

Michigan Department of Education

FINAL REPORT AND DECISION  
OF  
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Arts Academy in the Woods  
Certification Penalty  
Docket No. CP 19-8

BACKGROUND FACTS

In a letter dated May 28, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Arts Academy in the Woods that the department had determined that Arts Academy in the Woods employed Philemon Anosike in violation of state law in that he did not hold a valid Michigan teaching certificate and he was not working under a substitute permit during the period of September 7, 2018, to December 14, 2018. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Arts Academy in the Woods in the amount of \$18,351.19, the salary paid to Mr. Anosike during the period of noncompliance.<sup>1</sup>

Arts Academy in the Woods appealed the assessment to the superintendent of public instruction on June 3, 2019, and requested to present its appeal at a review conference at the department. Robert Taylor, designee of the superintendent of public instruction, convened the review conference on August 16, 2019.

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<sup>1</sup> The Office of Educator Excellence calculated the assessment based on Arts Academy in the Woods' assertions that Mr. Anosike's salary for 188 working days was \$47,917.00 and that he worked for 72 days during the out-of-compliance period.

## DISCUSSION

Unless otherwise provided in the Revised School Code, a teacher shall hold a teaching certificate that is valid for the position to which an employing district assigns the teacher. MCL 380.1231(3); MCL 380.1233(1); MCL 388.1763(1); Mich Admin Code, R 390.1105.<sup>2</sup> A one-year, nonrenewable temporary teacher employment authorization that the department issues under MCL 380.1531(16)<sup>3</sup> to an applicant who holds an out-of-state teaching certificate is a Michigan teaching certificate for purposes of the Teacher Certification Code. Mich Admin Code, R 390.1101(l)(vii). 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 shall obtain a substitute permit for that employment. MCL 380.1233(6); Mich Admin Code, R 390.1141 et seq. A school administrator submits the application for a permit to the department and holds the permit on behalf of the individual whose substitute employment it concerns. Mich

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<sup>2</sup> 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).

<sup>3</sup> MCL 380.1531(16) provides as follows.

If an individual holding a teaching certificate from another state applies for a Michigan teaching certificate and meets all requirements for the Michigan teaching certificate except passage of the appropriate examinations under subsection (3), the superintendent of public instruction shall issue a nonrenewable temporary teaching certificate, good for 1 year, to the individual. The superintendent of public instruction shall not issue a Michigan teaching certificate to the individual after expiration of the temporary teaching certificate unless the individual passes appropriate examinations as described in subsection (3).

See also Mich Admin Code, R 390.1130(6).

Admin Code, R 390.1141(3). As is the case with the certification process, 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 School Code, MCL 380.1535a, is a sufficient ground for denial or revocation of a permit).

The assessment of a state aid deduction in this case was under section 163 of the State School Aid Act, MCL 388.1763, which 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) Except for an individual engaged to teach under section 1233b of the revised school code, MCL 380.1233b, an individual who does not hold a valid certificate or who is not working under a valid substitute permit, authorization, or approval issued under rules promulgated by the department to teach in an elementary or secondary school.

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- (2) Except as provided in the revised school code, a district or intermediate district employing individuals in violation of this section shall have deducted the sum equal to the amount paid the individuals for the period of 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 plain words of MCL 388.1763 require the department 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.

The facts in the instant case are as follows.

Philemon Anosike holds a teaching certificate (all-level music) issued by the state of Texas, but he has never held a Michigan teaching certificate.<sup>4</sup> He began his employment with Arts Academy in the Woods on September 7, 2018, as a high school music teacher. That employment ended on December 14, 2018. At issue in this appeal is the 72-day period during which Arts Academy in the Woods employed Mr. Anosike notwithstanding his failure to hold a valid Michigan teaching certificate and notwithstanding the fact that Arts Academy in the Woods did not hold a substitute permit to allow his employment.

In support of its appeal, Arts Academy in the Woods notes that, at the beginning of the 2018-2019 school year, there was turnover in the district's administrative position responsible for ensuring compliance with teacher certification requirements. In addition, Arts Academy in the Woods reports that it

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<sup>4</sup> Mr. Anosike did not apply for the one-year, nonrenewable temporary teacher employment authorization available to individuals holding teaching certificates issued by other states. See footnote 3, *supra*.

has recently implemented measures to help ensure that the individuals it employs in teaching positions satisfy certification requirements.

I am not unsympathetic to the challenges posed by staff turnover and I commend Arts Academy in the Woods for the recent improvement in its certification oversight process. Moreover, I am mindful of the financial plight of school districts against which the department assesses state aid penalties based on their employment of uncertified educators. However, it is the ongoing responsibility of school districts to ensure compliance with legal requirements related to instructional employees' credentials, and it is the responsibility of the department, which is subject to monitoring by the Auditor General, to follow the mandate of MCL 388.1763(2) as interpreted by the Court of Appeals in *Grand Rapids Education Association, supra*. I therefore uphold the assessment of the state aid penalty against Arts Academy in the Woods in this case.

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty against Arts Academy in the Woods based on its employment of Philemon Anosike from September 7, 2018, to December 14, 2018, in the amount of \$18,351.19.

I am transmitting this decision to the Office of Educator Excellence for implementation.

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Michael F. Rice, Ph.D.  
Superintendent of Public Instruction

Dated: September 6, 2019