

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Hanover-Horton School District
Certification Penalty
Docket No. CP 19-23

BACKGROUND FACTS

In a letter dated October 25, 2019, Leah C. Breen, director of the Office of Educator Excellence of the Michigan Department of Education (department), informed Hanover-Horton School District (Hanover-Horton) that the department had determined that Hanover-Horton employed Benjamin Cates in violation of state law in that he did not hold a valid Michigan teaching certificate and he was not working under a substitute permit during the period of August 20, 2018, to December 16, 2018. Pursuant to MCL 388.1763(2), the department assessed a state aid deduction against Hanover-Horton in the amount of \$19,604.88, the amount of salary determined by the department to have been paid to Mr. Cates during the period of noncompliance.

Hanover-Horton appealed the assessment to the superintendent of public instruction on November 8, 2019. On November 13, 2019, Robert Taylor, designee of the superintendent of public instruction, offered Hanover-Horton the following three options for presentation of its appeal: 1) entirely in writing, 2) by way of a telephonic review conference, or 3) at an in-person review conference at the department. Hanover-Horton chose to present its appeal at a review conference at the department. Mr. Taylor convened the review conference on December 11, 2019.

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), 380.1233(1), 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).

The department may issue a temporary teacher employment authorization to an applicant who satisfies the requirements of MCL 380.1531(16), including holding a teaching certificate issued by another state and meeting all requirements for a Michigan teaching certificate except passage of the Michigan test for teacher certification (MTTC). Mich Admin Code, R 390.1130(6). In addition, under MCL 380.1531(6), an individual holding a teaching certificate issued by another state is eligible for a Michigan professional teaching certificate if he or she has taught successfully for at least 3 years in a position for which the certificate was valid, has earned a master's degree or 18 semester credit hours in a planned course of study in an institution approved by the superintendent of public instruction, and has met the reading credit requirement established by rules promulgated by the superintendent of public instruction. The department may issue a professional temporary teacher employment authorization to an individual who satisfies all of the requirements of MCL 380.1531(6) except the reading credit requirement. Mich Admin Code, R 390.1130(7). Both the temporary teacher employment

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).

authorization and the professional temporary teacher employment authorization are Michigan teaching certificates for purposes of the Teacher Certification Code; they are valid for one year and nonrenewable. Mich Admin Code, R 390.1101(I)(vii) and (viii), R 390.1130(6) and (7).

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) and R 390.1201(1)(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 or for revocation of, or other action against, a teaching certificate).

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

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 relevant facts in this case are as follows.

Benjamin Cates began an elementary music teaching assignment with Hanover-Horton on August 20, 2018. At that time, he held an Ohio, but not a Michigan, teaching certificate, and Hanover-Horton did not hold a substitute permit allowing his employment. Using the Michigan Online Educator Certification System (MOECS), he applied for a Michigan professional teaching certificate on August 27,

2018. The application was placed on hold on August 28 pending receipt of court documents explaining his affirmative response to the question of whether he had ever accepted responsibility for a civil infraction or been convicted of a misdemeanor or felony.² He submitted the required court register of action on November 13, 2018, showing that, in 2018, he pleaded no contest to two traffic-related misdemeanor offenses that did not affect his eligibility for a Michigan teaching credential. He paid the fee required for the department to evaluate his application on November 14, at which time the MOECS sent to him an email requesting several documents, including official college and university transcripts, a copy of his out-of-state certificate, and proof of his work experience.³ He submitted two work experience forms on November 15 and one on November 16, at which time the department continued the hold on his application, asking him to provide an official transcript verifying his claimed eligibility for a professional teaching certificate. Absent such eligibility, he was told that he could be evaluated for eligibility for a standard teaching certificate. He submitted additional documents on December 17 and the department issued a temporary teacher employment authorization to him on that day.⁴

² Mr. Cates submitted two applications for a Michigan professional teaching certificate on August 27. He gave the affirmative response to the question about civil infractions or criminal convictions in the first application. That application was deleted from the MOECS before he submitted the second application on that day.

³ The request for documents was prompted by Mr. Cates' application responses that indicated his possible eligibility for a Michigan professional credential, including his affirmative response regarding earning a master's degree or 18 semester credit hours as required by MCL 380.1531(6).

⁴ When the department determined that Mr. Cates had not satisfied the master's degree/18 semester hours requirement of MCL 380.1531(6), his application was evaluated for eligibility for a standard credential. Based on documentation that he submitted, the

At issue in this appeal is the period of August 20 to December 16, 2018, during which Mr. Cates did not hold a Michigan teaching certificate and Hanover-Horton did not hold a substitute permit allowing his employment. Hanover-Horton asserts that assessment of the penalty under MCL 388.1763(2) "appears to be punishing [the] district for the time it took the department to process [Mr. Cates'] application." The district also asserts that it believed Mr. Cates' Ohio certificate was valid in Michigan during the period he was in the process of applying for a Michigan certificate.

Until an individual applying for an educator credential pays the applicable fee, the department does not evaluate the application. In addition, an application is not complete until the applicant submits all required supporting documents. MCL 380.1538; *Battle Creek Area Learning Center* (CP 19-14); *Henry Ford Academy* (CP 18-3); *Iron Mountain Public Schools* (CP 17-3).

I appreciate that Hanover-Horton's failure to obtain a substitute permit to allow Mr. Cates' employment was not reflective of the district's usual diligence in ensuring that educators in its employ are properly credentialed. However, it is the ongoing responsibility of educators to maintain legally required credentials and it is the ongoing responsibility of school districts to monitor educators' certification status. Based on consideration of the timeline described above, I do not find that the delay in issuance of a legally required credential to Mr. Cates can be reasonably attributed to the department.

department determined that he qualified for a temporary teacher employment authorization, and that credential was issued to him on December 17, 2018. On November 21, 2019, after he passed the MTTC, the department issued to him a standard teaching certificate, which will expire on June 30, 2024.

I am mindful of the financial plight of some school districts against which the department assesses state aid penalties based on their employment of educators who are not properly credentialed. However, the department, which is subject to monitoring by the auditor general, is bound to follow the mandate of MCL 388.1763(2) as interpreted by the Court of Appeals in *Grand Rapids Education Association, supra*. I am therefore constrained to uphold the assessment of a state aid penalty against Hanover-Horton in this case. However, based on information provided by Hanover-Horton, I find that the amount of the penalty shall be calculated as follows:

$\$45,622 \text{ annual salary} / 184 \text{ contracted days} = \$247.95 \text{ daily salary}$

$\$247.95 \text{ daily salary} \times 79 \text{ days out of compliance} = \$19,588.05$

ORDER

Based on my review of this matter and for the above reasons, I affirm the assessment of a state aid penalty against Hanover-Horton School District based on the employment of Benjamin Cates from August 20, 2018, to December 16, 2018, but I determine that the amount of the penalty shall be \$19,588.05.

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



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

Dated: January 8, 2020