

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Wayne-Westland Community Schools
Certification Penalty
Docket No. CP 18-6

BACKGROUND FACTS

In a letter dated May 18, 2018, Leah C. Breen, director of the Office of Educator Excellence 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 Wayne-Westland Community Schools (Wayne-Westland) that the Department had determined that Wayne-Westland employed Shelley Holt, Ph.D., in contravention of state law in that she did not hold a Michigan school administrator certificate during the 154-day period from September 17, 2017, to April 19, 2018. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Wayne-Westland in the amount of \$114,824.58, the amount of salary paid to Dr. Holt during that 154-day period.

In a letter dated June 7, 2018, Wayne-Westland filed a first level appeal with Ms. Breen challenging the state aid deduction. On June 20, 2018, Ms. Breen affirmed the deduction in its entirety. On July 12, 2018, Wayne-Westland filed a second level appeal with the Interim Superintendent of Public Instruction.

Acting as designee of the Interim Superintendent of Public Instruction, Robert J. Taylor offered Wayne-Westland the option to submit its appeal either entirely in writing or at a review conference during which it could present its position and the Department could respond. Wayne-Westland chose the latter

option and a review conference was convened at the Department on August 29, 2018. Present at the review conference were Mr. Taylor; Ms. Breen; Dr. Holt; Wayne-Westland Assistant Superintendent of Employee, Community, and Government Relations Jill Simmons; Sharon Peterson, Wayne-Westland certification secretary; and Mary Fielding, a Department administrative law specialist.

DISCUSSION

Unless otherwise provided in the Revised School Code, an individual who was first employed by a Michigan school district as a superintendent after January 4, 2010, must hold a valid Michigan school administrator certificate. MCL 380.1246(1)(b); MCL 380.1536(1); Mich Admin Code, R 380.102(3).¹ An exception to the certification requirement is set forth in MCL 380.1246(3), which provides as follows.

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.

Thus, a school district may employ as a superintendent an individual who does not hold school administrator certification if the individual enrolls in a school

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).

administrator preparation program within 6 months of beginning the superintendent assignment and if the individual meets certification requirements within 3 years.

The relevant facts in the instant case are as follows.

Shelley Holt, Ph.D., began her duties as superintendent of Wayne-Westland Community Schools on September 19, 2017. At that time, she held a valid California school administrator certificate. On September 27, 2017, she applied for a Michigan school administrator certificate using the Michigan Online Educator Certification System (MOECS). The statutory fee for evaluation of the application was paid on January 22, 2018.² It was at approximately that time that the district and Dr. Holt realized that the Department required submission of transcripts from Dr. Holt's three California universities. After the Department received transcripts from two of the universities, Ms. Patterson contacted the third university, the University of California Berkeley. She was told that Berkeley provides transcripts only by regular mail and she eventually learned that the university sent the transcripts to the Department on March 15, 2018. The Department received the Berkeley transcripts on March 23, 2018. Ms. Patterson again contacted the Department the first week of April to inquire about the delay in issuance of Dr. Holt's Michigan certificate. She then learned that the Department required a letter from California State University showing Dr. Holt's completion of an approved program for central office endorsement. Over the next several days, Ms. Patterson repeatedly telephoned California State University. When California State finally returned her call on April 16, 2018, she explained what the Department needed.

² MCL 380.1538(1)(a)(xiii)(applicant shall pay specified fee to Department for having application evaluated for conformance with application requirements).

California State sent the required letter to her by email on April 18, she sent the letter to the Department by email on April 19, and the Department issued a school administrator certificate with central office endorsement to Dr. Holt based on her California certification on April 20, 2018. At issue is Wayne-Westland's employment of Dr. Holt during the period that she did not hold a valid Michigan school administrator certificate.

The deduction assessed in this case was based on Section 163(2) of the State School Aid Act, MCL 388.1763(2), which provides in pertinent part as follows.

(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 many cases, state aid deductions have been assessed under MCL 388.1763 based on school districts' employment of uncertified teachers. See, for example, *Academy for Business and Technology* (17-5).³ In each of those cases, the availability of a substitute permit to allow employment of the uncertified teacher, which would have avoided a state aid deduction, was noted. See Mich Admin Code, R 390.1141 et seq.

Prior to November 15, 2017, the School Administrator Certification Code, Mich Admin Code, R 380.101 to 380.136, did not provide for a substitute permit that allowed employment of uncertified school administrators. Recognizing the need for such a permit, the Department promulgated amended rules that

³ See *Grand Rapids Education Association v Grand Rapids Board of Education*, 170 Mich App 644, 648 (1988) (the Department is obligated under MCL 388.1763 to impose a state aid penalty when a district employs noncertified teachers).

introduced a new school administrator substitute permit. Mich Admin Code, R 380.116. The new rules were effective November 15, 2017. However, on November 17, 2017, the Superintendent of Public Instruction granted a state-wide waiver of Rule 380.116 until September 1, 2018. On August 16, 2018, the Department announced that the new school administrator permit would be available on August 17 and that, effective September 1, 2018, superintendents and other school administrators required by statute to be certified must either hold a valid Michigan school administrator certificate or be employed under a school administrator permit. (Department of Education Memo #2018-115). Had this permit, which the Department recognized was clearly needed, been available for the 2017-2018 school year, Wayne-Westland could have avoided the current dilemma.

Thus, in contrast to cases involving uncertified teachers, at all times relevant to this case, no substitute permit was available to support the employment as a superintendent of an individual who was certified as a school administrator in another state but who did not hold a valid Michigan school administrator certificate. In my judgment, this is a significant factor that weighs heavily in support of Wayne-Westland's challenge to the state aid penalty imposed in this case.

Mich Admin Code, R 380.106(1) provides that the superintendent of public instruction may accept an out-of-state school administrator certificate as a basis for issuance of a Michigan school administrator certificate. In this case, it is noteworthy that Dr. Holt initiated the Michigan school administrator certification process, relying on her California certification, shortly after her assignment began and that at least some of the delay in issuance of her Michigan certificate was due

to factors that were beyond her control and beyond the control of Wayne-Westland. For example, there was some delay in the transmission to the Department of her California transcripts and the letter about her completion of a preparation program that was clearly not attributable to Dr. Holt or Wayne-Westland. In MCL 380.1535, the Legislature provided protection for some teachers who are victims of similar institutional delays. The purpose of that statute is to avoid penalizing teachers for lack of certification occasioned by the delay in the processing of paperwork by colleges, universities, and the Department in cases where the teacher bears no responsibility for the delay. By analogy, I find that this factor also weighs in favor of Wayne-Westland in this case.

Wayne-Westland points out the discrepancy between the penalty imposed in this case and the protection afforded to school districts who employ uncertified school administrators for six months (and, in some cases, an additional three years) under MCL 380.1246(3). Dr. Holt, who had already completed a school administrator preparation program and who already held a California school administrator certificate at the time of her assignment, did not come within the scope of that statute because, already being certified, she was not required to enroll in a school administrator preparation program in Michigan. I agree with Wayne-Westland that it is unjust to afford protection under MCL 380.1246(3) to individuals who have never been certified while at the same time denying any similar protection to individuals who hold out-of-state certification and who are not required to complete any further professional preparation to qualify for Michigan certification.

For all these reasons, I find that application of MCL 388.1763(2) to the instant facts would be unjust and unreasonable. I therefore reverse the first level decision in this matter. I emphasize that this decision is based on the unique facts of this case.

ORDER

Based on my review of this matter and for the above reasons, I reverse the first level appeal decision to assess a state aid penalty in the amount of \$114,824.58 against Wayne-Westland Community Schools based on its employment of Shelley Holt from September 17, 2017, to April 19, 2018.

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

Sheila Alles
Interim Superintendent of Public Instruction

Dated: September 14, 2018