

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 17-8

BACKGROUND FACTS

In a letter dated July 26, 2017, Leah Breen, director of the Office of Professional Preparation Services 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 Megan (Molnar) Iatonna in contravention of state law in that she did not hold a teaching certificate and she was not working under a substitute permit during the 76-day period from February 2, 2017, to May 24, 2017. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against ABT in the amount of \$9,728.00, the amount of salary paid to Ms. Iatonna during that 76-day period.

On August 2, 2017, ABT filed a first level appeal with Ms. Breen challenging the state aid deduction as it applied to the period of April 3 to May 24, 2017. In a letter dated September 15, 2017, Ms. Breen affirmed the deduction in its entirety. ABT filed a second level appeal with the Superintendent of Public Instruction on October 10, 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 requested to present its position at a telephonic review conference. The review conference was held on December 20, 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; Michelle Taylor, 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(3). 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 390.1141(6)(b) (conviction of a crime described in section 1535a of the Revised

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).

School Code, MCL 380.1535a, is sufficient grounds for denial or revocation 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 ABT's employment of Megan Iatonna during the 2016-2017 school year. It is not disputed that Megan Iatonna, who did not hold a valid Michigan teaching certificate, began a substitute science teacher assignment in grades six through eight at ABT on February 2, 2017. Nor is it disputed that ABT did not apply for a substitute permit to allow its employment of Ms. Iatonna until April 3, 2017, and that the fee required for the permit was not paid until May 24, 2017.

ABT acknowledges its responsibility for the failure to apply in a timely fashion for the substitute permit to allow its employment of Ms. Iatonna. Nevertheless, ABT argues that calculation of the state aid deduction required by MCL 388.1763, if any, should be based only on salary paid to Ms. Iatonna from the day she began her substitute assignment to the last school day before ABT applied for a substitute permit. ABT cites no authority in support of this argument. In fact, ABT's responsibility included not only applying for a substitute permit but paying the statutorily mandated fee so that the department could evaluate the application for conformance with requirements. MCL 380.1538(1). 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 "[S]chools 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)). Thus, ABT's employment of Ms. Iatonna continued to be illegal until issuance of the substitute permit, which occurred immediately upon ABT's fulfillment of its obligation not only to apply for the permit but to pay the statutory fee.

As noted above, the state aid assessment in this case was based on the salary paid to Ms. Iatonna during a 76-day period. During the review conference, ABT was invited to submit evidence of discrepancies, if any, between the school calendar and the days that Ms. Iatonna was required to report for work during the time in question. In a communication following the review conference, ABT stated that it had identified no such discrepancies. However, based on further review of the 2016-2017 school calendar provided by ABT, the Department determined that Ms. Iatonna was employed illegally as a substitute teacher for a total of 71, not 76, days. The state aid assessment will be adjusted accordingly.

For the above reasons, and based on the mandate of MCL 388.1763(2) as interpreted by the Court of Appeals in *Grand Rapids Education Association, supra*, I affirm in part and reverse in part the first level decision in this matter.

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 Megan Iatonna during the 2016-2017 school year. The total state aid assessment based on the Academy for Business and Technology's employment of Ms. Iatonna during the 2016-2017 school year shall be in the amount of \$9,088.00.

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

Brian Whiston
Superintendent of Public Instruction

Dated: January 16, 2018