

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Camden-Frontier Schools
Certification Penalty
Docket No. CP 19-3

BACKGROUND FACTS

In a letter dated March 11, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (Department), informed Camden-Frontier Schools (Camden-Frontier) that the Department had determined that Camden-Frontier employed Benjamin Slusher in violation of state law in that he did not hold a school administrator certificate and he was not working under a school administrator permit during the period of September 1, 2018, to February 25, 2019. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Camden-Frontier in the amount of \$26,435.65, the amount of salary determined by the Office of Educator Excellence to have been paid to Mr. Slusher when he was employed as an assistant principal during the period of noncompliance.

Camden-Frontier appealed the assessment to the Superintendent of Public Instruction on March 27, 2019, choosing to present its appeal entirely in writing. On April 12, 2019, at the request of the designee of the Interim Superintendent of Public Instruction, Camden-Frontier provided a 2018-2019 school calendar and a job description for Mr. Slusher's position as assistant principal and athletic director. In addition, on April 23, 2019, Camden-Frontier Business Manager Christine Ash

provided an explanation of the number of days for which Mr. Slusher was paid under his contract with the district.

DISCUSSION

The deduction assessed in this case was based on 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:

(c) An individual who does not satisfy the requirements of section 1246 of the revised school code, MCL 380.1246, or who is not working under a valid substitute permit issued under rules promulgated by the department, to be employed as a superintendent, principal, or assistant principal, or as an individual whose primary responsibility is to administer instructional programs in an elementary or secondary school, or in a district or intermediate district.

(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 Department is bound by the plain words of MCL 388.1763 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 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.

The reasoning of the Court of Appeals applies with equal force to the employment of an individual who is legally required to hold school administrator certification or to be employed under a school administrator permit.

MCL 380.1246 provides in pertinent part as follows:

(1) A school district, public school academy, or intermediate school district shall not continue to employ a person as a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs or as a chief business official unless the person meets 1 or more of the following requirements, as applicable:

(b) Subject to subsection (3), for a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs and who is initially employed as a school administrator in this state after [January 4, 2010], possesses a valid Michigan school administrator's certificate issued under section 1536.

(3) A school district, public school academy, or intermediate school district may employ as a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs a person who is enrolled in a program leading to certification as a school administrator under section 1536 not later than 6 months after he or she begins the employment. A person employed as a school administrator pursuant to this subsection has 3 years to meet the certification requirements of section 1536, or the school district, public school academy, or intermediate school district shall not continue to employ the person as a school administrator described in this subsection.

Rule 2 of the School Administrator Certification Code, Mich Admin Code, R 380.102, provides in pertinent part as follows.

(1) The superintendent of public instruction may issue the following school administrator certificates under this code:

(a) School administrator (1246(1)(a)) certificate.

(b) School administrator (1246(1)(b)) certificate.

(3) An individual initially employed by a school district in this state after January 4, 2010, as a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs shall hold a valid Michigan school administrator (1246(1)(b)) certificate with the appropriate PK-12 building or central office endorsement under R 380.104, R 380.105, or R 380.106.

(4) A school district that employs a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs who does not hold a valid school administrator certificate with the appropriate endorsement under this code shall obtain a school administrator substitute permit under R 380.116.

Rule 16(2) of the School Administrator Certification Code, Mich Admin Code, R 380.116, provides as follows.

In addition to obtaining a school administrator substitute permit under this rule for any other individual who is not appropriately certificated, a school district shall obtain a school administrator substitute permit for a school administrator employed under section 1246(3) of the revised school code, 1976 PA 451, MCL 380.1246.

The school administrator permit requirements were added to the School Administrator Certification Code effective November 15, 2017, but the Department delayed enforcement of those requirements until September 1, 2018. See Department memo #2018-092 issued on June 28, 2018 (School Administrator Certification) (notice to all local and intermediate school district superintendents and public school academy directors that, effective September 1, 2018, a school administrator permit was required for individuals hired under MCL 380.1246(3))

and memo #2018-115 issued on August 16, 2018 (New School Administrator Permit Availability) (notice to all local and intermediate school district superintendents and public school academy directors that, effective September 1, 2018, a superintendent, principal, assistant principal, or individual employed with the responsibility to administer instructional programs shall hold a valid Michigan school administrator certificate or be employed under a school administrator permit).

The facts in the instant case are as follows.

Benjamin Slusher has held a Michigan teaching certificate with endorsements in health and physical education (grades K-12) and elementary education (K-5, all subjects; K-8, all subjects in a self-contained classroom) continuously since January 27, 2013. On August 20, 2018, he began his employment with Camden-Frontier as assistant principal and athletic director, with 50% of his time devoted to each position. Pursuant to MCL 380.1246(3), he enrolled in a school administrator preparation program within six months of beginning his school administrator assignment. On February 26, 2019, the Department issued a school administrator permit to Camden-Frontier to allow its employment of Mr. Slusher as assistant principal. At issue in this appeal is the period beginning on September 1, 2018,¹ and ending on February 25, 2019, during which Camden-Frontier employed Mr. Slusher half-time as assistant principal notwithstanding his failure to hold a valid school administrator certificate and notwithstanding the fact that Camden-Frontier

¹ See Department memos #2018-092, *supra*, and #2018-115, *supra*, which described the September 1, 2018 starting date for enforcement of school administrator permit requirements.

did not hold a school administrator permit to allow his employment in the position of assistant principal.

Camden-Frontier does not argue that Mr. Slusher is not required to hold school administrator certification in his assistant principal position, and, based on the job description provided by the district, I find that he requires such certification. See *Bangor Public Schools* (CP 17-4).²

I commend Camden-Frontier for taking immediate steps when, in February 2019, it realized its error in failing to obtain a school administrator permit to allow its employment of Mr. Slusher as assistant principal. Moreover, I am not unsympathetic to the financial plight of school districts that are assessed state aid penalties based on their employment of uncertified educators. However, all school districts are obligated to ensure that educators are properly certified or permitted and the Department, which is subject to monitoring by the Auditor General, is required to follow the mandate of MCL 388.1763(2) as interpreted by the Court of Appeals in *Grand Rapids Education Association, supra*. I am therefore constrained to uphold the assessment of a state aid penalty against Camden-Frontier in this case. However, I find that the amount of the assessment in this case is incorrect.

² Mr. Slusher's assistant principal duties include, but are not limited to, either assisting or leading in the following areas: recruitment and recommendation of candidates for employment; coordination of referrals to agencies to serve pupils' special needs; facilitation of the development, communication, implementation, and evaluation of a shared vision of learning to promote the success of all students; review and dissemination of research materials; supervision of the alignment, coordination, and delivery of assigned programs and curriculum; participation in the classification of students with disabilities and in the planning of individualized education programs (IEPs); acting as a resource and consultant to school personnel regarding students' learning challenges; communication of a clear vision of excellence and continuous improvement consistent with district goals; communication of high standards for teaching and learning; promotion of effective communication and relations among staff, parents, students, and community members; management of student records; coordination of discipline procedures; fostering of a safe learning environment; and completion of financial reports on federal and state programs.

In her April 23, 2019 statement, Ms. Ash explained that Mr. Slusher was contracted to work for 203 days during the 2018-2019 school year. Based on that information and the calendar provided by the district, I find that the period of non-compliance (September 1, 2018, to February 25, 2019) was 112 days. The calculation of the state aid assessment is therefore as follows, taking into consideration that Mr. Slusher's assistant principal assignment accounted for only 50% of his assignment.

- $\$60,000 \text{ contract amount} \times 50\% = \$30,000 \text{ contract amount for assistant principal position}$
- $\$30,000/203 \text{ days} = \$147.78/\text{day}$
- $\$147.78/\text{day} \times 112 \text{ days} = \$16,551.36$

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty against Camden-Frontier Community Schools based on its employment of Benjamin Slusher from September 1, 2018, to February 25, 2019, but I reduce the assessment to \$16,551.36.

This decision is being transmitted to the Office of Educator Excellence for implementation.

Sheila A. Alles
Interim Superintendent of Public Instruction

Dated: June 6, 2019