

Michigan Department of Education

FINAL REPORT AND DECISION  
OF  
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Gwinn Area Community Schools  
Certification Penalty  
Docket No. CP 18-4

BACKGROUND FACTS

In a letter dated April 16, 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 Gwinn Area Community Schools (Gwinn) that the Department had determined that Gwinn employed Jared Mottes 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 95-school-day period from September 5, 2017, to January 28, 2018. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Gwinn in the amount of \$17,794.95, the amount of salary paid to Mr. Mottes during that 95-day period.

In a letter dated May 15, 2018, Gwinn filed a first level appeal with Ms. Breen challenging the state aid deduction. In a letter dated May 29, 2018, Ms. Breen affirmed the deduction in its entirety. On June 6, 2018, Debra Asano, associate superintendent of teaching, learning, and technology services of Marquette Alger Regional Educational Service Agency (MARESA), filed a second level appeal on behalf of Gwinn with the Interim Superintendent of Public Instruction.

Acting as designee of the Interim Superintendent of Public Instruction, Robert J. Taylor offered Gwinn 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. Gwinn chose the latter option and a video review conference was convened at the Department on August 8, 2018. Present at the video review conference were Mr. Taylor; Ms. Breen; Gwinn Superintendent Sandy Petrovich; Jane Flourre, administrative assistant to Ms. Petrovich; Gwinn Business Manager Amy Finkbeiner; Gwinn High School Principal Brad Pfluger; Mr. Mottes; Ms. Asano; Rene Cope, administrator of grants and special projects at MARESA; and Mary Fielding, a Department administrative law specialist.

#### 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.<sup>1</sup> A district may employ a noncertificated individual as a teacher under certain circumstances and must obtain a substitute permit or authorization for that employment. MCL 380.1233(6); Mich Admin Code, R 390.1105(1), 390.1141 et seq., R 390.1165. The application for a permit or authorization is submitted to the Department by the employing school district and the permit or authorization is issued to the school district. Mich Admin Code, R 390.1141(3), R 390.1165. The permit/authorization process plays an important role in the screening of school instructional employees for criminal convictions, a vital function of the Department

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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).

in its efforts to safeguard pupils' safety. See Mich Admin Code, R 390.1141(6)(b) and R 390.1165(5) (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 or authorization).

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.

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(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 in the instant case are as follows.

During each of the 2015-2016 and 2016-2017 school years, Jared Mottes, who did not hold a Michigan teaching certificate, was employed by Gwinn as a high school computer-aided design and drafting (CADD) teacher under an annual occupational authorization (AOA) obtained by Gwinn. During those school years, Mr. Mottes was seeking teaching certification. On September 5, 2017, he was again employed by Gwinn in the high school CADD position but Gwinn did not possess an authorization or permit allowing its employment of him for the 2017-2018 school year. In a September 24, 2017 email message, Mr. Mottes informed Ms. Flourre that he had not passed the Michigan basic skills examination (which was required for an interim occupational certificate<sup>2</sup>) and that he would therefore “have to do another AOA.” In a September 25, 2017 email to MARESA, Ms. Flourre stated that she would apply for an AOA for Mr. Mottes. On September 27, 2017, Mr. Mottes learned that he had, in fact, passed the basic skills examination. He thereafter began gathering documentation of his satisfaction of the experience requirement for standard CTE certification as set forth in Mich Admin Code, R 390.1163.

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<sup>2</sup> Mich Admin Code, R 390.1163. Effective November 15, 2017, the name of the interim occupational certificate was changed to standard CTE certificate. Mich Admin Code, R 390.1101(m)(vi), 390.1163.

On November 29, 2017, Gwinn applied for an annual CTE authorization<sup>3</sup> to allow its employment of Mr. Mottes during the 2017-2018 school year. In an electronically generated email dated November 29, 2017, MOECS informed Mr. Mottes that Gwinn had applied for the annual CTE authorization but that the statutory fee<sup>4</sup> had to be paid before the authorization could be issued. Further reminders about nonpayment of the fee were electronically generated by MOECS on December 18, 2017, January 1, 2018, January 15, 2018, and January 29, 2018. It is not disputed that the fee was never paid. MCL 380.1538(1) requires an applicant to pay the statutory fee in order to have the Department evaluate the application.

On January 19, 2018, Mr. Mottes submitted an application for a standard CTE certificate. On January 29, 2018, he submitted the statutory fee<sup>5</sup> and the Department issued a standard CTE certificate to him. That certificate will expire on June 30, 2023. Gwinn withdrew its application for an annual CTE authorization on January 30, 2018. At issue in this case is Gwinn's employment of Mr. Mottes during the 95-school-day period from the beginning of the 2017-2018 school year until he obtained the standard CTE certificate.

I appreciate that Gwinn was experiencing significant administrative challenges in the fall of 2017 and I commend the district for taking steps to ensure that the situation at issue in this case will not recur. I also am sympathetic to the significant financial burden that state aid penalties under MCL 388.1763 pose for

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<sup>3</sup> Effective November 15, 2017, the name of the AOA was changed to annual CTE authorization. Mich Admin Code, R 390.1101(b), R 390.1165.

<sup>4</sup> MCL 380.1538(1)(a)(ix).

<sup>5</sup> MCL 380.1538(1)(a)(iii).

many school districts. However, it is a teacher's responsibility to maintain certification, as required by law. It is also a district's responsibility to ensure its compliance with legal requirements related to the employment of educators. For 95 school days during the 2017-2018 school year, Gwinn's employment of Mr. Mottes violated that responsibility. During that period, the district had access to MOECS, which would have disclosed the status of Mr. Mottes' certification application.

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 all these reasons, I must affirm the first level decision in this matter.<sup>6</sup>

### 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 \$17,794.95 against Gwinn Area Community Schools based on its employment of Jared Mottes from September 5, 2017, to January 28, 2018.

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

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Sheila Alles  
Interim Superintendent of Public Instruction

Dated: September 14, 2018

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<sup>6</sup> Gwinn may apply to the Department's Office of Financial Management under MCL 388.1615(2) for an extension of the state aid adjustment.