

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Appeal by Whittemore-Prescott Area Schools
Certification Penalty
Docket No. CP 17-7

BACKGROUND FACTS

In a letter dated May 10, 2017, Leah Breen, director of the Office of Professional Preparation Services (OPPS) of the Michigan Department of Education (Department), and Philip L. Boone, interim director of the Department's Office of State Aid and School Finance, informed Whittemore-Prescott Area Schools (Whittemore-Prescott) that the Department had determined that the district employed Andrea Sobiesiak in contravention of state law regarding teacher certification during the 185-day period of September 6, 2016, to March 9, 2017. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Whittemore-Prescott in the amount of \$15,891.25, the amount of salary paid to Ms. Sobiesiak during the time in question.

On June 2, 2017, Whittemore-Prescott filed a first level appeal with Ms. Breen challenging the state aid deduction. In a letter dated June 14, 2017, Ms. Breen affirmed the deduction. Whittemore-Prescott filed a second level appeal with the superintendent of public instruction on July 10, 2017.

Whittemore-Prescott chose to present its appeal at a review conference rather than entirely in writing. A review conference was convened at the Department on October 25, 2017. Present at the review conference were Robert Taylor, designee of the superintendent of public instruction; Ms. Breen; Phil Chase,

director of the OPPS Professional Accountability Unit; Naomi Casher, assistant director of the Department's Office of Financial Management; Travis Comstock, assistant attorney general representing Ms. Casher and Ms. Breen; Joseph J. Perrera, Whittemore-Prescott superintendent; Andrea Sobiesiak, Whittemore-Prescott teacher; Robert G. Huber, Piotr Matusiak, and Jessica Baker of Thrun Law Firm, P.C., representing Whittemore-Prescott; and Mary Fielding, Department administrative law specialist. The review conference was consolidated with the review conference requested by Whittemore-Prescott in *Whittemore-Prescott Area Schools* (MA 17-3), the pupil membership appeal arising out of the same circumstances upon which the salary deduction in this case was based.

DISCUSSION

The Revised School Code generally requires that teachers employed by school districts be properly certified. MCL 380.1231 and 380.1233. 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.

If a school district employs an individual as a teacher in contravention of legal requirements, the employment runs afoul of section 163 of the State School Aid Act, MCL 388.1763, and a state aid assessment is required. Section 163 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:

(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.

This appeal presents a dispute related to MCL 380.1535, which was added to the Revised School Code effective July 18, 1983. The statute, which has never been amended, provides in its entirety 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.

The first level decision is based on the finding that Ms. Sobiesiak was not certificated during the 185-day period described above. Whittemore-Prescott argues that, under MCL 380.1535, she was considered certificated and the holder of a valid teaching certificate at the time in question. The relevant facts are as follows.

The Department issued a provisional teaching certificate to Ms. Sobiesiak on June 18, 2007, with endorsements to teach physical education and mathematics in grades 6 to 12. After being employed for a short time as a teacher in Bay City Public Schools, Ms. Sobiesiak moved to North Carolina, where she was a high school mathematics teacher from August 2007 to July 2016. She obtained a North Carolina teaching certificate during the 2007-2008 school year. Her Michigan provisional teaching certificate expired on June 30, 2013. In August 2014, she enrolled at the University of North Carolina at Greensboro and, on August 5, 2016, the university awarded her a master of education degree in teacher education with a concentration in middle/secondary mathematics education.

Ms. Sobiesiak moved back to Michigan and, on September 6, 2016, she began an assignment in Whittemore-Prescott teaching 7th grade pre-algebra and 8th grade computers. On September 29, 2016, she submitted an application for renewal of her provisional teaching certificate to the Michigan Online Educator Certification System (MOECS). On the same day, she received two e-mails from MOECS, one telling her that her application had been successfully submitted but that the application could not be reviewed until OPPS received the official transcripts from all colleges or universities she had attended. Instructions for sending the documents were included in the e-mail. The other e-mail informed Ms.

Sobiesiak that her application for renewal of her provisional teaching certificate had been submitted to OPPS and it instructed her how to pay the \$100 application processing fee. Describing the fee as a nonrefundable application evaluation fee, the e-mail informed her that her application would not be evaluated until her fee payment was received by the Department.¹

On September 30, 2016, Ms. Sobiesiak requested that the University of North Carolina at Greensboro send her transcripts to her. She asserts that her father mailed those transcripts to the Department in October 2016. There was no documentary or other support for this assertion by Ms. Sobiesiak and the Department has no record of having received the transcripts at that time.

Ms. Sobiesiak submitted the statutorily required \$100.00 application fee to the Department on December 19, 2016. On March 10, 2017, the Department issued a substitute permit to Whittemore-Prescott to allow its employment of Ms. Sobiesiak. On that same day, Ms. Sobiesiak again requested her University of North Carolina at Greensboro transcripts. The Department received the transcripts on March 14, 2017, and issued the renewed provisional teaching certificate to her on that same day. The certificate will expire on June 30, 2020.²

Whittemore-Prescott argues that, notwithstanding the fact that Ms. Sobiesiak did not hold a valid Michigan teaching certificate issued by the Department during the 185-period that began with the first day of her Whittemore-Prescott

¹ MCL 380.1538(1)(b)(i) provides that an applicant for renewal of a provisional teaching certificate shall pay \$100.00 to the Department for having the application evaluated for conformance with the application requirements.

² The certificate is now known as a standard teaching certificate. Mich Admin Code, R 390.1101(v), as amended effective November 15, 2017.

assignment, she was considered to be certificated and the holder of a valid teaching certificate under MCL 380.1535 between August 5, 2016, the date she completed the requirements of the University of North Carolina at Greensboro program,³ and March 14, 2017, the date the Department issued her renewed certificate.⁴

By its express terms, MCL 380.1535 applies for the limited purposes of endorsement and recertification. Because Ms. Sobiesiak held an expired Michigan teaching certificate when she completed the requirements of the University of North Carolina at Greensboro program, and because renewal of that certificate would have constituted recertification, she came within the “for purposes of endorsement or recertification” limitation of the statute. The statute further provides, however, that a described individual shall be considered certificated and the holder of a valid teaching certificate “until such time as the certification is confirmed or rejected by the state board of education.”⁵ This language has been considered by the Court of Appeals and by the State Tenure Commission.

In *Cantu v Board of Education of Grand Rapids Public Schools*, 186 Mich App 488 (1990), the Court of Appeals affirmed a circuit court decision that upheld a

³Whittemore-Prescott describes August 5, 2016, as the date that Ms. Sobiesiak completed her degree requirements. According to her University of North Carolina at Greensboro transcript, that was the date her degree was awarded.

⁴ As noted above, on March 10, 2017, the Department issued a substitute permit to Whittemore-Prescott to allow its employment of Ms. Sobiesiak. The 185-day period at issue in this case ended with issuance of the permit.

⁵ 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).

decision of the State Tenure Commission⁶ that it did not have jurisdiction to review appellant Maria Cantu's discharge because she did not hold a teaching certificate (and she was therefore not a "teacher" for purposes of the Teachers' Tenure Act) on August 24, 1987, when she was discharged, or on September 23, 1987, when she filed a claim of appeal with the Commission. In that case, Ms. Cantu's certificate expired on June 30, 1987, but she did not apply for recertification until November 1, 1987. Rejecting her argument that she came within the protection of MCL 380.1535, the State Tenure Commission recognized that MCL 380.1535 was enacted to remedy the dilemma faced by teachers when there is a delay in the processing of their certificates.⁷ Finding that it was Ms. Cantu's responsibility to apply for recertification, the State Tenure Commission granted summary relief to Grand Rapids Public Schools related to its August 24, 2017 action, which preceded Ms. Cantu's recertification application by over two months. Following circuit court affirmance of the decision of the State Tenure Commission, Ms. Cantu appealed to the Court of Appeals. Addressing MCL 380.1535, the Court of Appeals stated, "We also agree with the commission and the circuit court that petitioner was not entitled to the protection of MCL 380.1535; MSA 15.41535, because her certification was not delayed by the board of education." 186 Mich App at 491. See also *Reyner v Board of Education of the Waverly Community Schools* (State Tenure Commission Case No. 85-17), *aff'd* unpublished per curiam opinion of Court of Appeals (Docket

⁶ *Cantu v Board of Education of the Grand Rapids Public Schools* (State Tenure Commission Case No. 87-27) (Decision and order, appellee's motion for summary disposition, March 11, 1988).

⁷ In this regard, the State Tenure Commission adopted the reasoning of an earlier tenure decision, *Huff v Board of Education of the Reading Community Schools* (State Tenure Commission Case No. 83-24).

No. 102795, issued March 30, 1989), lv den 434 Mich 908 (1990), where the State Tenure Commission found that MCL 380.1535 was enacted to protect the certificated status of individuals for whom issuance of certificates is delayed due to the processing of paperwork.

In this case, Whittemore-Prescott agrees that, as the State Tenure Commission observed in *Cantu*, MCL 380.1535 was enacted in response to the Commission's holding in *Suckley v Board of Education of the Warren Woods Public Schools* (81-38) (Decision and order, appellee's motion for summary and/or accelerated judgment, issued March 19, 1982).⁸ In *Suckley*, the Commission held that, notwithstanding delays at both Oakland University and the Department in the processing of an additional endorsement on Patricia Suckley's teaching certificate, the fact that she did not have possession of the endorsed certificate at the time in question was fatal to her claim under the Teachers' Tenure Act. Evidence in that case included Oakland University's admission that Ms. Suckley was not responsible for the university's failure to process her endorsement application in a timely fashion. In fact, it was several months before the university notified the Department that it was recommending her for the additional endorsement. There was also evidence of the Department's acknowledgement of cases where, due to budget cutbacks and staff reductions, delays in processing certificates were occurring in both the certification offices of institutions and at the Department and that those delays were beyond the control of teachers and school districts. The Department further acknowledged that imposition of state aid penalties under circumstances of such delays would be arbitrary.

⁸ See also *Reyner, supra* (MCL 380.1535 was enacted in direct response to *Suckley*).

I agree with the Court of Appeals and the State Tenure Commission that the purpose of MCL 380.1535 is to provide protection to individuals whose applications for renewal and endorsement are delayed through no fault of their own. The words of Commissioner Leonard M. Porterfield, concurring in the decision in *Suckley*, *supra*, describe the dilemma that MCL 380.1535 was meant to address.

I believe that the controlling statutes and regulations relative to teacher certification clearly indicate that the State Board of Education must issue a certificate before a person may be considered "certificated" for purposes of employment under the Tenure Act. Nevertheless, I must emphasize [sic] with the plight of appellant in the present case, for *she suffers greatly because of bureaucratic delays*. It is apparent that there was *no lack of diligence on her part*.

I find the, [sic] unfairness of this situation most troubling. As the law now stands, if the school board so chooses, individual teachers may be made to suffer real economic loss because of *institutional failings which the individual teacher has no power to correct or prevent*. If school boards, such as appellee, insist on being so inflexible, then it is my view that legislative or judicial action mandating a speedier and more reasonable approach to certifying teachers is warranted. (Emphasis added.)

In this case, there was no proof of delay attributable to the Department, lack of diligence on the part of the Department, or institutional failings of which Ms. Sobiesiak or Whittemore-Prescott were victims. In fact, according to Ms. Breen, the Department issued the renewal of Ms. Sobiesiak's certificate within four hours of receiving all documentation necessary for review of her application.

When construing statutory language, it is important to be mindful not to abandon common sense and not to support an interpretation that would lead to an absurd result at odds with legislative intent. *Ionia Public Schools v Ionia Education Association*, 311 Mich App 479, 488 (2015); *TES Filer City Station L.P. v Michigan*

Public Service Commission (In re Consumers Energy), 310 Mich App 614, 633 (2015). In my judgment, to extend the protection of the statute to the instant facts, where issuance of the renewed certificate was delayed solely because of the applicant's failure to submit the required documentation and fee, would lead to absurd results. Whittemore-Prescott's interpretation of the statute 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. I reject such an interpretation, which removes accountability from applicants and school districts.

The statute refers to the state board's confirmation or rejection of an application. I find that the sole reasonable interpretation of the statute 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."

The *Suckley* case and the enactment of MCL 380.1535 long preceded the implementation in 2011 of the Michigan Online Educator Certification System (MOECS), the web-based system that educators must use to apply for certificates, endorsements, and certificate renewals. That system also allows individuals to check the status of their pending applications. If Ms. Sobiesiak had reasonably monitored the progress of her application online, she would have discovered that the delay in its processing was not attributable to the Department. In addition, there was no evidence that Whittemore-Prescott, which was obligated to comply

with all legal requirements related to the employment of certificated teachers, diligently pursued the issue of Ms. Sobiesiak's lack of possession of a valid Michigan teaching certificate.

For these reasons, I find that MCL 380.1535 does not apply in this case. Ms. Sobiesiak was not certificated during the time in question. Applying the plain words of MCL 388.1763, I therefore affirm the first level decision upholding the state aid penalty assessed against Whittemore-Prescott based on its illegal employment of her.

Whittemore-Prescott requests waiver of the state aid deduction under subsection 15(2) of the State School Aid Act, MCL 388.1615(2). As amended by 2017 PA 108, effective July 14, 2017, subsection 15(2) confers on the Department the discretion to "waive all or a portion of the adjustments under this subsection" if the Department determines that three criteria described in the subsection are satisfied.

As discussed above, the state aid deduction at issue in this case is based solely on the salary paid to Ms. Sobiesiak during the period that Whittemore-Prescott illegally employed her. The deduction is required by section 163 of the State School Aid Act, MCL 388.1763.

In my judgment, subsection 15(2) of the State School Aid Act does not confer on the Department the discretion to waive all or any portion of section 163 deductions. As described in subsection 15(2), the waiver language only applies to adjustments occurring under that subsection, which, as I interpret the statute, includes only pupil membership audits. The deduction in this case is based on

section 163 and therefore the waiver language does not apply. Whittemore-Prescott's request for waiver under subsection 15(2) is therefore denied.

ORDER

Based on my review of this matter and for the above reasons, I affirm the first level appeal decision of Leah Breen, director of the Office of Professional Preparation Services, and I order as follows:

The state aid penalty in the amount of \$15,891.25 assessed against Whittemore-Prescott Area Schools based on its employment of Andrea Sobiesiak from September 6, 2016, to March 9, 2017, is affirmed.

Whittemore-Prescott Area Schools' request for waiver under MCL 388.1615(2) is denied.

This decision is being transmitted to the Office of State Aid and School Finance for implementation.

Brian Whiston
Superintendent of Public Instruction

Dated: January 26, 2018