

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Marion Public Schools
Certification Penalty
Docket No. CP 19-1

BACKGROUND FACTS

In a letter dated December 17, 2018, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (Department) informed Marion Public Schools (Marion) that the Department had determined that Marion employed Emily Cannell in contravention of state law in that she did not hold a teaching certificate and she was not working under a substitute permit during the 58-school-day period from August 27, 2018, to November 20, 2018. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Marion in the amount of \$13,636.58, the amount of salary paid to Ms. Cannell during that 58-day period.

Marion challenged the assessment in an appeal filed on January 4, 2019. Acting as designee of the Interim Superintendent of Public Instruction, Robert Taylor offered Marion the opportunity to submit its appeal entirely in writing or to appear at a review conference during which it could present its position and the Department could respond. Marion chose to present its appeal at a telephonic review conference. Participating in the review conference, which took place on February 22, 2019, were Mr. Taylor; Ms. Breen; Marion Superintendent Chris Arrington; Katrina Bontekoe, Marion business manager; Barbette Lane, Wexford-

Missaukee Intermediate School District auditor; and Mary Fielding, a Department administrative law specialist.

DISCUSSION

Unless otherwise provided in the Revised School Code, a teacher must hold a teaching certificate that is valid for the position to which the teacher is assigned. MCL 380.1231(3); MCL 380.1233(1); MCL 388.1763(1); Mich Admin Code, R 390.1105.¹ Employers are required to be 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 must obtain a substitute permit for that employment. MCL 380.1233(6); Mich Admin Code, R 390.1141 et seq. The application for a permit is submitted to the Department by a superintendent or 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 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 sufficient grounds for denial or revocation of a permit).

Section 163 of the State School Aid Act, MCL 388.1763, provides in pertinent part as follows.

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).

(1) Except as provided in the revised school code, the board of a district or intermediate district shall not permit any of the following:

(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 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 relevant facts in the instant case are as follows.

On February 17, 2009, the Department issued to Emily Cannell a standard secondary teaching certificate with an endorsement to teach music in kindergarten to grade 12. The certificate expired on June 30, 2015, and was renewed on September 10, 2015. The renewal expired on June 30, 2018. Notwithstanding the expiration of her teaching certificate, Ms. Cannell was employed by Marion as a music (grades K to 12) and choir (grades 6 to 12) teacher for the 2018-2019 school year, beginning on August 27, 2018. On November 20, 2018, Marion became aware of the expiration of Ms. Cannell's teaching certificate and immediately applied for a substitute permit to allow its employment of her. The Department issued the permit on November 21, 2018. At issue in this appeal is the 58-school-day period during which Marion employed Ms. Cannell as a teacher notwithstanding her failure to hold a valid teaching certificate and notwithstanding the fact that Marion did not hold a substitute permit to allow her employment.²

Marion argues that the substitute permit that it obtained on November 21, 2018, was valid for the entire 2018-2019 school year. The Superintendent of Public Instruction rejected a similar argument in *Academy for Business and Technology* (CP 17-5):

ABT asserts that the permit that it obtained on April 3, 2017 "was valid for the entire 2016/2017 school year." As all school districts and public school academies were reminded in a memorandum distributed by the Department on October 6, 2016, "It is important to recognize that educator permits are **not** retroactive," that "schools must ensure that a teacher holds a valid certificate or permit **at the time** that she/he begins a teaching assignment," and that "MCL 388.1763 requires a

² After Marion's discovery of her lack of certification, Ms. Cannell applied for renewal of her standard teaching certificate. The Department issued a renewal to her on November 28, 2018. The renewed certificate will expire on June 30, 2023.

deduction of state aid to the school or district when an educator is placed in an assignment without a valid certificate or permit.” (Department Memorandum # 2016-093)(emphasis in original). The permit issued to ABT on April 3, 2017, did not operate retroactively to allow ABT to assign Mr. Linares to the high school assignment from the beginning of the 2016-2017 school year.

Marion also argues that, under MCL 380.1535, Ms. Cannell was considered certificated during the period in question because she had completed the coursework necessary for renewal of her teaching certificate. That statute provides as follows.

For purposes of endorsement or recertification, a teacher shall be considered certificated and the holder of a valid teacher's certificate on the completion date of the requirements of a teacher education college, as defined by the college catalog of courses, until such time as the certification is confirmed or rejected by the state board of education.³

Citing *Whittemore-Prescott Area Schools* (CP 17-7), I rejected a similar argument in *Potterville Public Schools* (CP 18-5).

In *Whittemore-Prescott Area Schools* (CP 17-7), the Superintendent of Public Instruction rejected the district’s argument that the certification penalty was wrongly assessed because the teacher was considered “certificated” under MCL 380.1535 during the time in question. For the reasons set forth in the *Whittemore-Prescott* decision, I find that Potterville’s reliance on the statute is misplaced. The purpose of MCL 380.1535 is to protect teachers whose applications for certification renewal are delayed through no fault of their own, including paperwork delays at universities or at the Department. See *Cantu v Board of Education of Grand Rapids Public Schools*, 186 Mich App 488 (1990), and administrative decisions cited in *Whittemore-Prescott*. To extend the protection of the statute to instances where

³ The responsibilities of the State Board of Education set forth in the statute were transferred to the Superintendent of Public Instruction by Executive Reorganization Order No. 1996-7, MCL 388.994(1)(tt).

issuance of renewed certificates is delayed not because of institutional failings that are beyond applicants' control but because of applicants' failure to submit required documentation would lead to absurd results. For example, as noted in *Whittemore-Prescott*, such an interpretation:

could extend unlimited protection to individuals who complete academic requirements for recertification but either never apply for renewal of certification or who submit applications for renewal but never complete the application process by submitting the fees and documents necessary for the Department to evaluate their applications. . .[S]uch an interpretation. . . removes accountability from applicants and school districts.

The sole reasonable interpretation of MCL 380.1535 is that its protection does not arise until an individual completes both the academic renewal requirements described in the statute and the recertification or endorsement application process; until that time, there is nothing to be "confirmed or rejected" by the Department.

I find that the reasoning of *Whittemore-Prescott* and *Potterville* applies with equal force in the instant case. Ms. Cannell was obligated to keep her certification up-to-date. She did not complete the application process for renewal of her teaching certificate until after November 20, 2018, and the Department promptly renewed her certificate.

I appreciate the fact that Marion's illegal employment of Ms. Cannell was not prolonged and I commend Marion for taking immediate steps when it became aware of her lack of 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, the length of the penalty period in this case was not attributable to the Department or to any institutional

failings of which Ms. Cannell or Marion were victims. Furthermore, all school districts are obligated to ensure that teachers are properly certified, and information about certification status is readily available to districts in the Michigan Online Educator Certification System (MOECS). 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 affirm the state aid penalty assessment that Marion challenges in this appeal.

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty in the amount of \$13,636.58 against Marion Public Schools based on its employment of Emily Cannell from August 27, 2018, to November 20, 2018.

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

Sheila A. Alles
Interim Superintendent of Public Instruction

Dated: March 7, 2019