

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Potterville Public Schools
Certification Penalty
Docket No. CP 18-5

BACKGROUND FACTS

In a letter dated February 5, 2018, Leah C. Breen, director of the Office of Educator Excellence (formerly Office of Professional Preparation Services) of the Michigan Department of Education (Department), and Philip L. Boone, assistant director of the Department's Office of Financial Management – State Aid and School Finance, informed Potterville Public Schools (Potterville) that the Department had determined that Potterville employed Jacob Garman in contravention of state law in that he did not hold a teaching certificate and he was not working under a substitute permit during the 55-school-day period from August 28, 2017, to November 15, 2017. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Potterville in the amount of \$10,098.00, the amount of salary paid to Mr. Garman during that 55-day period.

On February 23, 2018, Potterville filed a first level appeal with Ms. Breen challenging the state aid deduction. In a letter dated February 26, 2018, Ms. Breen affirmed the deduction in its entirety. Potterville filed a second level appeal with the Superintendent of Public Instruction on March 23, 2018.

Acting as designee of the Interim Superintendent of Public Instruction, Robert J. Taylor offered Potterville 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. Potterville chose to present its appeal in writing and submitted its written argument on August 6, 2018.

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) A noncertificated educator to teach in an elementary or secondary school or in an adult basic education or high school completion program.

(2) Except as provided in the revised school code, a district or intermediate district employing educators not legally certificated or licensed shall have deducted the sum equal to the amount paid the educators for the period of noncertificated, unlicensed, or illegal 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 May 26, 2011, the Department issued to Jacob Garman a standard secondary teaching certificate with endorsements to teach English (grades 6 to 12) and history (grades 6 to 12). He began teaching at Potterville High School in July

2014. During June 2017, the high school principal, Andrew Wise, talked with him about the need to renew his teaching certificate, which expired on June 30, 2017.

On August 20, 2017, Mr. Garman completed at Marygrove College the reading disabilities course that is required to advance to a professional teaching certificate.² He immediately provided a copy of his Marygrove transcript to Mr. Wise, who, believing that Mr. Garman was therefore certified, placed him in an English and history teaching position for the 2017-2018 school year beginning on August 28, 2017. The district was unaware at that time that Mr. Garman's certificate renewal application had not been submitted.³ Mr. Garman submitted an online application for a professional teaching certificate using the Michigan Online Education Certification System (MOECS) on November 13, 2017. On November 15, 2017, immediately after learning from the Potterville business manager that no teaching certificate was on file for Mr. Garman, Mr. Wise removed Mr. Garman from his teaching position and directed him to complete the requirements for renewal of his teaching certificate. On November 16, 2017, Mr. Garman personally delivered required documents to the Department. On December 6, 2017, the Department issued to him a professional teaching certificate and Potterville reinstated him to his

² MCL 380.1531(4) (no advancement to professional teaching certificate without completion of a 3-credit course of study with appropriate field experiences in the diagnosis and remediation of reading disabilities and differentiated instruction).

³ In support of its statement of relevant facts, Potterville cites the July 31, 2018 affidavit of Mr. Wise that is attached to the district's August 6 appeal as Attachment C. That affidavit does not include all of the paragraphs identified in the August 6 document. Missing, for example, is paragraph #16, which Potterville cites in support of its assertion that Mr. Wise did not know until November 2017 that Mr. Garman's certificate had not been renewed. Notwithstanding that some of Potterville's factual assertions are not supported by affidavit or otherwise, I assume for purposes of this decision that the assertions are accurate.

teaching position. At issue in this case is Potterville's employment of him during the 55-school-day period between August 28, 2017, and November 15, 2017.

Citing MCL 380.1535, Potterville argues that it properly considered Mr. Garman to be "certificated" when he completed the reading diagnostics course in August 2017. 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.⁴

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 issuance of renewed certificates is delayed not because of institutional failings that are beyond applicants' control but because of applicants' failure to submit required

⁴ 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).

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. Mr. Garman, who is obligated to keep his certification up-to-date, did not complete the application process until after he was removed from the classroom on November 15, 2017.

Potterville argues that “school districts are not required to inquire with the teacher directly regarding the status of his or her application for a renewed teaching certificate” and that it was “not privy” to whether Mr. Garman properly applied for recertification or whether the Department timely processed his application and issued his certificate. (August 6 appeal, p 4). These arguments are at odds with the district’s legal obligation to ensure that its teachers are properly certified. Not only did Potterville fail to procure documentation to confirm its belief that Mr. Garman was certificated but it apparently failed to use the readily available MOECS to check Mr. Garman’s certification status.

I appreciate the fact that Potterville's illegal employment of Mr. Garman was not prolonged and I commend Potterville for taking immediate steps when its business office notified the high school principal that Mr. Garman's personnel file did not include a current teaching certificate. Moreover, I am not unsympathetic to the 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 Mr. Garman or Potterville were victims, and 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 therefore affirm the first level decision in this matter.

ORDER

Based on my review of this matter and for the above reasons, I affirm the first level appeal decision to assess a state aid penalty in the amount of \$10,098.00 against Potterville Public Schools based on its employment of Jacob Garman from August 28, 2017, to November 15, 2017.

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

Sheila Alles
Interim Superintendent of Public Instruction

Dated: September 14, 2018