

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

DIVISION OF THE SECRETARY
SD DEPT. OF EDUCATION

IN RE: Certification Application of)
)
MATTHEW JOHN MEYER)

DSE 2014-12

**ORDER DENYING “ALTERNATIVE ROUTE TO CERTIFICATION
PROGRAM APPLICATION”**

Pursuant to the authority granted to the undersigned independent hearing examiner by SDCL 13-42, and based upon Findings of Fact and Conclusions of Law which are hereby incorporated by this reference, it is hereby

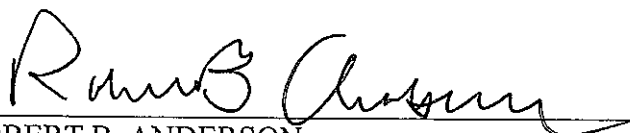
ORDERED, that the Secretary of the South Dakota Department of Education has a factual and legal basis to refuse to grant the “Alternative Route to Certification Program Application” filed by Matthew John Meyer; it is further

ORDERED, that the “Alternative Route to Certification Program Application” dated January 20, 2014, previously filed by applicant Matthew John Meyer is denied and that Meyer shall be prohibited from reapplying or filing another “Alternative Route to Certification Program Application” up through and including July 15, 2015. After July 15, 2015, Meyer may reapply for certification including but not necessarily limited to filing another “Alternative Route to Certification Program Application”; it is further

ORDERED, that this Order and the Findings of Fact and Conclusions of Law upon which it is based will be served upon Matthew John Meyer by the Department of Education pursuant to statute.

This constitutes final agency decision. Respondent and Applicant Matthew John Meyer has the right to appeal from this Order to circuit court as provided by law.

Dated this 4th day of December, 2014.


ROBERT B. ANDERSON
Independent Hearing Examiner

STATE OF SOUTH DAKOTA)
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IN RE: Certification Application of)
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FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant Matthew John Meyer (Meyer) requested a hearing in regard to a written "Notice of Intent to Deny Certificate" which notice was dated August 18, 2014.

A hearing on Meyer's timely request for hearing was held before Robert B. Anderson, duly appointed hearing examiner, on Monday, October 6, 2014, at 1:30 p.m. CDT in conference room 1 of the MacKay Building, 1st floor, 800 Governors Drive, Pierre, SD 57501. The hearing was a private hearing as requested by Meyer, and was held pursuant to written Notice of Hearing dated September 17, 2014.

The South Dakota Department of Education appeared through Carla Leingang, Administrator of the Office of Certification and Teacher Quality of the South Dakota Department of Education, Special Assistant Attorney General Bobbi J. Rank, and Special Assistant Attorney General Holly Farris. Matthew John Meyer appeared personally and chose to represent himself without legal counsel. The hearing was held before the duly appointed independent hearing examiner and a verbatim record was made. After hearing the arguments of counsel and the parties, and after hearing all the testimony and reviewing the exhibits and other evidence offered and received into evidence, as independent hearing examiner I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Meyer was born July 18, 1975.
2. Meyer submitted an "Alternative Route to Certification Program Application" dated January 20, 2014, to the South Dakota Department of Education.
3. Meyer's original application sought both an alternative Career and Technical Certification (CTE Certification) and a post secondary technical institute credential.
4. Meyer does not qualify for a post secondary technical institute credential and through written stipulation at the time of the hearing Meyer withdrew his application for that credential.
5. The purpose in Meyer's application was to obtain certification so as to enable him to teach facilities maintenance at the Box Elder Job Corps which offers high school credits through the Lead-Deadwood School District program.
6. At the time of the hearing it was the position of the Department of Education that Meyer did not satisfy the qualifications for Career and Technical Education (CTE) certification but allowed Meyer additional time to supplement the record with additional proof as to these qualifications.
7. Meyer did supplement the record in a timely manner and has proven his educational and training qualifications for CTE certification to the satisfaction of the Department of Education.
8. The Department of Education has withdrawn paragraph 3 of the Notice of Intent to Deny Certification which alleged that Meyer did not meet the requirements established by administrative rule and the Department of Education for CTE certification. Therefore, that issue is no longer before the hearing examiner and cannot be utilized as a basis for denial of Meyer's application for certification.

9. On the date of the hearing Meyer was employed as facilities maintenance instructor at the Box Elder Job Corps.

10. Meyer dropped out of high school prior to receiving a degree.

11. After dropping out of high school, Meyer worked and then entered the Job Corps and received his high school diploma/GED.

12. Meyer served in the military for one and one-half years.

13. Meyer's present employment involves teaching construction employability skills to students.

14. His present employment involves building maintenance, construction, employability skills, facilities maintenance, HVAC, grounds keeping and other construction and building maintenance skills.

15. Prior to teaching at the Job Corps, Meyer performed jobs which involved all of those skills and requirements.

16. Meyer performed some construction related work at the student activities center utilized by the Job Corps.

17. As a result of Meyer's acquaintance with the Job Corps, he was hired in January 2011 to temporarily replace the facilities maintenance instructor. To maintain employment at the Job Corps Center Meyer was required to go through several temporary employment agencies and the hiring process was convoluted as described by witness Bonnie Fuller.

18. In order to be employed on a full time basis at the Job Corps Center and teach students whose goal would ultimately be to obtain a high school diploma through the Lead-Deadwood School District Meyer would require certification by the Department of Education.

19. Meyer expected a criminal background check to be done when he applied for certification with the Department of Education.

20. Bonnie Fuller, a principal at the Lead-Deadwood School District advised Meyer that he should expect a criminal background check. Fuller did not advise Meyer to list all his criminal convictions and arrests on his application nor did she advise him not to do so.

21. The teacher's code of ethics as adopted for teachers and instructors in South Dakota applies to teachers in the Lead-Deadwood School District and to teachers and to instructors who are filling the role of facilities maintenance instructor at the Job Corps Center.

22. Meyer has done a good job working in a temporary capacity with the students at the Job Corps Center administered by the Lead-Deadwood School District. He has been a good role model for the students to see that someone who attended that program can go on to be successful and productive.

23. Meyer is a valued employee at the Job Corps Center.

24. Prior to the application submitted by Meyer in January 2014, Meyer had never applied for or been issued any type of certification by the South Dakota Department of Education.

25. The application completed and submitted by Meyer asked the following question of Meyer: "Have you ever been arrested or charged with any criminal offense?" The application went on to define criminal offense to include both misdemeanor and felony offenses.

26. Meyer's response to the question was to identify a DUI of March 3, 2004.

27. Another question in the application completed and submitted by Meyer asked: "Have you ever been convicted or pleaded guilty to any criminal offense?" The question went on to define conviction.

28. Meyer answered "no" to the question referenced in the preceding finding of fact.

29. On or about June 21, 1995, Meyer was charged in Pennington County, SD, with a class 1 misdemeanor offense of reckless driving and the petty offense of no driver's license.

30. On or about September 1, 1995, Meyer pled guilty to the charge of reckless driving in Pennington County and the remaining charge was dismissed.

31. During the time Pennington County charges referred to in the preceding two findings of fact were pending, two bench warrants were issued for Meyer's failure to appear.

32. On or about July 19, 1995, Meyer was charged with a municipal offense of carrying a concealed weapon (a class 2 misdemeanor) in Rapid City, Pennington County, South Dakota. The charge was dismissed on March 15, 1999.

33. On or about February 6, 1996, Meyer was charged with minor in possession of alcohol (a class 2 misdemeanor) in Pennington County, South Dakota. On or about February 9, 1996 Meyer pled guilty to this offense.

34. On or about April 26, 1997, Meyer was charged with driving under suspension (a class 2 misdemeanor), open container (a class 2 misdemeanor) and possession of a suspended license (a class 1 misdemeanor) in Meade County, South Dakota.

35. On or about May 1, 1997, Meyer plead guilty to driving with a suspended license and open container and the remaining charge was dismissed.

36. On or about March 15, 1998, Meyer was charged with simple assault (a class one misdemeanor) in Pennington County, South Dakota.

37. On or about April 14, 1998, Meyer pled guilty to disorderly conduct (a class 2 misdemeanor) and the simple assault charge was dismissed.

38. On or about March 17, 2002, Meyer was charged with possession of marijuana (class 1 misdemeanor), drug paraphernalia (class 2 misdemeanor) and failure to maintain financial responsibility (class 2 misdemeanor) in Lawrence County, South Dakota.

39. On or about April 17, 2002, Meyer pled guilty to possession of marijuana and the remaining charges described in the preceding findings of fact were dismissed.

40. On or about July 30, 2002, Meyer was charged with possession of a revoked license (class 1 misdemeanor) and driving under revocation (class 1 misdemeanor) in Pennington County, South Dakota.

41. On or about October 21, 2002, Meyer pled guilty to possession of a revoked license and the remaining charge was dismissed.

42. On or about January 6, 2005, Meyer was charged with driving under the influence (class 1 misdemeanor), open container (class 2 misdemeanor) and failure to maintain financial responsibility (class 2 misdemeanor) in Pennington County, South Dakota.

43. On or about April 12, 2005, Meyer pled guilty to driving under the influence and the remaining charges were dismissed.

44. A bench warrant was issued for Meyer's failure to appear at a sentencing review hearing relating to the DUI charge which led to the conviction.

45. On his written application submitted to the Department of Education dated January 20, 2014, Meyer answered yes to the question as to whether he had ever been arrested or charged with any criminal offense and described the arrest as referring to a DUI on March 3, 2004.

46. Meyer failed to disclose the fact that he was later convicted of the DUI.

47. Meyer failed to disclose any of the other arrests or convictions described in findings 29 through 44 inclusive above on his application dated January 20, 2014.

48. At no time, including during the hearing held on October 6, 2014, has Meyer denied the arrests or convictions described in findings 29 through 44 inclusive.

49. Meyer testified that because he expected a criminal background check to be conducted when his application was submitted he felt the arrests and convictions would be known to the Department of Education as a result.

50. The Department of Education has a duty to ask questions of candidates relating to criminal background and criminal history. Further, the Department of Education has the right to expect full, complete and truthful answers based on the very direct and straight forward questions contained in the application form.

51. A person applying for certification with the Department of Education should be expected to read, understand and take seriously an application for certification and the questions contained therein.

52. The Professional Teachers Practices and Standards Commission has promulgated rules for a code of professional ethics for teachers in South Dakota pursuant to authority granted by South Dakota Law. This code of ethics is found in ARSD 24:08:03.

53. The secretary of the Department of Education has the power and authority to refuse to issue or renew a certificate for violation of the code of professional ethics governing teachers.

54. Among other things the teacher's code of ethics requires one to "engage in no act that results in a conviction". ARSD 24:08:03:02(7).

55. The code of ethics requires a teacher to "exemplify high moral standards by not engaging in or become a party to such activities as deceit, moral turpitude, gross immorality...or use of misleading or false statements." ARSD 24:08:03:02(8).

56. Meyer's history of criminal convictions violates ARSD 24:08:03:02(7).

57. Meyer's omissions on his application referred to above violate ARSD 24:08:03:02(8).

58. Meyer is now aware of the Teacher's Code of Ethics and aware of a teacher's role model responsibilities.

59. Meyer agrees that teachers should be held to a high degree of responsibility.

60. Meyer has made great efforts in furthering his own education given the fact that he dropped out of school in the 7th grade, returned to the Job Corps, obtained a GED and has been engaged in a productive work life.

61. Meyer is a valuable asset to the Job Corps center and the Lead-Deadwood School District.

62. Meyer has no record and there was no indication through any evidence in the record that he has continued to engage in criminal behavior since his DUI conviction in 2005.

63. The evidence in the record proves that Meyer has violated the Teacher's Code of Ethics in the past and did not accurately and truthfully respond to the questions contained in his application.

64. Meyer's lack of recent criminal history, his service provided to the Job Corps center and the Lead-Deadwood School District and the efforts he has made to further his own education and employment are strong mitigating factors in support of his character and fitness.

65. At the conclusion of the hearing in this proceeding the representatives of the South Dakota Department of Education recommended that Meyer's Alternative Route to Certification Program Application should be denied based on his criminal convictions and his failure to disclose criminal history information on his application through at least July, 2015.

CONCLUSIONS OF LAW

1. Robert B. Anderson was duly designated and appointed as independent hearing examiner pursuant to SDCL 13-42-12 by the South Dakota Board of Education to preside over the contested case relating to Meyer's "Alternative Route to Certification Program Application".

2. The Department of Education and therefore the hearing examiner has jurisdiction over the parties and the subject matter of this proceeding.

3. A South Dakota teaching certificate including but not limited to a certificate such as that applied for by Meyer may be revoked, suspended or not issued for violations of the Teacher's Code of Ethics as set forth by South Dakota administrative rules.

4. SDCL 13-42-9 provides that the South Dakota Department of Education may revoke, suspend or refuse to issue a teacher's certificate for violation of the South Dakota Teacher's Code of Ethics.

5. SDCL 13-42-10 provides that the Department of Education may revoke or refuse to issue a teaching certificate to an applicant for such period of time as the secretary considers advisable if the person has been convicted of any crime involving moral turpitude.

6. The South Dakota Department of Education had the burden of going forward and had the burden of proof on whether Meyer committed acts or omissions which justified the denial or non-issuance of the certificate he applied for as permitted by South Dakota law.

7. The South Dakota Department of Education had the burden of proof on the issue of whether Meyer violated the South Dakota Teacher's Code of Ethics by "clear and convincing evidence."

8. The South Dakota Department of Education has met its burden of proof and shown by clear and convincing evidence that Meyer violated the South Dakota Teacher's Code of Ethics

and other administrative rules promulgated by the State of South Dakota, Department of Education as it relates to character and fitness.

9. The South Dakota Department of Education has met its burden of proof and shown by clear and convincing evidence that Meyer engaged in acts that resulted in criminal convictions.

10. Meyer violated that portion of the South Dakota Teacher's Code of Ethics which requires a teacher to "exemplify high moral standards by not engaging in or becoming a party to such activities as fraud...deceit, moral turpitude, gross immorality..., or use of misleading or false statements."

11. Meyer's criminal convictions violate ARSD 24:08:03:02(7).

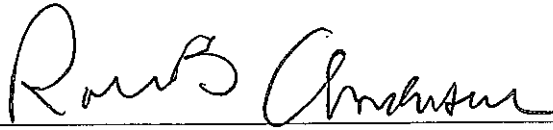
12. Meyer's omissions on his application for the "Alternative Route to Certification Program Application" dated January 20, 2014 violate ARSD 24:08:03:02(8).

13. The South Dakota Department of Education acted appropriately in issuing its denial of Meyer's Alternative Route Certification Program Application dated January 20, 2014.

14. Having heard all of the testimony and having reviewed all of the exhibits admitted into evidence at the hearing, and having reviewed the transcript of the hearing, and having reviewed oral and written arguments and statements made by the parties and based on a review of the record in its entirety and a determination as to the credibility of the witnesses, I conclude as the duly appointed hearing examiner that Meyer's Alternative Route Certification Program Application dated January 20, 2014 should be denied and that Meyer should be prohibited from reapplying for any such certification or any other certification through the Department of Education up through and including July 15, 2015.

15. An order shall be entered consistent with these findings of fact and conclusions of law denying Meyer's Alternative Route Certification Program Application dated January 20, 2014.

Dated this 4 day of December, 2014.

A handwritten signature in cursive script, appearing to read "Robert B. Anderson". The signature is written in black ink and is positioned above a horizontal line.

ROBERT B. ANDERSON
Independent Hearing Examiner