

Michigan Department of Education

FINAL REPORT AND DECISION  
OF  
THE SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of: Appeal by Webberville Community Schools  
Certification Penalty  
Docket No. CP 18-2

BACKGROUND FACTS

In a letter dated August 10, 2017, 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 Webberville Community Schools (Webberville) that the Department had determined that Webberville employed Aaron Mayes in contravention of state law in that she was not certificated or working under a substitute permit from August 29, 2016, to June 9, 2017. Pursuant to MCL 388.1763(2), a state aid deduction was assessed against Webberville in the amount of \$32,213.38, the amount of Ms. Mayes' salary allocated by the Department to the period in question.

On September 8, 2017, Webberville filed a first level appeal with Ms. Breen challenging the state aid deduction. In a letter dated October 10, 2017, Ms. Breen affirmed the deduction in its entirety. Webberville filed a second level appeal with the Superintendent of Public Instruction.

In accordance with Webberville's request, a review conference was convened at the Department on June 14, 2018. Present at the review conference were Robert Taylor, designee of Interim Superintendent of Public Instruction Sheila A.

Alles; Ms. Breen; Webberville Superintendent Brian Friddle; 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> 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).

At all relevant times, section 163 of the State School Aid Act, MCL 388.1763, provided in pertinent part as follows.

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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).

(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.

On October 26, 2010, the Department issued to Aaron Mayes a provisional teaching certificate; that certificate expired on June 30, 2016. She applied for a professional teaching certificate on June 12, 2016, reporting completion of six

semester credit hours<sup>2</sup> and the statutorily required reading diagnostics course.<sup>3</sup> The Department placed her application on hold pending receipt of transcripts showing her satisfaction of the credit and reading diagnostics requirements. On August 1, 2016, the Department received a transcript from Spring Arbor University for Ms. Mayes that did not show completion of an approved reading diagnostics course. The application was again placed on hold and Ms. Mayes was informed of the need for evidence of completion of an approved reading diagnostics course. In an August 8, 2016 email, Ms. Mayes asked the Department why a course listed on her transcript did not satisfy the reading diagnostics requirement. The Department informed her that the course was not on the list of approved courses and directed her to contact Spring Arbor University to find out if, in fact, the course had been approved. Notwithstanding her expired certification, Webberville employed her as a third grade teacher for the 2016-2017 school year.

The Department next heard from Ms. Mayes on June 15, 2017. In an email to the Department on that date, she stated, "I have been having a really hard time getting someone from Spring Arbor to get back with me about the reading diagnostic class. I keep leaving messages and honestly gave up for a while."

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<sup>2</sup> Former Mich Admin Code, R 390.1132(3)(a) (options for fulfilling continuing education requirements for progression to professional teaching certificate included completion of "[s]ix semester credit hours in a planned program at an approved teacher preparation institution or six semester credit hours of academic credit appropriate to the grade level and content endorsement(s) of the certificate at any approved college or university"). The current rule, effective November 15, 2017, is Mich Admin Code, R 390.1132(1).

<sup>3</sup> MCL 380.1531(4) (no advancement to professional teaching certificate absent successful completion of a 3-credit course, determined by the Department to be appropriate, in the diagnosis and remediation of reading disabilities and differentiated instruction).

It was Ms. Mayes' responsibility to maintain certification and to be aware of certification requirements. I am not persuaded by Webberville's suggestion that the Department bears some responsibility for her lack of certification during the 2016-2017 school year. On the contrary, she applied for professional certification, the Department gave her accurate advice about the requirements for that certification, and she failed to follow that advice in a diligent manner. In addition, it was Webberville's responsibility to ensure its compliance with legal requirements related to the employment of certified teachers, including the employment of Ms. Mayes during the 2016-2017 school year.

I am not unsympathetic to the plight of school districts that are assessed state aid penalties based on their employment of uncertified educators. However, 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 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 \$32,213.38 against Webberville Community Schools based on its employment of Aaron Mayes from August 29, 2016, to June 9, 2017.

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

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Sheila A. Alles  
Interim Superintendent of Public Instruction

Dated: July 27, 2018