

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Charlevoix Montessori Academy for the Arts
Certification Penalty
Docket No. CP 19-5

BACKGROUND FACTS

In a letter dated April 15, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (Department) informed Charlevoix Montessori Academy for the Arts (Charlevoix Montessori) that the Department had determined that Charlevoix Montessori employed Jason Minaker in contravention of state law during a 104-day period from September 4, 2018, to February 27, 2019. As found by the Department, 42% of Mr. Minaker's assignment during that period required either that he hold a Michigan teaching certificate or that Charlevoix Montessori hold a substitute permit to allow his employment. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Charlevoix Montessori in the amount of \$6,066.28, 42% of the salary determined by Ms. Breen to have been paid to Mr. Minaker during the period of noncompliance.¹

In an appeal filed on May 14, 2019, Charlevoix Montessori challenged the assessment and chose to present its arguments entirely in writing.

¹ According to Charlevoix Montessori, Mr. Minaker's daily rate of pay was \$138.88. Calculation of the state aid deduction was therefore as follows.

$$\$138.88/\text{day} \times 104 \text{ days} \times 42\% = \$6,066.28$$

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 390.1105.² 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 School Code, MCL 380.1535a, is sufficient grounds for denial or revocation of a permit).

The deduction assessed in this case was based on 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

² 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).

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.

(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 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.

The relevant facts are as follows.

Charlevoix Montessori employed Jason Minaker as a long-term substitute teacher for the 2018-2019 school year, assigning him to teach science in grades 6 to 12 for 42% of the school day and to act as a monitor of online instruction for the

remaining 58% of the school day. On August 29, 2018, using the Michigan Online Educator Certification System (MOECS), Leslie Herriman applied on behalf of Charlevoix Montessori for a full year substitute permit to allow the district's employment of Mr. Minaker, who has never held a Michigan teaching certificate.³ On the same day, an email to Ms. Herriman was generated by MOECS informing her that evaluation of the permit application could not be completed until the Department received an official transcript showing that Mr. Minaker earned a major in science. The email informed Ms. Herriman that electronic transcripts must be submitted directly by a university. Alternatively, proof of Mr. Minaker's passing of the Michigan Test for Teacher Certification (MTTC) in science was required.⁴

There was no further communication between Charlevoix Montessori and the Department about a permit for Mr. Minaker until February 2019, when the Department notified Charlevoix Montessori of its investigation of Mr. Minaker's status. As a result, on February 28, 2019, Charlevoix Montessori applied for a daily substitute permit,⁵ which the Department immediately issued. At issue is the

³ As noted above, the application for a substitute permit is submitted to MOECS on behalf of a school district by a school administrator. Mich Admin Code, R 390.1141(3). That individual is required to have a user agreement with MOECS, including providing his or her contact information for communications related to permit applications.

⁴ The requirements spelled out in the MOECS email are found in Mich Admin Code, R 390.1142(2)(b).

When a school district or nonpublic school requests a full-year substitute permit for an assignment to teach a core academic discipline, as defined by the superintendent of public instruction, the school district or nonpublic school shall present evidence that the individual has completed an academic major in the discipline or obtained a passing score on the appropriate available discipline area examination approved by the superintendent of public instruction.

⁵ See Mich Admin Code, R 390.1143.

period of September 4, 2018, to February 27, 2019, during which Charlevoix Montessori employed Mr. Minaker as a science teacher despite his lack of valid Michigan teaching certification and Charlevoix Montessori's failure to hold a substitute permit to allow his employment.

According to Charlevoix Montessori, it never received the August 29, 2018 MOECS email, which was sent to Ms. Herriman at an email address that has not been in service for over five years. When someone from Charlevoix Montessori spoke with a Department representative in February 2019, the representative updated Ms. Herriman's email address in MOECS to the current one. Charlevoix Montessori asserts that, "[T]he email address was changed on the LEA's part five (5) years previously and furthermore, correspondence has taken place since that date for other certifications with no communications issues from the correct email." Even assuming that Charlevoix Montessori updated its email address with the Department for some purposes, it provided no documentary evidence that Ms. Herriman, who is the individual who is authorized to apply for substitute permits on behalf of Charlevoix Montessori, did so. On the contrary, it is clear that Ms. Herriman's MOECS record on behalf of Charlevoix Montessori continued to show the outdated email address until the Department representative updated the address at Charlevoix Montessori's request in February 2019. Responsibility for updating that contact information in a timely fashion lay with Ms. Herriman and with Charlevoix Montessori. Furthermore, it is Charlevoix Montessori's continuing responsibility to ensure that its educators are properly certified or permitted, and it offers no reason for its failure to monitor the status of the August 2018 permit application in MOECS, to which it had access.

I commend Charlevoix Montessori for taking immediate steps when, in February 2019, it realized its error in failing to secure a substitute permit to allow its employment of Mr. Minaker. Moreover, I am not unsympathetic to the financial plight of school districts that are assessed state aid penalties based on their employment of uncertified educators. However, the delay in issuance of a substitute permit to Charlevoix Montessori in this case was not the result of any failure on the part of the Department. In addition, all school districts are obligated to ensure that educators are properly certified or permitted and the Department, which is subject to monitoring by the Auditor General, is required to follow the mandate of MCL 388.1763(2) as interpreted by the Court of Appeals in *Grand Rapids Education Association, supra*. For these reasons, I am constrained to uphold the assessment of the state aid penalty against Charlevoix Montessori.

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty in the amount of \$6,066.28 against Charlevoix Montessori Academy for the Arts based on its employment of Jason Minaker from September 4, 2018, to February 27, 2019.

This decision is being transmitted to the Office of Educator Excellence for implementation.

Sheila A. Alles
Interim Superintendent of Public Instruction

Dated: July 18, 2019