

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Appeal by Academy for Business and Technology
Certification Penalty
Docket No. CP 17-5

BACKGROUND FACTS

In a letter dated May 22, 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 the Academy for Business and Technology (ABT), that the Department had determined that ABT employed Anthony Linares in contravention of state law during the 120-day period from December 5, 2016, to April 3, 2017. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against ABT in the amount of \$11,852.05, the amount of salary paid to Mr. Linares during the period of noncompliance. ABT is a public school academy authorized by Eastern Michigan University and managed by The Leona Group, L.L.C.

On June 1, 2017, ABT filed a first level appeal with Ms. Breen challenging the state aid deduction. In a letter dated June 15, 2017, Ms. Breen affirmed the deduction. ABT filed a second level appeal with the Superintendent of Public Instruction on July 11, 2017.

Acting as designee of the Superintendent of Public Instruction, Robert J. Taylor offered ABT 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. ABT chose to present its position by way of a review conference.

The review conference was convened on October 16, 2017. Participants at the conference were Mr. Taylor; Ms. Breen; Diane K. Griggs of The Leona Group, L.L.C., human relations director of ABT; Carmen Willingham, school leader of ABT's middle/high school; Mike Atkins, ABT core team member; and Mary Fielding, a Department administrative law specialist.

DISCUSSION

Unless otherwise provided in the Revised School Code, a teacher must hold a teaching certificate that is valid for the position to which the teacher is assigned. MCL 380.1231(3); MCL 380.1233(1); MCL 388.1763(1); Mich Admin Code, R 390.1105.¹ Employers are required to be familiar with the details of the validity of certificates held by their employees. Mich Admin Code, R 390.1117(1). 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. The application for a permit is submitted to the Department by a superintendent or school administrator, who holds it on behalf of the individual whose substitute employment it concerns. Mich Admin Code, R 390.1141(2). The permit process plays an important role in the screening of school instructional employees for criminal convictions, a vital function of the Department in its efforts to safeguard pupils' safety. See Mich Admin Code, R 390.1111(5), which provides in pertinent part that conviction of a crime described in section 1535a of the Revised School Code, MCL 380.1535a, is considered to be

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).

reasonably and adversely related to the ability to serve in an elementary or secondary school and is sufficient grounds for denial of a permit.

Section 163 of the State School Aid Act, MCL 388.1763, 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.

At issue in this case is whether a state aid deduction has been properly assessed against ABT based on its employment of Anthony Linares during part of the 2016-2017 school year. The relevant facts are as follows.

The Department issued to Mr. Linares an elementary provisional teaching certificate for kindergarten to grade five (all subjects) and kindergarten through grade eight (self-contained classroom²) on May 19, 2011. On April 4, 2017, an endorsement for English (grades six to eight) was added to the certificate. The certificate expired on June 30, 2017.³

During the 2015-2016 school year, ABT applied for and was issued a full year substitute permit to allow its employment of Mr. Linares as a high school English teacher. As noted above, Mr. Linares held a valid Michigan teaching certificate at that time but he was not certified to teach high school courses.

ABT continued to employ Mr. Linares during the entire 2016-2017 school year. His 2016-2017 teaching assignment consisted of one period teaching eighth grade English (not in a self-contained classroom), two periods teaching high school English, one period proctoring an online elective lab for tenth through twelfth grade students, one period teaching eleventh grade test prep/life skills, and a preparation period. Notwithstanding that this teaching assignment was outside the validity of

² A self-contained classroom is a classroom in which one teacher provides instruction to the same pupils for the majority of the pupils' instructional day. Mich Admin Code, R 390.1101(r).

³ On August 29, 2017, the Department issued to Mr. Linares an elementary professional education certificate for kindergarten to grade five (all subjects), kindergarten through grade eight (self-contained classroom), and English (grades six to eight). The professional education certificate will expire on June 30, 2022.

Mr. Linares' elementary provisional teaching certificate,⁴ it was not until April 3, 2017, that ABT applied for a substitute permit to allow his employment. On April 4, 2017, the Department issued the requested substitute permit, which expired on August 31, 2017. The state aid deduction at issue in this case is based on the salary paid to Mr. Linares from December 5, 2016,⁵ to April 3, 2017.

ABT acknowledges that its failure to obtain a substitute permit to allow its employment of Mr. Linares at the beginning of the 2016-2017 school year was due to an error in its human relations department. ABT argues, however, that Mr. Linares' provisional teaching certificate, his success on the Michigan Test for Teacher Certification (MTTC) for English in November 2015, and the substitute permits that were issued by the Department to ABT "should be adequate to keep ABT in compliance with state law." In support of this argument, ABT argues that some of the classes to which Mr. Linares was assigned in 2016-2017 did not require a "highly qualified" teacher. ABT further argues that the state aid assessment, if any, should be prorated based on whether Mr. Linares' classes were "core" classes.

⁴ As noted above, an endorsement for English (grades six to eight) was not added to Mr. Linares's elementary provisional teaching certificate until April 4, 2017. He was therefore not certified to teach the eighth grade English class during the period in question.

⁵ Mich Admin Code, R 390.1143(3) provides as follows.

Individuals who hold valid Michigan teaching certificates are not required to have a substitute permit for teaching in short term assignments of 90 calendar days or less outside of the grade level and subject area validity of their teaching certificates.

Based on this subrule, OPSS delayed the start of the deduction period until December 5, 2016, 90 days after the start of the 2016-2017 school year, because Mr. Linares held a valid Michigan teaching certificate (although he was teaching outside the certificate's grade level validity) at the time in question.

It is not disputed that Mr. Linares was not certified to teach high school classes during the 2016-2017 school year and that he was not certified to teach eighth grade English until April 4, 2017.

There is no authority that supports ABT's argument that certification requirements are dependent on whether a class is considered a core or non-core class. However, at the review conference, a question was raised about certification requirements for the online "proctoring" role to which Mr. Linares was assigned during the 2016-2017 school year. Based on review of the relevant sections of the Pupil Accounting Manual and the relevant OPPS guidance that was in effect at the time in question, and because it was not established that Mr. Linares was the teacher of record for the online course, I find that OPPS did not establish that he was required to hold grade level certification to perform his assigned role in that course. With that exception, I uphold the state aid assessment in this case. The fact that Mr. Linares held a provisional teaching certificate under which he was eligible to teach all subjects in kindergarten through fifth grade and to teach in a self-contained classroom in kindergarten through eighth grade did not absolve ABT of its legal responsibility to obtain a substitute permit to employ him in those portions of his 2016-2017 assignment for which he was clearly not certified. Contrary to ABT's argument, an individual's successful completion of an MTTC test does not confer certified status on the individual or otherwise render permit requirements inapplicable and substitute permit requirements are not dependent on "highly qualified" requirements.

ABT asserts that the permit that it obtained on April 3, 2017 "was valid for the entire 2016/2017 school year." As all school districts and public school

academies were reminded in a memorandum distributed by the Department on October 6, 2016, "It is important to recognize that educator permits are **not** retroactive," that "schools must ensure that a teacher holds a valid certificate or permit **at the time** that she/he begins a teaching assignment," and that "MCL 388.1763 requires a deduction of state aid to the school or district when an educator is placed in an assignment without a valid certificate or permit."

(Department Memorandum # 2016-093)(emphasis in original). The permit issued to ABT on April 3, 2017, did not operate retroactively to allow ABT to assign Mr. Linares to the high school assignment from the beginning of the 2016-2017 school year.

With the exception of my finding regarding Mr. Linares' role related to the online course, I find that the plain words of MCL 388.1763(2) require that I uphold the assessment of a state aid deduction based on ABT's employment of him for the period in question. See *Grand Rapids Education Association, supra*. I therefore affirm in part and reverse in part the first level appeal decision in this matter. In accord with this final report and decision, the state aid assessment shall be reduced by one-sixth, representing the portion of Mr. Linares' salary attributable to the online course.

ORDER

Based on my review of this matter and for the above reasons, I affirm in part and reverse in part the first level appeal decision of Leah Breen, director of the Office of Professional Preparation Services, to assess a state aid penalty against the Academy for Business and Technology based on its employment of Anthony Linares during the 2016-2017 school year. The total state aid assessment based on the Academy for Business and Technology's employment of Mr. Linares during the 2016-2017 school year shall be in the amount of \$9,876.71.

This final report and decision is being transmitted to the Office of Professional Preparation Services and the Office of State Aid and School Finance for implementation.

Brian Whiston
Superintendent of Public Instruction

Dated: January 16, 2018