

Michigan Department of Education

FINAL REPORT AND DECISION  
OF  
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Battle Creek Area Learning Center  
Certification Penalty  
Docket No. CP 19-14

BACKGROUND FACTS

In a letter dated May 24, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Battle Creek Area Learning Center that the department had determined that Battle Creek Area Learning Center employed Neal Zoellick 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 4, 2018, to February 6, 2019. Pursuant to MCL 388.1763(2), the department assessed a state aid deduction against Battle Creek Area Learning Center in the amount of \$25,168.54, the salary paid to Mr. Zoellick during the period of noncompliance.

Battle Creek Area Learning Center appealed the assessment to the superintendent of public instruction on June 21, 2019, and chose 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 July 23, 2019.

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>1</sup> A one-year, nonrenewable temporary teacher employment authorization that the department issues under MCL 380.1531(16)<sup>2</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 responsible for being 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 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

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<sup>1</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>2</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).

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.

Neal Zoellick earned a bachelor's degree in biology from Gannon University in 2013. After completing an alternative route teacher preparation program at National Louis University, he received an Illinois teaching certificate.

Notwithstanding that Mr. Zoellick did not hold a valid Michigan teaching certificate, Battle Creek Area Learning Center employed him at Calhoun Community High School as a biology and chemistry teacher beginning on September 4, 2018. On February 7, 2019, the department issued to Mr. Zoellick a temporary teacher employment authorization with endorsements in biology and chemistry for grades 6 to 12. At issue in this case is the period of September 4, 2018, to February 6, 2019, when Battle Creek Area Learning Center employed Ms. Zoellick as a high school biology and chemistry teacher notwithstanding his failure to hold a valid Michigan teaching certificate and notwithstanding the fact that Battle Creek Area Learning Center did not hold a substitute permit allowing his employment.

Mr. Zoellick submitted his application for a temporary teacher employment authorization on June 1, 2018, using the Michigan Online Educator Certification System. At that time, he received notice of documentation necessary to support his application. The department received his National Louis University transcript in June 2018. He paid the required application fee on September 19, 2018. The

department communicated with him on October 29, 2018, about missing documentation, and it received some documents on January 10, 2019. Still missing, however, was his Gannon University transcript, which the department received on February 7, 2019, and which supported the department's issuance of the temporary teacher employment authorization on that date.

I am not unsympathetic to the financial plight of school districts against which the department assesses state aid penalties based on their employment of uncertified educators and I trust that Battle Creek Area Learning Center has put in place procedures to ensure that the situation that led to the instant state aid assessment does not recur. 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 a state aid penalty against Battle Creek Area Learning Center in this case. I find, however, that it is appropriate to reduce the amount of the penalty. The department concedes that the delay in submission of the Gannon University transcript may have been due to a lack of clarity in communication between Mr. Zoellick and the department on October 29. I therefore find that it is reasonable to exclude the 27-day period of January 10 to February 6 in the calculation of the salary penalty under MCL 388.1763. Calculation of the amount of the assessment is therefore as follows.

$$\$40,000.00 \text{ salary} / 178 \text{ contracted days} \times 85 \text{ days} = \$19,101.12$$

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty against Battle Creek Area Learning Center based on its employment of Neal Zoellick during the 2018-2019 school year but I reduce the assessment to \$19,101.12.

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