

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Birmingham Public Schools
Certification Penalty
Docket No. CP 19-18

BACKGROUND FACTS

In a letter dated July 2, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Birmingham Public Schools (Birmingham) that the department had determined that Birmingham employed Besnike Muzlijaj in violation of state law in that she did not hold a valid Michigan teaching certificate and she was not working under a substitute permit during the period of November 28, 2018, to May 14, 2019. Pursuant to MCL 388.1763(2), the department assessed a state aid deduction against Birmingham in the amount of \$32,810.40, the salary determined paid to Ms. Muzlijaj during the period of noncompliance.

Birmingham appealed the assessment to the superintendent of public instruction on July 31, 2019, and chose to present its appeal in writing.

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 390.1105.¹ 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 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

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).

promulgated by the department to teach in an elementary or secondary school.

(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.

Besnike Muzlijaj, a native French speaker who does not hold a valid Michigan teaching certificate, was awarded a degree in early childhood and elementary education by Haute Ecole Pédagogique des Cantons de Berne, du Jura et de Neuchâtel in 2007. After she had taught French for several years in Detroit, Birmingham employed her as a high school French teacher for the 2018-2019

school year.² At the beginning of the school year, Birmingham obtained a daily substitute permit to allow its employment of Ms. Muzlijaj. Mich Admin Code, R 390.1143. The permit was valid for 90 days and expired on November 27, 2018. According to Birmingham, the district's intention was to apply for a full-year substitute permit under Mich Admin Code, R 390.1142, to allow its continued employment of Ms. Muzlijaj after expiration of the daily substitute permit. However, during a routine audit in May 2019, the district discovered that, due to an oversight and work flow issues in its human resources department, it had not applied for the full-year permit. On May 15, 2019, the district applied to the department for an extended daily substitute permit under Mich Admin Code, R 390.1143(2)(e) to allow its continued employment of Ms. Muzlijaj and the department immediately issued the permit. At issue in this case is the period of November 28, 2018, to May 14, 2019, when the district employed Ms. Muzlijaj notwithstanding that she did not hold a valid Michigan teaching certificate and that Birmingham did not hold a valid permit to allow her employment.

I commend Birmingham for taking prompt action when it discovered its oversight in failing to obtain a valid permit to allow its employment of Ms. Muzlijaj after expiration of the daily substitute permit. I also appreciate Birmingham's assurance that it has recently put in place a process that will guard against future similar errors. In addition, I am not unsympathetic to the financial plight of school districts against which the department assesses state aid penalties based on their

² According to Birmingham, Ms. Muzlijaj recently enrolled in an alternative route teacher preparation program. MCL 380.1531i; Mich Admin Code, R 390.1122a.

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 Birmingham 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 Birmingham Public Schools based on its employment of Besnike Muzlijaj from November 28, 2018, to May 14, 2019, in the amount of \$32,810.40.

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

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

Dated: September 6, 2019