

STATE OF MICHIGAN

BILL SCHUETTE, ATTORNEY GENERAL

REVISED SCHOOL CODE: Closure of lowest achieving schools
operated by a community district

EDUCATION:

Subsection 391(1) of 2016 PA 192, MCL 380.391(1), requires the State School Reform/Redesign Officer (SRO) to close a school operated by a community district if the school has been among the lowest achieving 5% of public schools in the State for the immediately preceding three school years, unless the SRO determines under subsection 391(3), MCL 380.391(3), that the closure would result in unreasonable hardship to pupils. The school need not be operated by the community district for the immediately preceding three school years before it is subject to closure by the SRO under subsection 391(1). The statute authorizes such closure effective no later than the end of the 2016-2017 school year.

Opinion No. 7292

September 28, 2016

The Honorable Arlan B. Meekhof
Senate Majority Leader
The Capitol
Lansing, MI 48909

The Honorable Kevin Cotter
Speaker of the House
The Capitol
Lansing, MI 48909

You have asked whether the State School Reform/Redesign Officer is authorized under section 391 of 2016 PA 192, MCL 380.391, to order the closure of a community district school before July 1, 2019, including whether closure can be ordered effective no later than the end of the 2016-2017 school year. For the reasons that follow, the answer to your question is yes.

Creation of the State School Reform/Redesign Officer and Office

The Revised School Code, MCL 380.1 *et seq.*, provides for a system of public instruction, elementary and secondary schools, and the organization, regulation, and maintenance of school districts with a local school district having the responsibility to provide for the education of its pupils. In 2009 PA 204, the Legislature added section 1280c, MCL 380.1280c, to the Revised School Code to require local school districts to implement reforms for the lowest achieving 5% of schools in the State. MCL 380.1280c. The State School Reform/Redesign Officer (SRO or Officer) position was created by 2009 PA 204, which also prescribes the powers and duties of the Officer to require, approve, and supervise local school districts' implementation of reforms. MCL 380.1280c.

Beginning in 2010, the Superintendent of Public Instruction was required to publish an annual list identifying the lowest achieving 5% of all public schools in this State. MCL 380.1280c(1). Each "public school" (including public school academies and other charter schools) that is included on the list is placed under the supervision of the SRO. MCL 380.1280c(2); MCL 380.5(6). The school board or board of directors operating the public school is required to submit for SRO approval a redesign plan requiring implementation of one of four school intervention models—turnaround, restart, transformation, or school closure. MCL 380.1280c(2). If the SRO does not approve the redesign plan, or if the SRO determines that the redesign plan is not achieving satisfactory results, the statute requires the SRO to issue an order placing the public school in the state school

reform/redesign school district and imposing one of the four school intervention models. MCL 380.1280c(6). Alternatively, if the SRO determines that better educational results are likely to be achieved by appointing a chief executive officer to take control of multiple public schools, the SRO may make a recommendation for appointment of a chief executive officer to take control over those multiple schools and impose one of the four intervention models. MCL 380.1280c(7). The chief executive officer exercises the powers of the local school board with respect to the schools. *Id.*

Subsequently, Executive Order No. 2015-9 created the State School Reform/Redesign School Office as an autonomous entity within the Department of Technology, Management and Budget and transferred the SRO from the Department of Education to the State Reform/Redesign Office (Office).¹ The Executive Order made the SRO the head of the newly created Office and transferred to the Office all of the powers and duties of the Department of Education and the Superintendent of Public Instruction under MCL 380.1280c. Under the Executive Order, it is now the SRO's duty to compile and publish the annual list identifying the lowest achieving 5% of all public schools in this State.

¹ Executive Order 2015-9 is available on the Michigan Legislature's website at <http://www.legislature.mi.gov/documents/2015-2016/executiveorder/pdf/2015-EO-09.pdf>, (accessed September 21, 2016)

The enactment of 2016 Public Act 192 with immediate effect

Public Act 192 of 2016 (PA 192) began as House Bill 5384 as part of a package of six bills designed to provide a mechanism for restructuring a first-class school district that no longer meets the 100,000 pupil enrollment requirement.² The primary purpose of PA 192 was to transfer the operation of a first-class school district into a new district and to require the SRO to take certain actions with respect to the transferred schools. More specifically, the Legislature required the SRO to do two things: create an accountability system and to order school closures for low-achieving schools under certain conditions. Public Act 192 also amended certain statutes relating to intermediate school districts and public school academies (often referred to as charter schools). The Governor signed PA 192 into law on June 21, 2016, with immediate effect.

As enacted, PA 192 amended the Revised School Code to provide that beginning June 21, 2016, “if a school district *is* or becomes a *qualifying school district*, the school district shall lose its organization and be dissolved as provided in” section 12b. MCL 380.12b(1) (emphasis added). A “qualifying school district” is “a school district that was previously organized and operated as a first class school district . . . that has a pupil membership of less than 100,000 enrolled on its most recent pupil membership count day, including . . . a school district that was

² The legislative history of PA 192 is available on the Michigan Legislature’s website at [http://www.legislature.mi.gov/\(S\(tpob4j3em0mhs4frfuzd4l2v\)\)/mileg.aspx?page=getObject&objectName=2016-HB-5384](http://www.legislature.mi.gov/(S(tpob4j3em0mhs4frfuzd4l2v))/mileg.aspx?page=getObject&objectName=2016-HB-5384), (accessed September 21, 2016). The related acts are Public Acts 193 through 197.

previously organized and operated as a first class school district” MCL 380.5(9).³ As of the date a school district becomes a qualifying school district, “a *community district* is created for the same geographic area of that qualifying school district to provide public education services for residents of that geographic area and to otherwise exercise the powers of a community district for that geographic area” governed by part 5B of PA 192, MCL 380.381 through 380.396. MCL 380.383 (emphasis added); MCL 380.3(5).

Although PA 192 is not limited to the Detroit Public School District, the only school district presently within the definition of a “qualifying school district” is the Detroit Public School District.⁴ Accordingly, with the enactment of PA 192, the Detroit Public School District (the Qualifying District) was reorganized as the Detroit Public Schools Community District (the Community District). As of July 1, 2016, the transfer date to the new district, the Community District acquired, succeeded to, and assumed all of the rights of the Qualifying District “under any ordinances, agreements, or other instruments and under law.” MCL 380.12b(7)(c); MCL 380.12b(15)(c). In addition, the Community District assumed, and the Qualifying District was relieved of, all operational jurisdiction over the school district as well as all further costs and responsibilities relating to operating a public school or providing public education services. MCL 380.12b(9). The Qualifying

³ See OAG, 2009-2010, No. 7234, p 66, (July 20, 2009), for a discussion of the Detroit Public School District’s past status as a first class school district.

⁴ Enrollment in the Detroit Public School District has averaged slightly fewer than 50,000 students for the last four school years. See <https://goo.gl/y0RAh4>. (accessed September 21, 2016).

District did, however, retain debt and other financial obligations. *Id.* And all students who were enrolled in the Qualifying District, but had not completed grade 12 during the immediately preceding school year were automatically enrolled in the Community District by operation of law. MCL 380.12b(7)(i).

The accountability system and closure of schools

As noted above, PA 192 also mandated that the SRO create an accountability system for all schools within a community district and that the SRO close low-achieving schools operated by community districts under certain conditions.

Under section 390, the SRO must establish a new accountability system:

Subject to subsection (2), the state school reform/redesign officer serving under section 1280c shall establish, implement, and administer a community district accountability system under this section for all public schools located within the boundaries of a community district, including all schools operated by the community district and all public school academies located within the boundaries of the community district. . . . [MCL 380.390(1).]

Notably, the accountability system also applies to public school academies, often referred to as charter schools, within the boundaries of the community district.⁵

The SRO must implement and administer this new accountability system “beginning with the second full school year that starts after the transfer date [i.e.,

⁵ A “public school academy” is defined as “a public school academy established under part 6a and, except as used in part 6a, also includes an urban high school academy established under part 6c, a school of excellence established under part 6e, and a strict discipline academy established under sections 1311b to 1311m.” MCL 380.5(7).

after the qualifying district becomes a community district].” MCL 380.390(2).

Again, the transfer date to the Detroit Public Schools Community District was July 1, 2016. Therefore, the implementation date for the accountability system in the Detroit Public Schools Community District begins with the 2018-2019 school year.

Section 391 provides for the closure of community district schools, and states in relevant part:

(1) Notwithstanding section 1280c,^[6] . . . and subject to subsections (2) and (3), until the accountability system under section 390 has been in effect in the community district for at least 3 full school years, if a school operated by a community district is among the lowest achieving 5% of all public schools in this state for the immediately preceding 3 school years, as determined under section 1280c, the state school reform/redesign officer shall order the community district to close the school effective no later than the end of the current school year.

(2) Notwithstanding section 1280c, . . . and subject to subsection (3), after the accountability system under section 390 has been in effect in the community district for at least 3 full school years, if a school operated by a community district has been assigned a grade of “F” under section 390 for the immediately preceding 3 school years, the state school reform/redesign officer shall order the community district to close the school effective no later than the end of the current school year. [MCL 380.391(1)-(2).]

Section 391 thus provides separate procedures for the closure of low-achieving schools before and after the implementation of section 390’s accountability system. However, schools that are subject to closure under either

⁶ Again, section 1280c, MCL 380.1280c, requires the compilation and publication of a list of the lowest achieving 5% of schools in this State, and requires the SRO to require, approve, and supervise local school districts’ implementation of reforms with respect to those schools.

subsection 391(1) or (2) are subject to subsection 391(3), which offers a reprieve from closure if it would result in an unreasonable hardship to pupils:

For a public school that is subject to closure under this section, the state school reform/redesign officer shall consider other public school options available to pupils in the grade levels offered by the public school who reside in the geographic area served by the public school. If the state school reform/redesign officer determines that closure of the public school would result in an unreasonable hardship to these pupils because there are insufficient other public school options reasonably available for these pupils, the state school reform/redesign officer may rescind the order subjecting the public school to closure. . . . [MCL 380.391(3).]

A similar process is set forth in section 507 for public school academies:

. . . [I]f the state school reform/redesign officer determines that a public school academy site that has been operating for at least 4 years is among the lowest achieving 5% of all public schools in this state for the immediately preceding 3 school years, as determined under section 1280c . . . the state school reform/redesign officer shall notify the public school academy’s authorizing body. . . . Also, . . . after the accountability system under section 390 has been in effect in the community district for at least 3 full school years, if the state school reform/redesign officer determines that a public school academy site located in a community district has been assigned a grade of “F” under section 390 for the immediately preceding 3 school years, and is not currently undergoing reconstitution under this section, the state school reform/redesign officer shall notify the public school academy’s authorizing body. [MCL 380.507(5).]

After the SRO notifies the public school academy’s authorizing body, that body must, in either instance, take steps to close the low-achieving public school academy. *Id.*⁷ But as with a community district school, if the SRO “determines that closure of the public school academy or site would result in an unreasonable

⁷ It should be noted that the first closure scenario – a public school academy operating for at least four years – applies to a public school academy operating anywhere in the State. The second closure scenario only applies to public school academies located in a “community district.” At this time, the second scenario applies only to public school academies within the Detroit Public Schools Community District, and after the accountability is in place for the appropriate time period.

hardship to these pupils because there are insufficient other public school options reasonably available for these pupils, the state school reform/redesign officer may rescind the notice.” MCL 380.507(6).

Application of Section 391 to a community district school

Because the Detroit Public School District is now operating as a community district under PA 192, questions have arisen regarding the application of section 391 to the Detroit Public Schools Community District. Specifically, you ask whether under subsection 391(1) the SRO is authorized to order the closure of a community district school before July 1, 2019, including whether closure can be ordered effective not later than the end of the 2016-2017 school year.

The goal in interpreting a statute “ ‘is to give effect to the Legislature’s intent, focusing first on the statute’s plain language.’ ” *Madugula v Taub*, 496 Mich 685, 696 (2014) (internal citation omitted). In doing so, statutes must be read “as a whole, reading individual words and phrases in the context of the entire legislative scheme.” *Id.* “When a statute’s language is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written.” *Bank of Am, NA v First Am Title Ins Co*, 499 Mich 74, 85 (2016) (internal citations omitted).

Because the new accountability system required under section 390 is not yet in place, subsection 391(1) applies to a community district school. Again, that subsection provides in relevant part:

[U]ntil the accountability system under section 390 has been in effect in the community district for at least 3 full school years, *if a school operated by a community district is among the lowest achieving 5% of all public schools in this state for the immediately preceding 3 school years, . . .* the state school reform/redesign officer shall order the community district to close the school effective no later than the end of the current school year. [MCL 380.391(1) (emphasis added).]

Under the plain language of the statute, the SRO shall order a school to close if two conditions are met: (i) the school is operated by a community district; and (ii) the school is among the lowest achieving 5% of all public schools for the immediately preceding three school years.

As to the first condition, all schools transferred into the Detroit Public Schools Community District have been “operated” by the Community District since the July 1, 2016 transfer date, and are presently being “operated” by the Community District. Under the second condition, the schools “operated” by the Community District are subject to closure if they are among the lowest achieving 5% of all public schools “for the immediately preceding 3 school years.” Thus, any school currently operated by the Detroit Public Schools Community District that was on the list of low-achieving schools for school years 2015-2016, 2014-2015, and 2013-2014, is subject to closure “effective no later than the end of the current school year,” i.e. the 2016-2017 school year.

As noted in your request, some have argued that the community district must have itself “operated” the school for at least three years before the closure provision of subsection 391(1) can be applied. This interpretation is apparently based on the theory that the word “operated” is modified by the phrase “immediately preceding 3

years.” But this construction is contradicted by the Act’s text, structure, and purposes.

Public Act 192 does not define the term “operated.” Where words in a statute are undefined, dictionary definitions may be consulted. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312 (2002). Also, in construing a statute, “ ‘statutory language must be read and understood in its grammatical context, unless it is clear that something different was intended.’ ” See *Rock v Crocker*, 499 Mich 247, 262 (2016), quoting *Sun Valley Foods Co v Ward*, 460 Mich 230, 237 (1999).

The relevant dictionary definition of “operate” is “to conduct or direct the affairs of (a business, etc.)” *Webster’s New World Dictionary* (1988). Applying this definition to the word “operated,” which functions as an adjective in a phrase modifying schools, the Detroit Public Schools Community District has conducted or directed the affairs of the schools within the district since July 1, 2016. As a result, any school “operated” by the Detroit Public Schools Community District and on the list of the lowest achieving 5% of all public schools is subject to closure if it has been on the list for the “immediately preceding 3 years.”

But the words “immediately preceding 3 years” of subsection 391(1) do not modify the clause “operated by a community district.” “The ‘last antecedent’ rule of statutory construction provides that a modifying or restrictive word or clause contained in a statute is confined solely to the immediately preceding clause or last antecedent, unless something in the statute requires a different interpretation.” *Stanton v City of Battle Creek*, 466 Mich 611, 616 (2002), citing *Sun Valley Foods Co*

v Ward, 460 Mich 230, 237 (1999) (“It is a general rule of grammar and of statutory construction that a modifying word or clause is confined solely to the last antecedent, unless a contrary intention appears.”).

Applying this general rule, the words “for the immediately preceding 3 school years” modify the immediately preceding clause “is among the lowest achieving 5% of all public schools in this state.” They do not modify the earlier clause “if a school operated by a community district.” Nothing in the statute requires a different interpretation here. Accordingly, the text and structure of subsection 391(1) contradict the claim that a community district must operate a lowest-achieving school for three years before the SRO is required to order closure. To read subsection 391(1) as requiring a community district to operate a school for a full three years before the school is subject to closure impermissibly rewrites the statutory provision as follows:

[I]f a school operated by a community district FOR THE IMMEDIATELY PRECEDING 3 SCHOOL YEARS is among the lowest achieving 5% of all public schools in this state for the immediately preceding 3 school years, as determined under section 1280c, the state school reform/redesign officer shall order the community district to close the school effective no later than the end of the current school year.

But a plain reading of the statute as written requires the SRO to order closure if a school operated by a community district is among the lowest achieving 5% of all public schools in Michigan for the immediately preceding three school years.

Had the Legislature intended to delay implementation for three years, it would have done so by including such language in the statute, as it did in subsection 391(2), which applies “after the accountability system under section 390 has been in effect in the community district for at least 3 full school years.” A well-established principle of statutory construction provides that where the Legislature uses unambiguous language to express the same point elsewhere in the statute, its failure to use the same language supports the conclusion it did not intend the same meaning. See, e.g., *Wesche v Mecosta County Road Comm’n*, 480 Mich 75, 86 (2008) (“the Legislature knows how to create a statutory threshold when it wishes to do so”); *Carson City Hosp v Dep’t of Cmty Health*, 253 Mich App 444, 447–48 (2002) (“When the Legislature enacts laws, it is presumed to know the rules of statutory construction and therefore its use or omission of language is generally presumed to be intentional.”); 2A Singer & Singer, *Sutherland Statutory Construction* (7th ed.), § 46:6, p. 252 (“The use of different terms within similar statutes generally implies that different meanings were intended.”). Where the Legislature intended to require a specific time for a school to be “operated,” in addition to being on the list of lowest achieving 5% of schools for a specified period, the Legislature included language providing for a time restriction in the statute. It did not include such language in subsection 391(1).

This construction is also supported by the structure and context of the statutory scheme that substitutes the community district for the “qualifying school district” for purposes of operating facilities, operational jurisdiction, and providing educational services to schools in the district. See MCL 380.12b. In a similar vein,

section 507, which governs public school academies, provides that the SRO must act to close the academy if the SRO “determines that a public school academy site that has been operating for at least 4 years is among the lowest achieving 5% of all public schools in this state for the immediately preceding 3 school years, as determined under section 1280c” MCL 380.507(5). Thus, subject to the exception for hardship, the consistent design of the Act is to require the closure of those lowest achieving schools.

Finally, unlike section 1280c, MCL 380.1280c, which provides for an array of options for the improvement of the lowest achieving schools, PA 192 – other than the hardship reprieve – includes no corollary provisions. The purpose of PA 192 is qualitatively different for community district schools, requiring their closure and the closure of public school academies rather than requiring changes to these schools. Cf. MCL 380.391(1) (providing that the subsection applied “notwithstanding” the provisions of section 1280c). The Legislature neither created a process for reforming such schools nor established any special delay due to the fact that the school is now operated by a community school district. The change in status in the governing school district does not toll the time.

As a result, the plain language of subsection 391(1) requires the SRO to close a school operated by a community district if the school has been among the lowest achieving 5% of public schools in the State for the immediately preceding three school years. The school does not have to have been operated by the community district for the immediately preceding three years. As applied here, the SRO is

simply required to order the closure of a Detroit Public Schools Community District school before July 1, 2019, if it meets the conditions of subsection 391(1), subject to any application of the hardship provision set forth in subsection 391(3).

Conclusion

Some have argued that the SRO cannot order a Detroit public school closed unless the Detroit Public Schools Community District has operated the school for the last three years. That argument misreads the text, structure, and purposes of PA 192. The statute reads:

[I]f a school operated by a community district is among the lowest achieving 5% of all public schools in this state for the immediately preceding 3 school years . . . the [SRO] shall order the community district to close the school [MCL 380.391(1).]

Under a plain reading of the statute, the words “for the immediately preceding 3 school years” modify the preceding phrase “is among the lowest achieving 5% of all public schools.” If the Legislature had intended a 3-year time delay on school closures, it would have placed the phrase “for the immediately preceding 3 school years” after the words “operated by a community district.” But it did not do so.

It is my opinion, therefore, that subsection 391(1) of 2016 PA 192, MCL 380.391(1), requires the SRO to close a school operated by a community district if the school has been among the lowest achieving 5% of public schools in the state for the immediately preceding three school years, unless the SRO determines under subsection 391(3) that the closure would result in unreasonable hardship to pupils.

The school need not be operated by the community district for the immediately preceding three school years before it is subject to closure by the SRO under subsection 391(1). The statute authorizes such closure effective no later than the end of the 2016-2017 school year.

A handwritten signature in black ink, reading "Bill Schuette". The signature is written in a cursive style with a long horizontal flourish extending to the right.

BILL SCHUETTE
Attorney General