

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Burt Township Schools
Certification Penalty
Docket No. CP 19-19

BACKGROUND FACTS

In letters dated July 2 and July 29, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Burt Township Schools (Burt Township) that the department had determined that Burt Township employed Dixie McCormick in violation of state law in that she did not hold a valid Michigan teaching certificate and she was not working under a substitute permit during the period of January 21, 2019, to June 7, 2019. Pursuant to MCL 388.1763(2), the department assessed a state aid deduction against Burt Township in the amount of \$12,616.33, the amount of salary that the department determined, based on information provided by Burt Township, that the district paid to Ms. McCormick during the period of noncompliance.

Burt Township appealed the assessment to the superintendent of public instruction on August 29, 2019, and submitted a supplemental appeal letter on September 18, 2019. Burt Township chose to present its appeal at a review conference at the department. Robert Taylor, designee of the superintendent of public instruction, convened the review conference on September 18, 2019. Burt Township submitted additional information on September 19, 2019.

DISCUSSION

Unless otherwise provided in the Revised School Code, a teacher shall hold a teaching certificate that is valid for the position to which an employing district assigns the teacher. MCL 380.1231(3); MCL 380.1233(1); MCL 388.1763(1); Mich Admin Code, R 390.1105.¹ Employers are responsible for being familiar with the details of the validity of certificates held by their employees. Mich Admin Code, R 390.1117(1). A district may employ a noncertificated individual as a substitute teacher under certain circumstances and shall obtain a substitute permit for that employment. MCL 380.1233(6); Mich Admin Code, R 390.1141 et seq. A school administrator submits the application for a permit to the department and holds the permit on behalf of the individual whose substitute employment it concerns. Mich Admin Code, R 390.1141(3). As is the case with the certification process, the permit process plays an important role in the screening of school instructional employees for criminal convictions, a vital function of the department in its efforts to safeguard pupils' safety. See Mich Admin Code, R 390.1141(6)(b) (conviction of a crime described in section 1535a of the Revised School Code, MCL 380.1535a, is a sufficient ground for denial or revocation of a permit).

The assessment of a state aid deduction in this case was under section 163 of the State School Aid Act, MCL 388.1763, which 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:

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

(a) Except for an individual engaged to teach under section 1233b of the revised school code, MCL 380.1233b, an individual who does not hold a valid certificate or who is not working under a valid substitute permit, authorization, or approval issued under rules promulgated by the department to teach in an elementary or secondary school.

(2) Except as provided in the revised school code, a district or intermediate district employing individuals in violation of this section shall have deducted the sum equal to the amount paid the individuals for the period of 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 plain words of MCL 388.1763 require the department to impose a state aid penalty when a district employs noncertified teachers.

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. [*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 Burt Township public schools. Therefore, the Burt Township School District must be penalized. There is really no need for further analysis in view of the clarity of the statutory pronouncements.

The facts in the instant case are as follows.

The department first issued a standard teaching certificate, with endorsements to teach English and geography (grades 6 to 12) to Dixie McCormick

in 2006. After renewals in 2012 and 2015, her teaching certificate expired on June 30, 2018. She applied to renew her certificate again on December 7, 2018, but, because she did not submit documentation showing her satisfaction of renewal requirements until June 12, 2019, it was not until the latter date that the department issued the renewal of her certificate. This appeal concerns the fact that, notwithstanding that she did not hold a valid Michigan teaching certificate and that Burt Township did not hold a substitute permit allowing her employment, the district employed her as an English language arts teacher from January 21, 2019, to June 7, 2019.

I acknowledge and appreciate that the error that occurred in this case was due to an unintentional clerical oversight that was an aberration for Burt Township, which has taken steps to ensure that the error does not recur. Moreover, I am not unsympathetic to the financial plight of school districts against which the department assesses state aid penalties based on their employment of uncertified educators. Further, I recognize that Ms. McCormick was experiencing significant health concerns during the period of noncompliance.

Notwithstanding the compelling circumstances presented by this case, the department is bound to follow the mandate of MCL 388.1763(2) as interpreted by the Court of Appeals in *Grand Rapids Education Association, supra*. The statute imposes on school districts the responsibility to ensure compliance with their legal obligations related to instructional employees' credentials, and it is the responsibility of the department, which is subject to monitoring by the auditor general, to assess salary penalties in accordance with the clear statutory language. I am therefore constrained to uphold the assessment of a state aid penalty against

Burt Township in this case. However, I note that the department's calculation of the amount of the penalty was based on incorrect information provided by the district concerning the length of the out-of-compliance period (100 days) and the number of contracted days (172). Based on the discussion at the review conference and information provided by the district after the review conference, I find that Ms. McCormick's contract period totaled 182 days and that the out-of-compliance period totaled 92 days. The calculation of the penalty is therefore as follows.

92 days out of compliance/182 contracted days
x \$43,400.17 contracted salary
x 50% assignment
= \$10,969.27 salary during out-of-compliance period

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty against Burt Township Schools based on its employment of Dixie McCormick from January 21, 2019, to June 7, 2019, but I order that the amount of the penalty shall be in the amount of \$10,969.27.

I am transmitting this decision to the Office of Educator Excellence for implementation.

Michael F. Rice, Ph.D.
Superintendent of Public Instruction

Dated: October 18, 2019