

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Jackson Preparatory and Early College
Certification Penalty
Docket No. CP 19-4

BACKGROUND FACTS

In a letter dated March 18, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (Department) informed Jackson Preparatory and Early College (Jackson Preparatory), a public school academy, that the Department had determined that Jackson Preparatory employed Debra Holton and Jonathon Marowelli in contravention of state law in that they did not hold school administrator certificates and they were not working under school administrator permits during the period of September 4, 2018, to February 18, 2019. Pursuant to MCL 388.1763(2), state aid deductions were assessed against Jackson Preparatory in the amounts of \$37,168.14, the amount of salary determined by the Office of Educator Excellence to have been paid to Ms. Holton during the period of noncompliance, and \$39,823.01, the amount of salary determined by the Office of Educator Excellence to have been paid to Mr. Marowelli during that period.

Jackson Preparatory appealed the assessments to the Superintendent of Public Instruction on April 16, 2019, choosing to present its appeal entirely in writing. On April 25, 2019, and May 9, 2019, in response to requests by the designee of the Interim Superintendent of Public Instruction, Jackson Preparatory submitted documents setting forth the details of its employment agreements with

Ms. Holton and Mr. Marowelli and a school calendar indicating the days for which they were paid.¹

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).]

¹ In February 2018, America's Back Office purchased Human Resource Experts, Inc., the human resources management firm that had hired and employed Jackson Preparatory staff since the 2014-2015 school year. Jackson Preparatory's appeal and additional documents were submitted on its behalf by America's Back Office.

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.

Debra Holton has held a Michigan elementary teaching certificate continuously since May 2, 2007. On June 7, 2018, she accepted Jackson Preparatory's offer of employment as college preparatory principal, with a start date of July 9, 2018. (May 25, 2018 Offer of At Will Employment).² On February 19, 2019, the Department issued a school administrator permit to Jackson Preparatory to allow its employment of Ms. Holton as principal.

Jonathon Marowell held a Michigan secondary standard teaching certificate from June 16, 2010, to June 30, 2016. According to Jackson Preparatory, he was

² In the course of the Department's investigation of Ms. Holton's certification status, Jackson Preparatory asserted, "Records kept at the district indicate that Debra Holton does meet the requirements for administrator certification by being enrolled in an approved certification program and will be obtaining certification within the State's specified timelines." (Certification Compliance Data Intake Tool, March 4, 2019). See MCL 380.1246(3), *supra*.

hired by Jackson Preparatory as provost on September 6, 2016.³ On August 8, 2018, he accepted Jackson Preparatory's offer of employment as dean of academics/principal, with a start date of September 4, 2018. (August 8, 2018 Offer of At Will Employment). On February 19, 2019, the Department issued a school administrator permit to Jackson Preparatory to allow its employment of Mr. Marowelli in his 2018-2019 administrative position.

At issue in this appeal is the period beginning on September 4, 2018,⁴ and ending on February 18, 2019, during which Jackson Preparatory employed Ms. Holton and Mr. Marowelli notwithstanding their failure to hold valid school administrator certificates and notwithstanding the fact that Jackson Preparatory did not hold school administrator permits to allow their employment in the positions of college preparatory principal and dean of academics/principal respectively. Jackson Preparatory admits that the positions held by Ms. Holton and Mr. Marowelli require school administrator certification.

I recognize that the failure to obtain school administrator substitute permits was rectified immediately when the Department notified Jackson Preparatory of its investigation of this matter in February 2019. I also note that, according to the appeal documents, steps have been taken to ensure that Jackson Preparatory and its agents keep abreast of communications from the Department regarding

³ In the course of the Department's investigation of Mr. Marowelli's certification status, Jackson Preparatory asserted, "District records show that Mr. Marowelli was enrolled in an administrative certification program and will obtain administrative certification within the State's identified timelines." (Certification Compliance Data Intake Tool, March 4, 2019). See MCL 380.1246(3), *supra*.

⁴ Tuesday. September 4 was the first day of school; September 3 was Labor Day. 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.

educator certification. In addition, I am aware of the financial challenge that state aid adjustments under MCL 388.1763 may pose to public school academies. However, public school academies 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 state aid penalties against Jackson Preparatory. However, I find that the amounts of the assessments in this case are incorrect. The documents provided by Jackson Preparatory on appeal show that Ms. Holton's salary under the contract is \$70,000; that Mr. Marowelli's salary is \$75,000; that both Ms. Holton and Mr. Marowelli are under contract to work for a total of 227 days; and that they were contracted to work for 100 days during the period of noncompliance (September 4, 2018, to February 18, 2019). The calculation of the state aid assessments is therefore as follows.

Debra Holton:

$$\$70,000/227 \text{ days} = \$308.37/\text{day}$$

$$\$308.37/\text{day} \times 100 \text{ days} = \$30,837.00$$

Jonathon Marowelli:

$$\$75,000/227 \text{ days} = \$330.40/\text{day}$$

$$\$330.40/\text{day} \times 100 \text{ days} = \$33,040.00$$

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of state aid penalties against Jackson Preparatory and Early College based on its employment of Debra Holton and Jonathon Marowell from September 4, 2018, to February 18, 2019, but I reduce the assessments to \$30,837.00 based on the employment of Ms. Holton and \$33,040.00 based on the employment of Mr. Marowell, for a total state aid adjustment of \$63,877.00.

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