

Michigan Department of Education

FINAL REPORT AND DECISION  
OF  
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Detroit Public Schools Community District  
Certification Penalty  
Docket No. CP 18-7

BACKGROUND FACTS

In a letter dated May 18, 2018, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (Department), and Philip L. Boone, assistant director of the Department's Office of Financial Management – State Aid and School Finance, informed Detroit Public Schools Community District (DPSCD) that the Department had determined that DPSCD employed Nikolai P. Vitti in contravention of state law in that he did not hold a Michigan school administrator certificate during the 240-day period from May 22, 2017, to April 22, 2018. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against DPSCD in the amount of \$272,307.69, the amount of salary paid to Dr. Vitti during that 240-day period.

In a letter dated July 24, 2018, DPSCD filed an appeal of the May 18, 2018 determination. In an August 27, 2018 communication from Jenice C. Mitchell Ford, DPSCD General Counsel, to Robert Taylor, the designee of the Interim Superintendent of Public Instruction in this matter, DPSCD waived the first level appeal to Ms. Breen and requested to proceed with the second level appeal to the Interim Superintendent of Public Instruction.

Mr. Taylor offered DPSCD 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. DPSCD chose to submit its appeal in writing and filed written arguments and documentation on August 27, 2018.

## DISCUSSION

Nikolai P. Vitti, Ph. D., holds a Florida school administrator certificate with validity dates of June 1, 2016 to June 30, 2021. He began his assignment as DPSCD's superintendent on May 22, 2017. In March 2018, he contacted the Department to apply for a Michigan school administrator certificate. On April 23, 2018, the Department issued him a Michigan school administrator certificate. The certificate will expire on June 30, 2023.

The deduction assessed in this case was based on Section 163(2) of the State School Aid Act, MCL 388.1763(2), which provides in pertinent part as follows.

(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.

Unless otherwise provided in the Revised School Code, an individual who was first employed by a Michigan school district as a superintendent after January 4, 2010, must hold a valid Michigan school administrator certificate. MCL 380.1246(1)(b); MCL 380.1536(1); Mich Admin Code, R 380.102(3).<sup>1</sup> An exception

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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).

to the certification requirement is set forth in MCL 380.1246(3), which provides as follows.

A school district, public school academy, or intermediate school district may employ as a superintendent, principal, assistant principal, or other person whose primary responsibility is administering instructional programs a person who is enrolled in a program leading to certification as a school administrator under section 1536 not later than 6 months after he or she begins the employment. A person employed as a school administrator pursuant to this subsection has 3 years to meet the certification requirements of section 1536, or the school district, public school academy, or intermediate school district shall not continue to employ the person as a school administrator described in this subsection.

Thus, a school district may employ as a superintendent an individual who does not hold school administrator certification if the individual enrolls in a school administrator preparation program within 6 months of beginning the superintendent assignment and if the individual meets certification requirements within 3 years.

DPSCD points out the discrepancy between the penalty imposed in this case and the protection afforded to school districts who employ uncertified school administrators for six months (and, in some cases, an additional three years) under MCL 380.1246(3). Dr. Vitti, who had already completed a school administrator preparation program and who already held a Florida school administrator certificate at the time of his assignment, did not come within the scope of that statute because, already being certified, he was not required to enroll in a school administrator preparation program in Michigan. I agree with DPSCD that it is unjust to afford protection under MCL 380.1246(3) to individuals who have never been certified while at the same time denying any similar protection to individuals

who hold out-of-state certification and who are not required to complete any further professional preparation to qualify for Michigan certification.

Further, in many cases, state aid deductions have been assessed under MCL 388.1763 based on school districts' employment of uncertified teachers. See, for example, *Academy for Business and Technology* (17-5).<sup>2</sup> In each of those cases, the availability of a substitute permit to allow employment of the uncertified teacher, which would have avoided a state aid deduction, was noted. See Mich Admin Code, R 390.1141 et seq.

Prior to November 15, 2017, the School Administrator Certification Code, Mich Admin Code, R 380.101 to 380.136, did not provide for a substitute permit that allowed employment of uncertified school administrators. Recognizing the need for such a permit, the Department promulgated amended rules that introduced a new school administrator substitute permit. Mich Admin Code, R 380.116. The new rules were effective November 15, 2017. However, on November 17, 2017, the Superintendent of Public Instruction granted a state-wide waiver of Rule 380.116 until September 1, 2018. On August 16, 2018, the Department announced that the new school administrator permit would be available on August 17 and that, effective September 1, 2018, superintendents and other school administrators required by statute to be certified must either hold a valid Michigan school administrator certificate or be employed under a school administrator permit. (Department of Education Memo #2018-115). Had this

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<sup>2</sup> See *Grand Rapids Education Association v Grand Rapids Board of Education*, 170 Mich App 644, 648 (1988) (the Department is obligated under MCL 388.1763 to impose a state aid penalty when a district employs noncertified teachers).

permit, which the Department recognized was clearly needed, been available for the 2017-2018 school year, DPSCD could have avoided the current dilemma.

Thus, in contrast to cases involving uncertified teachers, at all times relevant to this case, no substitute permit was available to support the employment as a superintendent of an individual who was certified as a school administrator in another state but who did not hold a valid Michigan school administrator certificate. In my judgment, this is a significant factor that weighs heavily in support of DPSCD's challenge to the state aid penalty imposed in this case.

For these reasons, I find that application of MCL 388.1763(2) to the instant facts would be unjust and unreasonable. I therefore reverse the first level decision in this matter. I emphasize that this decision is based on the unique facts of this case.

### ORDER

Based on my review of this matter and for the above reasons, I reverse the first level appeal decision to assess a state aid penalty in the amount of \$272,307.69 against Detroit Public Schools Community District based on its employment of Nikolai P. Vitti from May 22, 2017 until April 22, 2018.

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

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Sheila Alles  
Interim Superintendent of Public Instruction

Dated: September 14, 2018