and Claimant was advised of this new total and result by email in December 2020.

Unfortunately for Claimant, the Wallingford-Swarthmore SD was not the only employer to have incorrectly reported (or in one case, failed to report) information to PSERS. After Claimant was informally advised by e-mail that her account had been revised to indicate she had in excess of five (5) credits, PSERS received additional information in January of 2021 – this time from P4PCS regarding reporting errors it had made. For the 2001-2002 SY, P4PCS had reported Claimant's service as being 616 hours worked; however, after being contacted P4PCS determined it should have reported her service in terms of terms of days worked (86), not in terms of hours. This changed in reporting method of service credit made by Claimant's former employer also resulted in a necessary adjustment to Claimant's record.

Unfortunately, this adjustment did not work in Claimant's favor. Hourly employee credits are reported by hours worked and the service credit is calculated by utilizing 1100 hours as the denominator. P4PCS reporting Claimant's employment in terms of hours resulted in Claimant being given a service credit of 0.56 (616 hrs./1100 hrs.).

By contrast, daily employee credits are reported by days worked and service credit is calculated utilizing a denominator of 180 days. When P4PCS changed its reporting method to days, Claimant's service credit changed to a rounded total of 0.48 (86 days/180 days). This is a reduction of 0.08 service credits.

This was not the only reporting error made by P4PCS. Further investigation and review indicated that Claimant had elected to receive a balance-of-contract payment from P4PCS for her work during the 2002/2003 SY. Mr. Foremny described balance-of-contract payments as deferred payments earned during one school year, which are then paid over the summer. P4PCS had erroneously reported those balance-of-contract payments earned in 2002/2003 SY but paid over the summer as if the service had been provided in the 2003/2004 SY. Because service credit is reported by the school year in which it is earned and not paid, the erroneous service credit reported for the 2003/2004 SY had to be removed from Claimant's record. Respondent had already earned a full 1.0 credit for the 2002/2003 SY. Consequently, those misreported days could not act as an additional service credit in the prior school year. The removal of the erroneous 2003/2004 SY credits decreased Claimant's total service credit by -0.17. As noted by PSERS, Claimant acknowledged during the hearing that the revised 2002-2004 service credit calculations were accurate. (N.T. 73).

In January of 2021, the Wallingford-Swarthmore SD provided additional information to PSERS which required a further adjustment to Claimant's credits from that district. Specifically,



PSERS was advised that the school had accidentally reported 48 days of service in 2004/2005, however, after reviewing their records the Wallingford-Swarthmore SD determined that Claimant had been hired after classes had concluded and some services had been rendered during the summer. This again resulting in an adjustment to Claimant's record to remove those improper credits.<sup>5</sup>

During the hearing, the concept of Non-qualifying part-time service ("NQPT") and Former Uncredited Part-time Service were also discussed. As Mr. Foremny testified, NQPT is uncredited service rendered in a year where the member did not meet the qualifications for membership in PSERS. Claimant had rendered NQPT service the Colonial School District in the 2004-2005 SY and the Upper Merion School District in the 2009-2010 SY. That NQPT service was not reflected as service credit on her Statements of Account issued during the relevant years.

On November 10, 2011, PSERS mailed a letter to Claimant explaining that recent pension legislation provided Claimant with a limited window of opportunity to purchase her NQPT public school service. Claimant was advised that the deadline to purchase NQPT was June 30, 2014, and that Claimant would not have another opportunity to apply to purchase NQPT service beyond that date. Claimant was further advised that if she terminated her public school employment, retired or was no longer an active member then she would not be eligible to apply for NQPT service unless she again became an active contributing member. Claimant did not submit an application to purchase her NQPT service to PSERS prior to June 30, 2014.

Nevertheless, on April 15, 2021, Claimant submitted a *Purchase of Former Part-Time Uncredited Service* form to PSERS, request the purchase service credit of four (4) days of service

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<sup>5</sup> It is observed that Claimant's Statement of Account from the 2004/2005 SY reflected 33 days worked at Wallingford-Swarthmore SD (See Exhibit PSERS-3). Wallingford-Swarthmore SD had already confirmed and reported necessary adjustments a month prior).

rendered to the Colonial School District in the 2004-2005 school year only. That request was properly denied at the time because it had not been submitted under the specific statutory deadline for NQPT applications of June 30, 2014.<sup>6</sup>

Similarly, the Upper Merion SD had reported that Claimant rendered 29.5 days of service in the 2009-2010 SY. At the time, Claimant's service was insufficient to qualify for PSERS membership for that school year and Claimant's service and contributions were partially refunded by way of cover letter dated January 28, 2011. However, PSERS informed Claimant that "[i]f you qualify for PSERS membership in a subsequent year, you may apply to purchase credit for the 2009-2010 school service by completing an Application to Purchase Credit for Part Time Service (PSRS-100). Claimant never submitted an application to purchase credit for her 2009-2010 school service.

Former Uncredited Part-time service is service that should have been reported and credited at the time it was rendered because the member qualified for PSERS membership, but for some reason was not properly reported to PSERS by the employer. Claimant rendered Former Uncredited Part-time service to the Upper Merion SD in the 2005-2006 and 2006-2007 school years. Mr. Foremny speculated that the Upper Merion SD likely did not know Claimant had qualified for PSERS membership through additional employment with the Wallingford-Swarthmore SD, and therefore did not report Claimant's information to PSERS at the time.

On February 22, 2011, Claimant was notified by letter that she would be charged a debt and credited with 0.38 service credits for the Former Uncredited Part-time Service that she rendered for the Upper Merion SD in the 2006-2007 school year. Despite having already been

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<sup>6</sup> The Board has no authority to grant rights beyond those specifically set forth in the Retirement Code or to enlarge a statutorily mandated election period. *See e.g., Forman v. Public School Employees' Retirement Board*, 778 A.2d 778 (Pa. Cmwlth. 2001); *Burris v. State Employees' Retirement Board*, 745 A.2d 704, 706 (Pa. Cmwlth. 2000); *Bittenbender v. State Employees' Retirement Board*, 622 A. 2d 403 (Pa. Cmwlth. 1992).

credited with that time in February 2011, on August 11, 2014, PSERS received a Purchase of Former Part-Time Uncredited Service form from Claimant requesting to purchase credit for service rendered for the Upper Merion SD in both the 2005-2006 and 2006-2007 school years. After investigation, PSERS notified Claimant that she would be charged a debt and credited with 0.18 service credits for the Former Uncredited Part-time Service that she rendered for the Upper Merion SD in the 2005-2006 school year. No action was needed or taken for the 2006-2007 SY because she had already been credited for that time and charged a debt.

As of the date of the hearing, Claimant had not filed an Application for Retirement with PSERS, and therefore a final audit of claimant's account and certification of her creditable service has not occurred. (*See*, 24 Pa.C.S. § 8505(g), Hughes). However, as part of the hearing process, PSERS did agree with Claimant's assertion that she could be credited with six (6) additional days worked during the 2006-2007 SY to Wallingford-Swarthmore SD with regards to a summer program for which Claimant provided documentation. It appears those days fall under a similar issue as balance-of-contract payments. Claimant was able to produce documentation indicating that she had served six (6) of the days during the 2006-2007 SY, but was not paid for the services until the 2007-2008 SY. Therefore, those six (6) days were properly creditable to the 2006-2007 SY and would increase her total for that year from 49 days to 55 days.

Unfortunately, the other 20 days of documented service Claimant provided with regard to that summer program for the Wallingford-Swarthmore SD were rendered and would be credited to the 2007-2008 SY. Because Claimant had already received a full 1.0 credit in the 2007-2008 SY, those days are not eligible to provide additional credit to her service record (*See*, 24 Pa.C.S. § 8302(a)).

Claimant did not dispute the remaining credits made to her membership account for other years between February 2002 and the present time. For the reasons noted more fully above, apart from the additional six (6) days of service Claimant earned during the 2006-2007 SY which PSERS now acknowledges should count as an additional 0.03 service credits towards her total, it appears that PSERS has correctly calculated the number of service credits for which Claimant is eligible.

While the Board does have some authority to waive making adjustments (in this case, negative adjustments to Claimant's account), there are statutory limits to the circumstances when the Board may waive making those adjustments. Among other things, Claimant must demonstrate that she took some type of action based upon the erroneous information provided by the system. (See, 24 Pa.C.S. § 8303.1(a)<sup>7</sup>). However, in this case Claimant provided no information which would indicate that she took any action in reliance on the information provided by the system.

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<sup>7</sup> Section 8303.1 (relating to waiver of adjustments) provides, in relevant part, that:

*(a) Allowance.--Upon appeal by an affected member, beneficiary or survivor annuitant, the board may waive an adjustment or any portion of an adjustment made under section 8534(b) (relating to fraud and adjustment of errors) if in the opinion of the board or the board's designated representative:*

- (1) the adjustment or portion of the adjustment will cause undue hardship to the member, beneficiary or survivor annuitant;*
- (2) the adjustment was not the result of erroneous information supplied by the member, beneficiary or survivor annuitant;*
- (3) the member had no knowledge or notice of the error before adjustment was made, and the member, beneficiary or survivor annuitant took action with respect to their benefits based on erroneous information provided by the system; and*
- (4) the member, beneficiary or survivor annuitant had the erroneous information e the adjustment was made.*

\* \* \* \* \*

Claimant worked the equivalent of a full year teaching in the 2007-2008 SY and the 2008-2009 SY. Since that time, it appears she worked sparingly, if at all. She worked 29.5 days, 22 days, 1 day, 2 days, and 8.5 days, between the 2009/2010 SY and the 2013/2014 SY. She has not provided any creditable service since that time.

Claimant began receiving Statements of Account showing that she was below five (5.0) credits in 2017. One of the purposes of the PSERS annual statements is so that the member may review and determine the accuracy of information in PSERS records. (*See, Hughes*, 662 A.2d at 707). Given that purpose, Claimant clearly cannot argue that she is entitled to rely on Statements of Account from 2014 and 2015 when updated information was provided in three (3) subsequent years.

Further, the burden is upon the member to ensure that PSERS records are accurate before the member retires. *Id.* Unlike Hughes, in this case Claimant acknowledged during the hearing that she has not yet applied for retirement benefits through PSERS. Consequently, it does not appear that Claimant has taken any action, such as having retired, in reliance on the information in her various Statements of Account.

While the calculated service credit represented by PSERS in 2017, 2018, and 2019, was determined to ultimately be incorrect, the effect of that inaccurate information does is merely a matter of degree. That she did not yet have enough credit to vest was correct. It is only the amount of credit she must still earn in order to vest which has changed.

Unfortunately, after hearing it appears that Claimant still needs 0.13 more service credits to be considered vested with PSERS and to be eligible for a pension benefit. Claimant's arguments regarding the adjustments, in essence, are a request for equitable relief. Equitable relief, however, is not an available remedy under the Retirement Code. (*See, Finnegan*, 560 A.2d 848;

Bittenbender, 622 A.2d at 405). While a member is entitled to a liberal construction of the Retirement Code, she has only those rights created by the Retirement Code and none beyond. Forman, 778 A.2d at 780; Bittenbender, 622 A.2d at 405. The Board, therefore, is not authorized to grant Claimant her requested relief in terms of immediately granting her service credit sufficient to be considered vested because it would conflict with the statutory mandates of the Retirement Code. (See, e.g., Marinucci, v. State Employees' Ret. Sys., 863 A.2d 43 (Pa.Cmwlth. 2004).

Therefore, based upon the foregoing findings of fact, conclusions of law, and discussion, the following recommendation denying Claimant's appeal shall issue:

**COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PUBLIC SCHOOL RETIREMENT BOARD**

**IN RE:   Account of Kathleen Maylath,  
          Claim of Kathleen Maylath**

**Docket No. 2023-07**

**RECOMMENDATION**

**AND NOW**, this 3rd day of February 2025, upon consideration of the foregoing findings of fact, conclusions of law and discussion, the Hearing Officer for the Public School Employees' Retirement Board ("Board") recommends that the Board **DENY CLAIMANT'S APPEAL** of the determination made by the Public School Employees' Retirement System Executive Staff Review Committee that Claimant has not yet vested in order to be eligible for a pension benefit. However, it is further recommended that Claimant's service record be amended to reflect the additional six (6) days worked for the 2006-2007 School Year for the Wallingford-Swarthmore School District and that her service record now indicate that Claimant has 4.87 credits. ,

**NOTICE**

A party may file exceptions to this proposed opinion and recommendation in accordance with 1 Pa. Code §§ 35.211 and 35.212 (relating to procedure to except to proposed report; and content and form of briefs on exceptions). *See* 22 Pa. Code § 201.11(d). **Exceptions shall be filed** with the below-noted Appeal Docket Administrator and must be received within thirty (30) days after the mailing date of this proposed opinion and memorandum. *See* 1 Pa. Code § 35.211 (participant desiring to appeal to the agency head shall, within 30 days after the service of a copy of a proposed report or such other time as may be fixed by the agency head, file exceptions to the proposed report or part thereof in brief on exceptions; brief opposing exceptions may be filed in response to briefs on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the agency head).

If exceptions are filed, the Board will rule upon the exceptions. The Board may adopt or reject, in whole or in part, or supplement the proposed opinion and recommendation or issue its own opinion and order, whether or not exceptions to the proposed opinion and recommendation are filed by any party. *See* 22 Pa. Code § 201.11(c).

A legal assistant for the Office of Hearing Examiners will distribute this proposed opinion and recommendation to the Appeal Docket Administrator and the parties.

**BY ORDER:**



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Peter D. Kovach  
Hearing Examiner

**Claimant:**

Kathleen Maylath

REDACTED

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**Date of Mailing:**

February 3, 2025



Mail Date: AUG 26 2025

**COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT BOARD**

IN RE: ACCOUNT OF KATHLEEN A. MAYLATH  
DOCKET NO. 2023-07  
CLAIM OF KATHLEEN A. MAYLATH

**OPINION AND ORDER OF THE BOARD**

The Board has carefully and independently reviewed the entire record of this proceeding, including the proposed Opinion and Recommendation of the Hearing Examiner. We note that neither party filed exceptions to the proposed Opinion and Recommendation. The Board finds appropriate the proposed Opinion and Recommendation, and, accordingly, we hereby adopt it as our own.

IT IS HEREBY ORDERED that Claimant Kathleen Maylath's request to make an adjustment to her account to credit her with an additional twenty-six (26) days of service in the 2006-2007 school year is granted in part, and denied in part. The Board GRANTS Claimant's request to credit her with an additional six (6) days of service in the 2006-2007 school year, and DENIES Claimant's request regarding the additional twenty (20) days of service. The Board orders that Claimant's record indicate that she has 4.87 years of credited service. Claimant's requests to waive other service adjustments made to her account and to have non-qualifying part-time service credited to her account so that she is vested and eligible for a pension are DENIED.

PUBLIC SCHOOL EMPLOYEES'  
RETIREMENT BOARD

Dated: 8/22/2025

Signed by:  
  
By: E8D344BEB4E24B3...  
Richard Vague, Chairman