

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Melvindale-Northern Allen Park Public Schools
Certification Penalty
Docket No. CP 19-11

BACKGROUND FACTS

In a letter dated May 14, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Melvindale-Northern Allen Park Public Schools (Melvindale-Northern Allen Park) that the department had determined that Melvindale-Northern Allen Park employed Donald Fish and Phillip Howard in violation of state law in that they did not hold school administrator certificates and they were not working under school administrator substitute permits during the period of September 1, 2018, to April 24, 2019. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Melvindale-Northern Allen Park in the amount of \$161,333.14, the total amount of salary determined by the Office of Educator Excellence to have been paid to Mr. Fish and Mr. Howard when they were employed as middle school principal and middle school assistant principal, respectively, during the period of noncompliance.

Melvindale-Northern Allen Park appealed the assessment to the superintendent of public instruction on June 13, 2019, and requested to present its appeal at a review conference. Robert Taylor, designee of the superintendent of public instruction, convened a review conference on August 13, 2019.

DISCUSSION

The department assessed the 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:

(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.

MCL 380.1246 provides 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:

(a) For a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs, or a chief business official, who was employed as a school administrator in this state on or before the effective date of the amendatory act that added this subdivision,^[1] has completed the continuing education requirements prescribed by rule under subsection (2).

¹ The effective date of the amendatory act that added MCL 380.1246(1)(a) was January 4, 2010. 2009 PA 205.

(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 the effective date of the amendatory act that added this subdivision, possesses a valid Michigan school administrator's certificate issued under section 1536.

(2) The superintendent of public instruction shall promulgate rules establishing continuing education requirements as a condition for continued employment for persons described in subsection (1)(a). The rules shall prescribe a minimum amount of continuing education that shall be completed within 5 years after initial employment and shall be completed each subsequent 5-year period to meet the requirements of subsection (1)(a) for continued employment.

(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.

Administrative rules promulgated by the department have the force and effect of law and bind the department. *Detroit Base Coalition for Human Rights of Handicapped v Director, Department of Social Services*, 431 Mich 172, 177, 189 (1988); *Rand v Civil Service Commission*, 71 Mich App 581, 586 (1976); *Micu v City of Warren*, 147 Mich App 573, 584 (1985), lv den 425 Mich 877 (1986).

Among the department's administrative rules that are relevant to this appeal is Rule 2 of the School Administrator Certification Code, Mich Admin Code, R 380.102, which provides 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.

(2) An individual employed by a school district in this state on or before January 4, 2010, as a superintendent, principal, assistant principal, or other person whose primary responsibility was administering instructional programs shall hold a valid school administrator (1246(1)(a)) certificate under R 380.103.

(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.

The school administrator (1246(1)(a)) certificate is the subject of Mich Admin Code, R 380.103, which provides as follows.

(1) The superintendent of public instruction may issue a school administrator (1246(1)(a)) certificate to an applicant based on evidence of employment by a school district in this state on or before January 4, 2010, as a superintendent, principal, assistant principal, or other person whose primary responsibility was administering instructional programs if, during the 5-year period immediately preceding the issuance of the certificate, the individual completed any combination of education-related professional learning hours, as defined in R 380.101, totaling 150 hours.^[2]

² Rule 380.101(e):

“Education-related professional learning” means an educational opportunity intended to improve a school administrator’s practice and capacity to perform

(2) Holding a valid Michigan professional teaching certificate satisfies the continuing education requirements of subrule (1) of this rule.

Compliance with the requirement that a school administrator described in MCL 380.1246(1)(a) hold a valid school administrator (1246(1)(a)) certificate (also called the “experience-based” certificate) enables the department to monitor compliance with requirements related to educators’ criminal convictions under the Revised School Code. See MCL 380.1535a and 380.1539b, and document entitled “School Administrator Experience-Based Certificate” linked to Department memo #2018-092, issued June 28, 2018 (School Administrator Certification).³ As stated in Rule 380.102(4), *supra*, a school district that employs an individual who does not hold a valid school administrator certificate as required by the School Administrator Certification Code shall obtain a school administrator substitute permit under Rule 380.116.

In both the June 28, 2018 memorandum and in a memorandum issued on August 16, 2018 (Department memo #2018-115 (New School Administrator Permit Availability))⁴, the Department notified all local and intermediate school district superintendents and public school academy directors that, effective September 1,

the work within the profession of education, including time spent engaging with local employers or technical centers, that is 1 or more of the following:

- (i) Satisfactory college semester credit hours relevant to professional development as a school administrator at a regionally accredited college or university, with 1 semester credit hour being equivalent to 25 education-related professional learning hours.
- (ii) State continuing education clock hours relevant to professional development as a school administrator.
- (iii) Michigan annual district provided professional development hours relevant to professional development as a school administrator.

³ https://www.michigan.gov/documents/mde/School_Admin_Cert_626501_7.pdf.

⁴ https://www.michigan.gov/documents/mde/School_Admin_Permit_630188_7.pdf.

2018, a superintendent, principal, assistant principal, or other employee responsible for the administration of instructional programs shall hold a valid Michigan school administrator certificate or shall work under a school administrator substitute permit issued to the employing district. As with issuance of a school administrator certificate under the School Administrator Certification Code, issuance of a school administrator substitute permit under Rule 16 of the Code (Rule 380.116) enables the department to monitor the criminal conviction records of individuals who do not hold valid Michigan school administrator certificates but who are employed as superintendents, principals, or assistant principals or whose positions include primary responsibility to administer instructional programs.

In addition to prohibiting the employment of school administrators who do not satisfy the requirements of MCL 380.1246 and department rules, MCL 388.1763 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 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 individuals who are legally required to hold school administrator certification or to be employed under school administrator substitute permits.

The relevant facts in this case are as follows.

In 1999, Melvindale-Northern Allen Park began employing Donald Fish as a school administrator and his 2018-2019 assignment was as middle school principal. In 2007, the district began employing Phillip Howard as a school administrator and his 2018-2019 assignment was as middle school assistant principal.

On May 31, 2018, a Melvindale-Northern Allen Park administrative assistant submitted to the Michigan Online Educator Certification System (MOECS) two forms entitled "Administrator Experience-Based Verification," one for Mr. Fish and one for Mr. Howard. The forms provided in pertinent part: "If you are applying for the Experience-Based Administrator Certificate in accordance with School Administrator Certification Code R380.102(2)," Part II of the form was to be completed. Part II, entitled "Verification of Experience," required verification of the date "that the educator. . .was initially employed as a superintendent, principal, assistant principal, other person whose primary responsibility was administering instructional programs." The forms further provided: "Once completed this form is submitted with application for certification. Application for certification is submitted using the [MOECS]." In her email accompanying the two forms, the administrative assistant stated, "Attached please find applications for two of our Administrators with copies

of their signed/dated contracts attached. If there's anything else you need from us, please let me know." On April 9, 2019, the department received an email from the administrative assistant, asking for the "status of these two certificates." The department informed her that the forms she submitted in May 2018 were not applications for certification. Mr. Fish and Mr. Howard thereafter applied for the first time for school administrator certification and the department issued school administrator (1246(1)(a)) certificates to them on April 25, 2019.

At issue in this appeal is the period of September 1, 2018, to April 24, 2019, when neither Mr. Fish nor Mr. Howard held a school administrator certificate and Melvindale-Northern Allen Park did not hold school administrator substitute permits to allow their employment as middle school principal and assistant principal.

Melvindale-Northern Allen Park argues that it believed in good faith that it was complying with legal requirements when it submitted the "Administrator Experience-Based Verification" forms in May 2018. According to the district,

Indeed, this is the classical situation where equitable estoppel should be imposed. Equitable estoppel may arise where (1) a party, by representations, admissions, or silence intentionally or negligently induces another party to believe facts, (2) the other party justifiably relies and acts on that belief, and (3) the other party is prejudiced if the first party is allowed to deny the existence of those facts. *Lakeside Oakland Dev., LC v H & J Beef Co.*, 249 Mich App 517, 527 (2002).

Melvindale-Northern Allen Park argues that the department knew that Mr. Fish and Mr. Howard were attempting to obtain school administrator certificates in May 2018 but that it remained silent and did not inform the district of deficiencies in the May 2018 submission until April 2019. In the view of Melvindale-Northern Allen Park,

much of the culpability for the lack of timely certification of these two educators thus resides with the department.

Melvindale-Northern Allen Park cites no authority that establishes that a defense of equitable estoppel can ever be allowed in an administrative proceeding to preclude an executive department from exercising a statutory duty. In any event, I find that the required element of justifiable reliance is missing in this case. It is not reasonable to suggest that the department is charged with knowing that every individual who submits an experience-based verification form is applying for school administrator certification. That form adequately informs districts and individuals that it does not constitute an application for certification. In addition, it is the ongoing responsibility of educators to hold legally required credentials and it is the ongoing responsibility of school districts to ensure compliance with legal requirements related to the credentials of their employees. To assist districts and educators in the fulfillment of these responsibilities, information about individuals' certification status is readily available to both the individuals and to districts at any time in the MOECS.

I am mindful that the error that occurred in this case was unintentional and that it is not representative of Melvindale-Northern Allen Park's usual practice. I also appreciate the fact that Melvindale-Northern Allen Park acted to correct the error when it became clear that Mr. Fish and Mr. Howard had not completed the process of applying for school administrator certification. 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, I am not persuaded that the length of the penalty period in this case was reasonably

attributable to the department or to any institutional failings of which Melvindale-Northern Allen Park, Mr. Fish, or Mr. Howard were victims.

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 must therefore uphold the assessment of a state aid penalty against Melvindale-Northern Allen Park in this case.⁵ However, based on information provided by Melvindale-Northern Allen Park after the review conference, I find that the calculation of the penalty is as follows.

➤ Donald Fish

- \$109,340.00 salary/225 contracted days = \$485.96/contracted day
- September 1, 2018 to April 24, 2019 = 163 contracted days out of compliance
- 163 days x \$485.96 = \$79,211.48

➤ Phillip Howard

- \$108,025.00 salary/225 contracted days = \$480.11/contracted day
- September 1, 2018 to April 24, 2019 = 163 contracted days out of compliance
- 163 days x \$480.11 = \$78,257.93

⁵ Melvindale-Northern Allen Park does not argue that Mr. Howard was not required to hold school administrator certification. According to the job description provided by the district, he was tasked with providing school-wide leadership and learning the role of the principal. His specific responsibilities included but were not limited to: serving as principal in the principal's absence, assisting in preparation of students' schedules, supervising teachers and departments as assigned by the principal, supervising the summer school program, conducting classroom observations, and serving as the teacher supervisor for purposes of the evaluation of teachers' performance. Based on this information, I find that he required school administrator certification. See *Bangor Public Schools* (CP 17-4).

- Total salary paid to Donald Fish and Phillip Howard during out-of-compliance period = \$157,469.41

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty against Melvindale-Northern Allen Park Public Schools based on its employment of Donald Fish and Phillip Howard from September 1, 2018, to April 24, 2019, but I hold that the total amount of the penalty shall be in the amount of \$157,469.41

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

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

Dated: December 4, 2019