

Michigan Department of Education

FINAL REPORT AND DECISION
OF
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Henry Ford Academy
Certification Penalty
Docket No. CP 18-3

BACKGROUND FACTS

In a letter dated March 12, 2018, Leah C. Breen, director of the Office of Professional Preparation Services (now 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, informed Henry Ford Academy that the Department had determined that Henry Ford Academy employed Deanna Baldwin in contravention of state law in that she was employed from September 5, 2017, to February 5, 2018, without a valid certificate or substitute permit. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Henry Ford Academy in the amount of \$24,649.29, the amount of salary paid to Ms. Baldwin during that 102-school-day period.

On April 9, 2018, Henry Ford Academy filed a first level appeal with Ms. Breen challenging the state aid deduction. In a letter dated April 15, 2018, Ms. Breen affirmed the deduction in its entirety. Henry Ford Academy filed a second level appeal with the Superintendent of Public Instruction on April 19, 2018.

Acting as designee of the Interim Superintendent of Public Instruction, Robert J. Taylor offered Henry Ford 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. Henry Ford Academy chose the second

option and a review conference was convened at the Department on July 27, 2018. Present at the review conference were Mr. Taylor; Henry Ford Academy Principal Cora Christmas; Robert A. Boonin of Dykema Gossett PLLC, representing Henry Ford Academy; and Mary Fielding, a Department administrative law specialist. On September 3, 2018, Mr. Boonin filed additional argument on behalf of Henry Ford Academy.

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 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

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).

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

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 in the instant case are as follows.

On July 17, 2008, the Department issued to Deanna Baldwin a provisional teaching certificate that expired on June 30, 2014.² The certificate included endorsements in English (grades 6 to 12) and Spanish (grades 6 to 12). On October 31, 2014, the Department renewed her provisional teaching certificate, with an expiration date of June 30, 2017.

In December 2015, Ms. Baldwin earned a master's degree in the art of teaching at Marygrove College. On July 26, 2017, she filed an application for another renewal of her certificate and she paid the statutory \$100 fee. MCL 380.1538(1)(b)(i).

Ms. Baldwin's July 26, 2017 renewal application was based on her having earned a master's degree. See Mich Admin Code, R 390.1129b(2), which, prior to November 15, 2017, allowed the second renewal of a provisional teaching certificate based on evidence of the holder having earned a master's degree in an area appropriate to teaching kindergarten to grade 12.³ When she submitted her renewal application to the Michigan Online Educator Certification System (MOECS), she received an automatically generated email confirmation of her payment of the statutory fee. When MOECS generates and sends an email acknowledging payment, it also generates and sends an email describing required documentation

² Effective November 15, 2017, the Michigan provisional teaching certificate was replaced by the standard teaching certificate. Provisional teaching certificates were valid for six years and were renewable for three years.

³ See current Mich Admin Code, R 390.1129b(4) (holder of standard teaching certificate who submits evidence of having earned at any time an education-related master's or higher degree is eligible for one 5-year renewal of the standard teaching certificate).

that has not yet been submitted, including, as applicable, an email directing the applicant to submit transcripts. If the Department is unable to evaluate an application because it is awaiting documents, that fact is noted on MOECS.

It was not until February 6, 2018, that Ms. Baldwin submitted to the Department documentary evidence of her master's degree. At that time, the Department evaluated her application and immediately issued to her a renewed standard teaching certificate. During the 102-school-day period that she was employed without a valid certificate, Henry Ford Academy did not obtain a substitute permit to allow her employment. At issue in this case is that period of illegal employment.

I commend Henry Ford Academy for taking steps to ensure that the situation that occurred 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 many school districts and public school academies. However, it is a teacher's obligation to maintain certification, as required by law. Further, it is the responsibility of school districts and public school academies to ensure their compliance with legal requirements related to the employment of educators. For 102 school days during the 2017-2018 school year, Henry Ford Academy's employment of Ms. Baldwin violated that responsibility. Ms. Baldwin's certification status was readily available to Henry Ford Academy on MOECS.

I have considered the additional arguments raised by Henry Ford Academy following the review conference and I am not persuaded that they compel reversal of the assessment in this case. As stated above, it is the responsibility of a school district to be aware of the certification status of its teachers and to obtain substitute

permits as necessary to allow its employment of uncertified individuals. Henry Ford Academy's argument that substitute permits should be given retroactive application is both inapposite (because no permit was obtained at any time by Henry Ford Academy to allow its employment of Ms. Baldwin) and contrary to guidance issued by the Department to local and intermediate school district superintendents and public school academy directors on October 6, 2016.

It is important to recognize that educator permits are **not** retroactive. In accordance with Michigan Compiled Law (MCL) 380.1231 and 380.1233, schools must ensure that a teacher holds a valid certificate or permit **at the time** that she/he begins a teaching assignment. MCL 388.1763 requires a deduction of state aid to the school or district when an educator is placed in an assignment without a valid certificate or permit. Department of Education Memo #2016-093 (Emphasis in original.)

Finally, Henry Ford Academy cites MCL 380.1531e, which was inapplicable to the facts of this case.⁴

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*. I therefore must affirm the first level decision in this matter.⁵ Henry Ford Academy may apply to the

⁴ MCL 380.1531e was repealed effective June 20, 2018. 2018 PA 202.

⁵ At the time Henry Ford Academy submitted its second level appeal in this case, the Department was investigating the certification status of another Henry Ford Academy teacher, Lisa Cunningham. In its April 17, 2018 second level appeal, in addition to asking for relief from the penalty assessed based on its employment of Deanna Baldwin, Henry Ford Academy asked for relief from penalties associated with its employment of Ms. Cunningham during a period when she was not certified. In a letter dated April 30, 2018, Ms. Breen and Mr. Boone informed Henry Ford Academy that it was being assessed a state aid penalty under MCL 388.1763(2) in the amount of \$24,191.16 based on its employment of Ms. Cunningham from September 5, 2017, to February 14, 2018. Henry Ford Academy did not appeal that penalty to Ms. Breen. Based on the available facts, I find that the

Department's Office of Financial Management under MCL 388.1615(2) for an extension of the state aid adjustment.

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 \$24,649.29 against Henry Ford Academy based on its employment of Deanna Baldwin from September 5, 2017, to February 5, 2018.

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

Sheila Alles
Interim Superintendent of Public Instruction

Dated: September 14, 2018

analysis and the holding in the instant case apply with equal force to the case of Ms. Cunningham.