

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Tecumseh Public Schools
Certification Penalty
Docket No. CP 19-6

BACKGROUND FACTS

In a letter dated March 11, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Tecumseh Public Schools (Tecumseh) that the department had determined that Tecumseh employed Carl Lewandowski in violation of state law in that he did not hold a school administrator certificate and he was not working under a school administrator substitute permit during the period of September 1, 2018, to April 7, 2019. Pursuant to MCL 388.1763(2), the department assessed a state aid deduction against Tecumseh in the amount of \$67,767.79, the amount of salary the department determined that Tecumseh paid to Mr. Lewandowski during the period of noncompliance.

Tecumseh appealed the assessment to the superintendent of public instruction on May 22, 2019, and requested 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 6, 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).

(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.

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

(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 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.

(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, 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

(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.

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 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 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.

Tecumseh began employing Carl Lewandowski as a school principal on November 10, 1997, and he served in that position during the 2018-2019 school year. When his 2018-2019 assignment began, he did not hold a school administrator certificate and Tecumseh did not hold a school administrator substitute permit to allow his employment. On January 14, 2019, he submitted an application for a school administrator (1246(1)(a)) certificate to the Michigan Online Educator Certification System (MOECS) but he did not submit the documents necessary to support his application until April 2019. On April 8, 2019, the department issued a school administrator (1246(1)(a)) certificate to him. At issue in this appeal is the period beginning on September 1, 2018,⁵ and ending on April 7, 2019, during which Tecumseh employed Mr. Lewandowski as principal notwithstanding his failure to hold a school administrator certificate and notwithstanding the fact that Tecumseh did not hold a school administrator substitute permit to allow his employment.

Tecumseh challenges the department's authority to promulgate administrative rules requiring that school administrators described in MCL 380.1246(1)(a) obtain a school administrator (1246(1)(a)) certificate. As noted above, however, administrative rules have the full force and effect of law. *Detroit*

⁵ See department memos #2018-092, *supra*, and #2018-115, *supra*, which described the September 1, 2018 starting date for enforcement of school administrator permit requirements.

Base Coalition for Human Rights of Handicapped, supra at 177. As such, both the public and the department are bound by the department's administrative rules. *Id.* at 189 (agency is under a duty to follow its own rules); *Rand, supra* at 586 (administrative agency must comply with its own rules); *Micu, supra* at 584 (agency cannot violate or waive administrative rules promulgated by agency to govern its activities). Thus, Tecumseh's challenge to the administrative rules must be in another forum. See *Michigan Farm Bureau v Department of Environmental Quality*, 292 Mich App 106, 119, n 7 (2011) (the proper mechanism to challenge the substantive validity of an administrative rule is an action for declaratory relief in circuit court).

I am mindful that the error that occurred in this case was unintentional and that it is not representative of Tecumseh's usual practice. I also appreciate the fact that Tecumseh acted to correct the error when it became clear that Mr. Lewandoski did not hold a school administrator certificate. 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 reasonably attributable to the department or to any institutional failings of which Tecumseh or Mr. Lewandowski were victims. 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. At all times, information about Mr. Lewandowski's certification status was readily available to both Tecumseh and Mr. Lewandowski in the MOECS.

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 Tecumseh in this case. However, based on the information provided by Tecumseh, I reduce the assessment to \$65,581.50 based on the following calculation.

- $\$90,940 \text{ salary} / 208 \text{ contracted days} = \$437.21 \text{ salary/contracted day}$
- September 1, 2018 to April 7, 2019 = 150 contracted days out of compliance
- $\$437.21 \times 150 = \$65,581.50$

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty against Tecumseh Public Schools based on its employment of Carl Lewandowski from September 1, 2018, to April 7, 2019, but I order that the amount of the assessment shall be \$65,581.50.

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