

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Old Redford Academy
Certification Penalty
Docket No. CP 19-22

BACKGROUND FACTS

In a letter dated September 18, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Old Redford Academy that the department had determined that Carrie Kucka was employed in violation of state law in that she did not hold a valid Michigan school administrator certificate and she was not working under a substitute permit during the period of March 4, 2019, to June 30, 2019. Pursuant to MCL 388.1763(2), the department assessed a state aid deduction against Old Redford Academy in the amount of \$31,538.54, the amount of salary paid to Ms. Kucka during the period of noncompliance.

Old Redford Academy appealed the assessment to the superintendent of public instruction on October 17, 2019, and chose to present its appeal at a telephonic review conference. Robert Taylor, designee of the superintendent of public instruction, convened the review conference on November 15, 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 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.

(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 380.116.¹

Rule 16(2) of the School Administrator Certification Code, Mich Admin Code, R 380.116(2), provides that a school district shall obtain a school administrator substitute permit for a school administrator employed under MCL 380.1246(3). 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

¹ 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).

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).

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 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.

The relevant facts in the instant case are as follows.

The department first issued a secondary standard teaching certificate with an endorsement to teach English (grades 6 to 12) to Carrie Kucka in 2008. The certificate was renewed in 2014 and 2017 and will expire on June 30, 2020. Effective March 4, 2019, Old Redford Academy, a public school academy, through its management company, employed Ms. Kucka as middle school assistant principal. At that time, Ms. Kucka was enrolled in a school administrator preparation program. She completed the program in the summer of 2019 and the department issued a school administrator certificate to her on August 1, 2019. At issue in this appeal is the period of March 4, 2019, to June 30, 2019.²

Old Redford Academy does not deny that Ms. Kucka was assigned on March 4, 2019, to a position that required school administrator certification under MCL 380.1246. Although she was enrolled in a school administrator preparation program at that time, the district did not hold a substitute permit to allow her employment in the position, in contravention of Mich Admin Code, R 380.102(4) and R 380.116(2).

I acknowledge and appreciate that the failure to obtain a school administrator substitute permit to allow Ms. Kucka's employment as assistant principal was an unintentional oversight that was an aberration for Old Redford

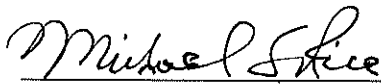
² The 2018-2019 school year ended on June 30, 2019.

Academy and that steps have been taken to ensure that the error does not recur. I also recognize that the goal in placing Ms. Kucka in the assistant principal position in March 2019 was to maintain the continuity of quality educational services following the unforeseen resignation of the middle school principal and the promotion of the middle school assistant principal to the principal position. Further, 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, the department is bound to follow the mandate of MCL 388.1763(2) as interpreted by the Court of Appeals in *Grand Rapids Education Association, supra*. The statute imposes on school districts the responsibility to ensure compliance with their legal obligations related to educators' credentials, and it is the responsibility of the department, which is subject to monitoring by the auditor general, to assess salary penalties in accordance with the clear statutory language. I am therefore constrained to uphold the assessment of the state aid penalty against Old Redford Academy in this case.

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty against Old Redford Academy based on the employment of Carrie Kucka from March 4, 2019, to June 30, 2019, in the amount of \$31,538.54.

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



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

Dated: January 8, 2020