

Michigan Department of Education

FINAL REPORT AND DECISION  
OF  
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Lake City Area Schools  
Certification Penalty  
Docket No. CP 19-16

BACKGROUND FACTS

In a letter dated July 2, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Lake City Area Schools (Lake City) that the department had determined that Lake City employed Katelyn Richardson and James Snyder in violation of state law in that they did not hold valid Michigan school counselor credentials and Lake City did not obtain substitute permits to allow their employment as school counselors during the periods of September 4, 2018, to May 7, 2019 (for Ms. Richardson), and September 5, 2018, to May 7, 2019 (for Mr. Snyder). Pursuant to MCL 388.1763(2), the department assessed a state aid deduction against Lake City in the amount of \$68,506.10, the total amount of salary paid to Ms. Richardson and Mr. Snyder during the periods of noncompliance.

Lake City appealed the assessment to the superintendent of public instruction on July 23, 2019, and 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 August 15, 2019. Lake City submitted supplemental materials to the superintendent of public instruction on September 12, 2019.

## DISCUSSION

The department assessed a state aid deduction in this case 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:

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(b) An individual who does not satisfy the requirements of section 1233 of the revised school code, MCL 380.1233, and rules promulgated by the department to provide school counselor services to pupils in an elementary or secondary school.

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(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.

Subsection (2) of section 1233 of the Revised School Code, MCL 380.1233, and Mich Admin Code, R 390.1301 to R 390.1313 set forth requirements for serving in a counseling role in a school district or intermediate school district. In Michigan, school counselor credentials, as defined in Mich Admin Code, R 390.1301(k), include a school counselor endorsement on a valid Michigan teaching certificate,<sup>1</sup> a school counselor license,<sup>2</sup> a preliminary employment authorization to work as a school counselor,<sup>3</sup> and a temporary school counselor authorization.<sup>4</sup> In furtherance of its responsibility to safeguard students' safety, the department receives

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<sup>1</sup> MCL 380.1233(2)(a), Mich Admin Code, R 390.1303 and R 390.1303a.

<sup>2</sup> MCL 380.1233(2)(b) and (c), Mich Admin Code, R 390.1305 and R 390.1306.

<sup>3</sup> Mich Admin Code, R 390.1304.

<sup>4</sup> Mich Admin Code, R 390.1307.

information about criminal convictions of individuals employed as school counselors, and it may refuse to grant, refuse to renew, suspend, or revoke a school counselor credential for, among other reasons, conviction of a crime described in MCL 380.1539b. Mich Admin Code, R 390.1310(1)(b).

Upon application and satisfaction of legal requirements, the department may issue a substitute permit to a school district that employs a non-credentialed individual as a school counselor. See MCL 380.1233(5); Mich Admin Code, R 390.1141 et seq. The application for a permit is submitted to the department by a school administrator, who holds it on behalf of the individual whose substitute employment it concerns. Mich Admin Code, R 390.1141(3). The permit process plays an important role in the screening of school employees for criminal convictions. 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 sufficient grounds for denial or revocation of a permit<sup>5</sup>).

In addition to prohibiting the employment of school counselors who do not satisfy the requirements of MCL 380.1233 and rules promulgated by the department, the State School Aid Act generally prohibits the employment of uncertified teachers. MCL 388.1763(1)(a). 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

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<sup>5</sup> The crimes described in MCL 380.1535a are identical to those described in MCL 380.1539b.

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.

This reasoning applies equally to the employment of school counselors in violation of MCL 388.1763(1)(b).

The facts related to Katelyn Richardson are as follows.

Ms. Richardson earned a master's degree in social work and she holds a master's social worker limited license issued by the Department of Licensing and Regulatory Affairs. Mich Admin Code, R 338.2947. The Office of Special Education of the department issued to Lake City a temporary approval to employ her as a school social worker for the 2018-2019 school year. Mich Admin Code, R 340.1012(1).<sup>6</sup> She began her employment with Lake City on September 4, 2018, but the district reported her to the Center for Educational Performance and Information (CEPI) as a school counselor. On May 8, 2019, after notification of the department's investigation of her employment status, Lake City applied for and received from the department a substitute permit to allow her employment as a

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<sup>6</sup> See Mich Admin Code, R 340.1799f ("School social worker' means a school social worker approved by the department.").

school counselor. At issue in this appeal as it relates to Ms. Richardson is the period of September 4, 2018, to May 7, 2019.<sup>7</sup>

The department's finding that Lake City employed Ms. Richardson as a school counselor was based in part on the information provided by the district to CEPI. Lake City argues that it erred in identifying Ms. Richardson as a school counselor when, in fact, she was a school social worker. At the review conference, Lake City Superintendent Kimberly Blaszak took responsibility for the error, including the fact that the job description she submitted to the Lake City Board of Education identified Ms. Richardson's position as that of school counselor.

According to Lake City, Ms. Richardson has performed the duties of a school social worker during her employment by the district. In support of this assertion, the district submitted the affidavits of both Ms. Richardson and James Snyder, the other individual whose employment status is at issue in this appeal. As described in the affidavits, despite some overlap in the duties of a school social worker and a school counselor in Lake City, the former does not make recommendations regarding curriculum and coursework and is not involved in pupils' scheduling, testing, preparation for graduation, or post-secondary career and college planning, all of which comprise a significant aspect of the work of a school counselor.

Based on careful consideration of the documentation submitted by Lake City, I am persuaded by the district's argument that Ms. Richardson was employed as a school social worker, not as a school counselor. The distinctions between school social workers and school counselors described in the documents submitted by Lake

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<sup>7</sup> Effective July 1, 2019, the department's Office of Special Education continued the temporary approval of Ms. Richardson as a school social worker for the 2019-2020 school year.

City are consistent with the descriptions of the positions found in administrative rules and the Revised School Code. Mich Admin Code, R 340.1011 (role of school social worker) and R 390.1301(k) (role of school counselor); MCL 380.1233(2)(b)(i)(C) (school counselor education program includes vocational development theory and educational and occupational information) and 380.1233(6) (beginning February 6, 2020, renewal of school counselor credentials shall require 25 hours of professional development covering college preparation and selection and 25 hours of professional development covering career counseling (including counseling about skilled trades and other careers that lead to industry credentials and 5 hours of counseling about military careers)). I also find it significant that the district applied for temporary approval of Ms. Richardson as a school social worker for the 2018-2019 school year and that the department granted that approval. For these reasons, I reverse the assessment of a state aid penalty against Lake City based on Ms. Richardson's employment.

Lake City also challenges the assessment of a state aid penalty based on its employment of Mr. Snyder. The relevant facts are as follows.

Mr. Snyder has never held a school counselor credential and there is no indication that he holds any other occupational credential. He is, however, pursuing a master's degree in education in school counseling at Liberty University. He asserts in his September 12, 2019 affidavit that he has completed 98% of the requirements for the master's degree.

It is not disputed that Lake City has employed Mr. Snyder as a school counselor since the beginning of the 2017-2018 school year. The district applied for and obtained from the department a substitute permit to allow his employment

as a school counselor for the 2017-2018 school year. He began his 2018-2019 school counselor assignment on September 5, 2018, but it was not until May 8, 2019, after notification of the department's investigation of his employment status, that the district applied for and obtained a substitute permit to allow his employment for that school year. At issue in this appeal is the period of September 5, 2018, to May 7, 2019.

According to the district, the failure to obtain a substitute permit to allow its employment of Mr. Snyder during the 2018-2019 school year was the result of an oversight. Lake City describes him as possessing the knowledge, skills, and abilities required for certification as a school counselor and it argues that, having obtained substitute permits to allow his employment in 2017-2018 and on May 7, 2019, it "substantially complied" with legal requirements.

Considering the important role of the credentialing and permitting processes in the monitoring of educators for criminal convictions, among other concerns, I am not persuaded by Lake City's characterization of its conduct as substantially in compliance with legal requirements. In any event, as the Court of Appeals interpreted MCL 388.1763 in *Grand Rapids Education Association, supra*, there is no "substantial compliance" exception to the department's mandate to assess state aid penalties against districts that employ individuals for whom the department has not issued the statutorily required credentials.

In further support of its appeal, Lake City argues that the assessments imposed in this case thwart the purpose of article VIII, Section 1 of the Michigan Constitution, which provides:

Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

To the extent that Lake City suggests that the clear mandate of MCL 388.1763(2) is unconstitutional, I am without authority to address its argument. *Universal Am-Can, Ltd. v Attorney General*, 197 Mich App 34, 37, 40 (1992) (administrative agency has no authority to determine the constitutionality of statutes that it is required to enforce).

I am not unsympathetic to the financial plight of school districts against which the department assesses state aid penalties based on their employment of educators who lack legally required credentials. I also acknowledge that there is no indication that Lake City's failure to obtain a substitute permit to allow its employment of Mr. Snyder was due to anything but a clerical oversight. However, it is the ongoing responsibility of school districts to ensure compliance with legal requirements related to educators' credentials, and it is the responsibility of the department, which is subject to monitoring by the Auditor General, to follow the mandate of MCL 388.1763(2) as interpreted by the Court of Appeals in *Grand Rapids Education Association, supra*. I therefore uphold the assessment of the state aid penalty against Lake City based on its employment of Mr. Snyder.



ORDER

Based on my review of this matter and for the above reasons, I reverse the assessment of a state aid penalty against Lake City Area Schools based on its employment of Katelyn Richardson from September 4, 2018, to May 7, 2019, and I affirm the assessment of a state aid penalty in the amount of \$35,746.10 based on its employment of James Snyder from September 5, 2018, to May 7, 2019.

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

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

Dated: October 18, 2019