

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Appeal by Detroit Innovation Academy
Certification Penalty
Docket No. CP 18-1

BACKGROUND FACTS

In a letter dated January 23, 2018, Leah Breen, director of the Office of Educator Excellence (formerly Office of Professional Preparation Services) 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 Innovation Academy that the Department had determined that Detroit Innovation Academy employed Thomas Boss in contravention of state law in that he did not hold a teaching certificate and he was not working under a substitute permit during the 16-school-day period from November 13, 2017, to December 6, 2017. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Detroit Innovation Academy in the amount of \$3,610.26, the amount of salary paid to Mr. Boss during that 16-day period.

On February 15, 2018, Detroit Innovation Academy filed a first level appeal with Ms. Breen challenging the state aid deduction. In a letter dated February 26, 2018, Ms. Breen affirmed the deduction in its entirety. Detroit Innovation Academy filed a second level appeal with the Superintendent of Public Instruction on March 1, 2018.

Acting as designee of the Superintendent of Public Instruction, Robert J. Taylor offered Detroit Innovation Academy 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. Detroit Innovation Academy did not respond to this offer. This appeal has therefore been reviewed based solely on available documentation.

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 390.1105.¹ 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 other 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).

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).

Section 163 of the State School Aid Act, MCL 388.1763, 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) A noncertificated educator to teach in an elementary or secondary school or in an adult basic education or high school completion program.

* * *

(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.

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.

On July 29, 2009, the Department issued to Thomas Boss a standard teaching certificate; that certificate expired on June 30, 2015.² On November 12, 2015, Mr. Boss received a 2-year extended standard certificate. He began the 2017-2018 school year as a fifth grade teacher at Detroit Innovation Academy. His 2-year extended standard certificate expired on November 11, 2017. His last day in a teaching assignment with Detroit Innovation Academy was December 6, 2017.³ At issue in this case is Detroit Innovation Academy's employment of Mr. Boss during the 16-school-day period between November 13, 2017, and December 6, 2017.

Detroit Innovation Academy acknowledges its responsibility for the failure to monitor Mr. Boss's certification status. It points out, however, that he began the 2017-2018 with a valid certificate, that he had completed the requirements for "renewal"⁴ at the time the certificate expired, and that expiration of the certificate in November was unusual in that most certificates expire in June.

I appreciate the fact that Detroit Innovation Academy's illegal employment of Mr. Boss was not prolonged, and I commend Detroit Innovation Academy for putting systems in place to ensure against recurrence of the lapse that occurred in this case. However, it was Mr. Boss's responsibility to maintain valid certification and it was Detroit Innovation Academy's responsibility to ensure its compliance with legal requirements related to the employment of certified teachers. The

² At the time, the certificate was called a provisional teaching certificate.

³ On January 17, 2018, the Department issued to Mr. Boss a professional teaching certificate that will expire on June 30, 2023.

⁴ In fact, the next certificate issued to Mr. Boss was a professional teaching certificate. The 2-year extended standard certificate was not renewable. MCL 380.1531e; Mich Admin Code, R 390.1129b(7).

Department, which is subject to monitoring by the Auditor General to ensure compliance with its legal responsibilities, 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 all these reasons, I affirm the first level decision in this matter.

ORDER

Based on my review of this matter and for the above reasons, I affirm the first level appeal decision to assess a state aid penalty in the amount of \$3,610.26 against Detroit Innovation Academy based on its employment of Thomas Boss from November 12, 2017, to December 6, 2017.

This decision is being transmitted to the Office of Financial Management – State Aid and School Finance for implementation.

Sheila A. Alles
Interim Superintendent of Public Instruction

Dated: July 6, 2018