

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Merrill Community Schools
Certification Penalty
Docket No. CP 19-17

BACKGROUND FACTS

In a letter dated June 26, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Merrill Community Schools (Merrill) that the department had determined that Merrill employed Stephanie Marr 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 September 17, 2018, to November 5, 2018. Pursuant to MCL 388.1763(2), the department assessed a state aid deduction against Merrill in the amount of \$6,242.83, the salary paid to Ms. Marr during the period of noncompliance.

Merrill appealed the assessment to the superintendent of public instruction on July 25, 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 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). The department shall receive the statutory fee for a substitute permit before the first instructional day the individual is in the assignment. Mich Admin Code, R 390.1141(4); MCL 380.1538(1)(a)(vi). 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 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 facts in the instant case are as follows.

Stephanie Marr does not hold a valid Michigan teaching certificate. On September 12, 2018, Merrill applied for a full-year substitute permit under Mich Admin Code, R 390.1142, to allow her employment and, on September 17, 2018, she began her assignment as a high school Spanish teacher (60% of her

assignment) and as teacher of record for online classes (40% of her assignment). Merrill did not pay the statutory substitute permit fee until November 6, 2018, at which time the department issued the daily substitute permit. At issue in this appeal is the period of September 17, 2018, to November 5, 2018, when Merrill employed Ms. Marr notwithstanding that she did not hold a valid Michigan teaching certificate and that Merrill did not hold a substitute permit allowing her employment.

Merrill admits its error in failing to pay the statutorily required fee in a timely manner and I commend the district for recently putting in place a system to ensure compliance with legal requirements regarding the employment of educators. In addition, 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. However, it is the ongoing responsibility of school districts to ensure compliance with legal requirements related to instructional employees' 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 a state aid penalty against Merrill in this case. I find, however, that it is appropriate to reduce the amount of the state aid penalty assessed in this case. Ms. Marr earned a bachelor's degree in Spanish from Saginaw Valley State University. The district asserts that it employed her because it was unable to engage an individual who held a Michigan teaching certificate with an endorsement to teach high school Spanish. Under these circumstances, I find that it is reasonable to consider Ms. Marr as employed as a high school Spanish

teacher under section 1233b of the Revised School Code, MCL 380.1233b.² As such, the plain words of MCL 388.1763(1)(a) prohibit the assessment of a state aid penalty under that statute based on that employment, which constituted 60% of her assignment. Therefore, the assessment in this case shall total \$2,497.13, which is 40% of the total salary paid to Ms. Marr during the period of noncompliance.

² MCL 380.1233b provides in pertinent part as follows.

(1) Subject to subsection (2) and except as provided in subsection (3), the board of a school district or intermediate school district or the board of directors of a public school academy may engage a full-time or part-time noncertificated, nonendorsed teacher to teach a course in computer science, a foreign language, mathematics, biology, chemistry, engineering, physics, robotics, or in another subject area determined by the state board to be appropriate to be included under this section and so designated by the state board, or any combination of these subject areas, in grades 9 through 12, or in an industrial technology education program or a career and technical education program.

(2) Subject to [subsection (3)], a noncertificated, nonendorsed teacher is qualified to teach [a foreign language] under this section if he or she meets. . .the following minimum requirements:

(a) All of the following:

(i) Possesses an earned bachelor's degree from an accredited postsecondary institution.

(ii) Has a major or a graduate degree in the field of specialization in which he or she will teach.

(iii) If the teacher desires to teach for more than 1 year, has passed a subject area examination, if a subject area examination exists, in the field of specialization in which he or she will teach.

(3) The requirements listed in subsection (2) for a teacher engaged to teach under this section shall be in addition to any other requirements established by the board of a school district or intermediate school district or board of directors of a public school academy, as applicable.

ORDER

Based on my review of this matter and for the above reasons, I deny in part and grant in part the appeal of Merrill Community Schools of the state aid penalty assessed against the district based on its employment of Stephanie Marr from September 17, 2018, to November 5, 2018. I hereby order that the state aid penalty shall be in the total amount of \$2,497.13.

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

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

Dated: September 6, 2019