

Michigan Department of Education

FINAL REPORT AND DECISION  
OF  
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Appeal by Britton Deerfield Schools  
Certification Penalty  
Docket No. CP 17-6

BACKGROUND FACTS

In a letter dated June 19, 2017, Leah Breen, director of the Office of Professional Preparation Services (OPPS) of the Michigan Department of Education (Department), and Philip L. Boone, interim director of the Department's Office of State Aid and School Finance, informed Britton Deerfield Schools (Britton Deerfield) that the Department had determined that Britton Deerfield employed Emily Stamm as a school counselor in violation of state law in that she did not hold a Michigan school counselor credential during the 275-day period from September 2, 2016, to June 4, 2017. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Britton Deerfield in the amount of \$25,993.15.

On July 10, 2017, Britton Deerfield filed a first level appeal with Ms. Breen challenging the state aid deduction. In a letter dated July 17, 2017, Ms. Breen affirmed the deduction. Britton Deerfield filed a second level appeal with the Superintendent of Public Instruction on July 27, 2017.

Acting as designee of the Superintendent of Public Instruction, Robert J. Taylor offered Britton Deerfield Schools the option to submit its appeal either entirely in writing or at a review conference during which it could present its position and the Department could respond. Britton Deerfield Schools chose the latter option and a review conference was convened at the Department on October

27, 2017. Present at the review conference were Mr. Taylor; Ms. Breen; Stacy Johnson, Britton Deerfield superintendent; and Mary Fielding, a Department administrative law specialist.

## DISCUSSION

Section 1233 of the Revised School Code, MCL 380.1233, prohibits the employment of an individual as a school counselor without satisfaction of statutory requirements.

(2) The board of a school district or intermediate school board of an intermediate school district shall not allow an individual to serve in a counseling role in the school district or intermediate school district, as the role is defined by the superintendent of public instruction, unless the individual meets 1 or more of the following and the board or intermediate school board complies with subsection (7):

(a) The individual holds a valid teaching certificate with a school counseling endorsement.

(b) The individual meets all of the following:

(i) Holds a master's degree awarded after completion of an approved school counselor education program that includes at least all of the following skills and content areas or their equivalent:

(A) Guidance services--philosophy, principles, and practices.

(B) Individual and group analysis--nature and range of human characteristics and appraisal methods.

(C) Guidance information--vocational development theory, educational and occupational information.

(D) Counseling theory and practice--individual and group procedures, administration and coordination relationships, professional relationships, and ethics.

(E) Supervised experiences--laboratory, practicum, or internship.

(F) Evaluation--statistics and research methodology, follow-up evaluation, and measurement methods.

(ii) Has successfully completed the department's guidance counselor examination.

(iii) Has been recommended by an approved school counselor education program to provide services as a school counselor.

- (c) The individual meets both of the following:
  - (i) Has at least 5 years of successful experience serving in a school counseling role in another state within the immediately preceding 7-year period.
  - (ii) Has successfully completed the department's guidance counselor examination.

\* \* \*

(7) If the board of a school district or intermediate school board of an intermediate school district chooses to employ an individual who does not hold a valid teaching certificate to serve in a counseling role, as permitted under subsection (2), the school board or intermediate school board shall comply with sections 1230 and 1230a with respect to that individual to the same extent as required for employing an individual with a teaching certificate to serve as a teacher.

In addition, at the time period in question, Mich Admin Code, R 390.1302(1), which had the force and effect of law,<sup>1</sup> stated as follows.

A person who is employed in the role of a school counselor by a local or intermediate school district or nonpublic school shall meet all requirements in these rules with regard to obtaining a school counselor endorsement, a preliminary employment authorization to work as a school counselor, a temporary school counselor authorization, or a school counselor license.

Mich Admin Code, R 390.1306 sets forth requirements for Michigan school counselor licensure for out-of-state individuals. Those requirements include successful completion of the Department's school counselor examination. If an individual from outside Michigan satisfies the requirements of R 390.1306 except for the examination requirement, he or she may apply for a one-year, nonrenewable temporary school counselor authorization. Mich Admin Code, R

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<sup>1</sup> *Detroit Base Coalition for Human Rights of Handicapped v Director, Department of Social Services*, 431 Mich 172, 177 (1988) (administrative rules have the force and effect of law).

The rules governing school counselor credentials were amended effective November 15, 2017. The amendments changed the wording but not the substance of the school counselor credential requirements that are relevant in this case.

390.1307. The authorization would allow the individual to be employed as a school counselor in Michigan during the one-year validity period.

If a school district employs an individual as a school counselor in contravention of legal requirements, the employment runs afoul of section 163 of the State School Aid Act, MCL 388.1763, and a state aid assessment is required.

Section 163 provides in pertinent part as follows.

(1) Except as provided in the revised school code, the board of a district or intermediate district shall not permit any of the following:

\* \* \*

(b) A noncertificated educator to provide counseling services to pupils in an elementary or secondary school or in an adult basic education or high school completion program.

\* \* \*

(2) Except as provided in the revised school code, a district or intermediate district employing educators not legally certificated or licensed shall have deducted the sum equal to the amount paid the educators for the period of noncertificated, unlicensed, or illegal employment.

In *Grand Rapids Education Association v Grand Rapids Board of Education*, 170 Mich App 644, 648 (1988), the Court of Appeals held that the Department is bound by the plain words of MCL 388.1763 to impose a state aid penalty when a district employs noncertified teachers.<sup>2</sup>

Where statutory language is clear and unambiguous, judicial interpretation to vary the plain meaning of the statute is precluded; the Legislature must have intended the meaning it plainly expressed, and the statute must be enforced as written.

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<sup>2</sup> The version of MCL 388.1763 that was at issue in the *Grand Rapids* case was not materially different from the current version, which prohibits the board of a district or intermediate district from permitting a noncertificated educator to teach. See MCL 388.1763(1)(a).

[*Nerat v Swacker*, 150 Mich App 61, 64; 388 N.W.2d 305 (1986), lv den 426 Mich 857 (1986).]

MCL 388.1763; MSA 15.1919(1063) clearly and unambiguously states that a board of a school district shall not permit unqualified teachers to teach and that a district employing unqualified teachers shall be penalized. Unqualified teachers taught in Grand Rapids public schools. Therefore, the Grand Rapids School District must be penalized. There is really no need for further analysis in view of the clarity of the statutory pronouncements.

At issue in this matter is Britton Deerfield's employment of Emily Stamm as a kindergarten through grade 12 school counselor during the 2016-2017 school year. Ms. Stamm began the school counselor assignment in September 2016. It was not until January 13, 2017, however, that she applied to the Department for a Michigan school counselor credential. She did not submit the fee that is required in order for the Department to review her application. MCL 380.1538(1)(a). On June 5, 2017, Britton Deerfield applied and paid for a daily substitute permit to cover its employment of Ms. Stamm. The Department issued a permit immediately to Britton Deerfield. On June 22, 2017, the Department issued to Ms. Stamm a temporary school counselor authorization under Rule 390.1307.

According to Britton Deerfield Superintendent Stacy Johnson, Emily Stamm holds a bachelor's degree from Bowling Green University in Ohio, she passed a national school counselor certification test in Ohio, and she held an Ohio school counselor credential when she was hired by Britton Deerfield as a school counselor in September 2016. Ms. Johnson asserts that, before hiring Ms. Stamm, she and other district representatives took part in a telephone conversation with a Department representative who said that the district could employ Ms. Stamm as a school counselor and that she would have one year to obtain her Michigan school

counselor certification. According to Ms. Johnson, the Department representative said nothing about a requirement that Ms. Stamm obtain a temporary school counselor authorization to allow her to be employed as a school counselor during the 2016-2017 school year. Britton Deerfield did not request written verification of the advice allegedly given by a Department representative in September 2016 and it presented no documentation to support the assertions about communications with the Department.

It was Britton Deerfield's obligation to comply with all legal requirements related to the employment of educators and it is my responsibility to enforce legal requirements fully and uniformly for all school districts. Notwithstanding Ms. Stamm's Ohio credential and her successful completion of a national certification test, Britton Deerfield's employment of her failed to comply with legal requirements related to Michigan school counselor credentials.

The holding of the Court of Appeals in *Grand Rapids Education Association, supra*, which specifically addressed the illegal employment of individuals as teachers, applies with equal force to the employment of individuals as school counselors in contravention of legal requirements. Under the holding in that case and the plain language of MCL 388.1763, I am constrained to uphold the assessment of a state aid deduction in the amount of the salary paid to Ms. Stamm during the period when her employment as a school counselor was out of compliance with legal requirements.

The record contains conflicting information about the date on which Ms. Stamm began her school counselor assignment in Britton Deerfield. As noted above, the state aid assessment was based on the 275-day period from September

2, 2016, to June 4, 2017. The assessment was reasonably based on Ms. Johnson's reply to a survey completed for the Department on June 2, 2017, in which she said that Ms. Stamm's first day in her assignment was September 2, 2016. At the review conference, however, Ms. Johnson stated that Ms. Stamm was interviewed on September 2, 2016, but that she did not begin her assignment until September 13, 2016. Based on those assertions by Ms. Johnson at the review conference, I find that the state aid assessment should be based on the salary paid to Ms. Stamm for 264 days.

For the above reasons, I affirm in part and reverse in part the assessment of a state aid adjustment against Britton Deerfield based on its employment of Ms. Stamm during the 2016-2017 school year. Applying the formula used by OPPS, the state aid assessment shall total \$24,953.42.

## ORDER

Based on my review of this matter and for the above reasons, I affirm in part and reverse in part the first level appeal decision of Leah Breen, director of the Office of Professional Preparation Services, to assess a state aid penalty against Britton Deerfield Schools based on its employment of Emily Stamm as a school counselor during the 2016-2017 school year. The total state aid assessment based on Britton Deerfield Schools' employment of Ms. Stamm during the 2016-2017 school year shall be in the amount of \$24,953.42.

This final report and decision is being transmitted to the Office of State Aid and School Finance for implementation.

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Brian Whiston  
Superintendent of Public Instruction  
Dated: January 16, 2018