*STATE OF MICHIGAN

COURT OF APPEALS

FREMONT PUBLIC SCHOOLS and FREMONT PUBLIC SCHOOLS BOARD OF EDUCATION,

Plaintiffs-Appellees,

v

DEPARTMENT OF EDUCATION, STATE OF MICHIGAN and SUPERINTENDENT OF PUBLIC INSTRUCTION,

Defendants-Appellants.

UNPUBLISHED
May 30, 1997

No. 191329
Newaygo Circuit Court
LC No. 95-15513-CZ

Before: Fitzgerald, P.J., and MacKenzie and A.P. Hathaway*, JJ.

PER CURIAM.

Defendants appeal as of right from an order granting plaintiffs' motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and remand for entry of an order granting summary disposition to defendants.

I

Plaintiffs brought suit challenging defendants' formula for calculating funding for adult education programs in the 1993-1994 school year under MCL 388.1707d; MSA 15.1919(1007d), referred to as § 107d,[1] and in the 1994-1995 school year under MCL 388.1707e; MSA 15.1919(1007e), referred to as § 107e[2]. The amount of funding for adult education programs is determined on the basis of "full-time equated membership" (FTE), the number of full-time program participants if part-time students are included on a pro rata basis. Plaintiffs contended that defendants' formula improperly reduced the size of their adult education FTE in both the 1993-1994 and 1994-1995 school years based on the district's failure to meet program attendance and completion requirements under MCL 338.1707; MSA 15.1919(1007), referred to as § 107[3]. Plaintiffs argued that the failure to meet the §

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* Circuit judge, sitting on the Court of Appeals by assignment.

107 performance requirements should have only resulted in a deduction from the dollar amount of funding, not a reduction in their FTE. The parties filed cross-motions for summary disposition pursuant to MCR 2.116(C)(10). The trial court concluded that although the statutes were ambiguous, plaintiffs' formula was more consistent with the express language of the statutes. We find that the circuit court erred in interpreting §§ 107d and 107e as it did because its construction is contrary to the statutes' plain language and renders the words relating to § 107 adjustments in those statutes meaningless.

II

We review questions of statutory interpretation de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991); *Smeets v Genesee Co Clerk*, 193 Mich App 628, 633; 484 NW2d 770 (1992). Adjustments under § 107 are mentioned twice in § 107d:

> (2) *Subject to…section 107,* the amount a district…shall receive [in 1993-1994 state aid for adult education]…shall be an amount equal to the gross membership allowance per pupil…received by the district in 1992-93, for up to a maximum number of participants in 1993-94 equal to *80% of the 1992-93 full-time equated adult education membership in the district…as counted in the 1992-93 fourth Friday report…and as adjusted under section 107….*

Stated simply, § 107d provides that state funding will be calculated by multiplying the 1992-1993 per pupil allowance ($3,567.05) by eighty percent of the district's 1992-1993 FTE, and that 1992-1993 FTE is computed by reference to the fourth Friday count as adjusted under § 107. The resulting figure is then "[s]ubject to section 107."

Contrary to plaintiffs' arguments, this formula does not result in a double deduction. The obvious purpose of the § 107 adjustment is to tie the amount of funding not to the number of students who merely enroll in an adult education program, but rather to the number of students who actually attend and complete the program, as evidenced by the audit and reimbursement requirement in that statute. Adult education programs are not compulsory; for a variety of reasons, enrollees may sign up for classes but not complete them. When adult education students enroll but do not attend or complete courses – stated otherwise, when the district fails to meet the performance standards -- the fourth Friday enrollment count becomes an artificially inflated figure that is not reflective of the true number of students actually served by a district's adult education program. Initial enrollment figures must be adjusted to account for student attrition in order to more accurately reflect the true number of students benefiting from the program. If the school district fails to meet the performance standards and the unadjusted, initial enrollment is used to formulate the next year's aid payment, the calculation based on that inflated figure defeats the statutory purpose of tying the amount of aid to the actual number of participants served by the district. Therefore, not only must the school district reimburse the state for the previous year's overpayment under § 107, but the number of participants for the previous year must

be adjusted from the initial count to the actual number who attended and completed the program, as reflected in the adjustments under § 107.

Similarly, § 107e specifically provides that the basis for calculating the number of FTEs is the number "in the final audited 1993-1994 participant count, *after adjustments under former section 107*, [and] as adjusted for the change in the basis for determining full-time equated participants from 480 to 900 hours." Like § 107d, this section explicitly states that the number of FTEs must be adjusted to reflect the actual number of full-time equated participants after audit under § 107. This is precisely what defendants' formula did.

Furthermore, the versions of § 107 in effect during the school years at issue expressly provided that school districts were to reimburse the state for its funding of students who failed to attend or complete their programs. Had the Legislature intended school aid to be formulated as plaintiffs contend, any reference in §§ 107d and 107e to the § 107 adjustments would have been completely unnecessary because the deductions were already mandated by § 107 itself. Thus, plaintiffs' interpretation cannot be sustained because it renders the statutory language in §§ 107d and 107e relating to adjustments under § 107 mere surplusage. *Altman v Meridian Twp*, 439 Mich 623, 635; 487 NW2d 155 (1992). The circuit court erred in granting summary disposition in favor of plaintiffs and in denying summary disposition in favor of defendants.

II

Ten days after entry of the order granting plaintiffs' motion, the Legislature retroactively amended § 107e in response to this case and another case, *Newaygo Public Schools v Dep't of Education*, Newaygo circuit case no. 94-14873-CZ. 1995 PA 130, § 1, immediately effective June 30, 1995.[4] Two paragraphs were added to clarify the role of § 107 adjustments in determining funding. The amended statute clearly mandated use of the formula employed by defendants, contrary to the circuit court's order granting summary disposition in favor of plaintiffs. Defendants immediately moved for reconsideration, but the motion was denied. On appeal, defendants contend that the court erred when it failed to grant their motion for reconsideration. We agree.

The holding of *Romein v General Motors Corp*, 436 Mich 515, 533; 462 NW2d 555 (1990), aff'd 503 US 181; 112 S Ct 1105; 117 L Ed 2d 328 (1992), is inapplicable to the instant case because the amendments were a clarification of the original legislation, not a modification of existing law. The effect of clarifying amendments was addressed in *Detroit v Walker*, 445 Mich 682; 520 NW2d 135 (1994). In that case, our Supreme Court stated that "[i]t is well settled . . . that when an amendment is enacted soon after controversies arise regarding the meaning of the original act, 'it is logical to regard the amendment as a legislative interpretation of the original act.'" *Id*. at 697, quoting *Detroit Edison Co v Revenue Dep't*, 320 Mich 506, 519-521; 31 NW2d 809 (1948). In such cases, "the amendment . . . clarifies what the . . . [legislative] intent had been all along." *Id*. Although in this case plaintiffs attempt to frame the issue as whether the Legislature could retroactively affect the trial court's decision and order, the relevant question is whether the trial court erred by denying defendants'

motion for reconsideration in the face of cogent evidence that the court's interpretation of § 107e was clearly at odds with the legislative intent "all along." Because the amendments to § 107e were a legislative interpretation of that statute demonstrating that the Department's formula was consistent with the legislative intent behind that statute, the trial court erred when it denied defendants' motion for reconsideration.

Reversed and remanded for entry of an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Barbara B. MacKenzie
/s/ Amy P. Hathaway

[1] Section 107d was repealed by 1993 PA 336, § 3, effective October 1, 1994.

[2] Section 107e was repealed by 1995 PA 130, § 3, effective October 1, 1995.

[3] Like § 107d, § 107 was repealed by 1993 PA 336, § 3, effective October 1, 1994. However, the performance criteria of § 107 were incorporated into § 107e when it was in effect.

[4] This statute was also repealed by 1995 PA 130, § 3, effective October 1, 1995.