

State of South Dakota)
)
County of Hughes)ss

DIVISION OF THE SECRETARY
SOUTH DAKOTA DEPT. OF EDUCATION

In re: Certification Application of
BRENT V. BREWER

DSE2015-09

**ORDER DENYING APPLICATION
FOR RENEWAL OF TEACHER'S
CERTIFICATE DATED
DECEMBER 5, 2014**

Pursuant to the authority granted to the undersigned Independent Hearing Examiner by SDCL 13-42 and the Order of Appointment, 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 application for renewal of teacher's certificate dated December 5, 2014 filed by Brent V. Brewer; it is further

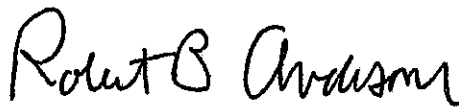
ORDERED, that the application for renewal of teacher's certificate dated December 5, 2014, previously filed by applicant Brent V. Brewer is denied and Brewer shall be prohibited from reapplying or filing another such application for any type of certification with the South Dakota Department of Education, up through and including December 31, 2016. After December 31, 2016, Brewer may file an application or reapplication for a South Dakota Teacher's Certificate or any other appropriate certification, provided he has been released by the Circuit Court for Pennington County, Seventh Judicial Circuit, from the Second Amended Order Suspending Imposition of Sentence. If Brewer is still under the supervision of the Circuit Court for the Seventh Judicial Circuit, County of Pennington, as of December 31, 2016, he shall be prohibited from applying or reapplying for any certification through the South Dakota Department of Education until such time as he is released from that Order by order of the Court; it is further

ORDERED, that this Order on the Findings of Fact and Conclusions of Law upon which it is based, will be served on Brent V. Brewer by the Department of Education pursuant to statute.

This constitutes a final agency decision. Applicant and Appellant Brent V. Brewer has the right to appeal from this Order to Circuit Court as provided by law.

Dated this 30th day of October, 2015.

BY:



Robert B. Anderson
Independent Hearing Examiner

State of South Dakota)
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DIVISION OF THE SECRETARY

SOUTH DAKOTA DEPT. OF EDUCATION

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**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Applicant Brent V. Brewer (Brewer) requested a hearing in regard to a written "Notice of Intent to Deny Teaching Certificate" which Notice was dated June 25, 2015.

A hearing on Brewer's timely request was held before Robert B. Anderson, duly appointed hearing examiner, on Thursday, September 3, 2015, at 10:00 a.m. CDT in conference room 4, MacKay Building, second floor, 800 Governor's Drive in Pierre, SD. The hearing was a private hearing as requested by Brewer, and was held pursuant to written Notice of Hearing dated August 12, 2015, which was provided to Brewer and which Brewer acknowledged receiving.

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 and Special Assistant Attorneys General, Holly Farris and Bobbi J. Rank. Brewer 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, observing the witnesses who all testified live and in person, 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. Brewer was born June 22nd, 1971.
2. Brewer was first issued a South Dakota Teachers Certificate in 1995. It was renewed in 2001 and 2006.
3. Brewer was employed as a teacher from approximately 1995 through sometime in 2010. Brewer voluntarily left teaching in 2010 because of various personal problems he was experiencing. He did not feel that he could fulfill his obligations as a teacher as a result.
4. Brewer comes from a family who has been educators and is dedicated to being an educator himself, particularly in schools which are made up of predominately Native American children.

5. Brewer graduated from Dakota Wesleyan University in Mitchell, Davison County, South Dakota.
6. After being arrested in September, 1994 for a DUI (1st Offense) in Davison County, South Dakota, Brewer pled guilty to that offense in October, 1994.
7. After being arrested for a DUI in Fall River County in July, 2004, Brewer pled guilty and was convicted to DUI 2nd in August, 2004.
8. In November, 2009, Brewer was arrested in Pennington County, South Dakota, for DUI 3rd and charged with a Class 6 Felony. Brewer entered a plea of guilty to that charge, but a finding of guilt was not made by the court, and Brewer received a suspended imposition of sentence on that charge by order on August 26, 2010.
9. In January of 2010, Brewer was arrested for and charged with a misdemeanor DUI in Custer County, South Dakota. He pled guilty to DUI (2nd Offense), and was sentenced by the court in August, 2010. The court suspended execution of sentence and placed Brewer on probation.
10. In approximately April, 2006, Brewer was arrested for and convicted of DUI in Sheridan County, Nebraska.
11. Brewer violated certain of the conditions of his suspended imposition in regard to the Pennington County felony conviction.
12. Brewer violated certain of the conditions of the suspended execution of his sentence and probation in regard to his Custer County conviction.
13. As a result of these violations, a petition to revoke his suspended imposition of sentence was filed in Pennington County, and a petition for revocation of his probation was filed for in Custer County.
14. Warrants were issued in both Custer County and Pennington County, and were outstanding for approximately 3 ½ years. During much of this period of time, Brewer was aware of the outstanding warrants.
15. Brewer was also aware of the petition to revoke his suspended imposition and sentence in Pennington County for approximately 3 ½ years and failed to respond to that for that time.
16. In 2014, Brewer voluntarily surrendered himself to both the Custer County and Pennington County authorities after coming to the realization that he needed to face these problems.

17. After Brewer surrendered himself to the authorities in Pennington County, a second judgment suspending imposition of sentence was imposed by the Circuit Court for Pennington County on October 28, 2014.
18. Brewer has now satisfied the conditions of his Custer County sentence, and according to Exhibit 4A, has been released from that sentence and from any Court supervision after observing all conditions imposed upon him by the Court. The Order of Discharge from Probation suspended execution of sentence was signed by the Court on August 13, 2015.
19. Brewer has continued to comply with the 2nd judgment suspending imposition of sentence Pennington County, but will remain under Court supervision in regard to that sentence until approximately October, 2016.
20. When appearing before both the Custer County Courts and the Pennington County Courts, Brewer voluntarily admitted his violation of the terms and conditions of his deferred execution and suspended imposition of sentence, respectively.
21. Brewer's criminal problems in the past have mainly been alcohol related.
22. Brewer was issued a teacher's certificate in 2006 based on an application made that same year.
23. Brewer denies that the signature on the 2006 application (Exhibit 11) is his signature. Brewer further denies completing the 2006 application (Exhibit 11) or signing it, or authorizing its signature.
24. There is no evidence that the signature on Exhibit 11 is genuine, and that of Brewer.
25. There is handwriting and printing on portions of Exhibit 11 – the 2006 application – that raise questions as to how it was completed and by whom.
26. Regardless of whether Brewer completed or signed the 2006 application, he did utilize the teacher's certificate issued based on that application and taught school thereafter in accordance with the authority granted by that certificate.
27. The teacher's certificate issued to Brewer in 2006 expired on July 1, 2011.
28. Other than Exhibit 11, there was no other application for renewal of Brewer's teaching certificate filed in 2006.
29. By order of the hearing officer and agreement of the parties, the record was supplemented after the hearing by letter dated October 5, 2015 from the South Dakota Department of Education. In that letter, the Department withdrew allegations of a code of ethics violation by Mr. Brewer relating to the 2006 application for renewal of his teacher's certificate, and therefore

withdrew paragraphs 10-14 and 36 as contained in the Notice of Intent to Deny previously filed in this proceeding. Therefore, none of those allegations, nor any of the facts relating to the application for renewal of Brewer's teaching certificate in 2006 will be relied on by the hearing examiner.

30. On or about December 5, 2014, Brewer applied for renewal of his expired teaching certificate (Exhibit 24).

31. In his 2014 application, Brewer answered yes to a question which inquired as to whether he had been arrested or charged with any criminal offense since his last certificate was issued. He explained that answer by referring only to the suspended imposition received in 2010 in regard to the Pennington County class six felony charge to which he entered a guilty plea.

32. In his 2014 application, Brewer failed to disclose the Custer County DUI to which he pled guilty in 2010.

33. Brewer failed to disclose or otherwise identify his DUI conviction in the state of Nebraska.

34. Brewer agreed at the hearing that his alcohol use and been irresponsible, that he had failed to meet certain responsibilities, and failed to act as a good role model during certain periods of time.

35. Brewer attributed his problems to his mother's illness and death in 2010, an assault on him which occurred when he was officiating a football game and caused some serious injury, and succumbing to the use of alcohol and allowing alcohol to negatively affect him, whether it was due to his drinking or being surrounded by others who abused alcohol.

36. It is to Brewer's credit that he voluntarily ultimately recognized his obligations to the Court system and turned himself in in both Custer County and Pennington County in 2014.

37. Brewer has rediscovered religion, and seems to acknowledge that there is a higher power which can assist him.

38. Brewer believes, and the record reflects, that he is likely a person who is or could be a role model to many children on the Pine Ridge Reservation who are aware of his educational and athletic achievements. However, he has failed to live up to the responsibilities of a role model on a number of occasions in the past.

39. Brewer is well-spoken and articulate.

40. Although to some point, Brewer acknowledges that his problems had been partially of his own making, he did not appear to be sufficiently repentant for his past behavior, nor did he sufficiently acknowledge that his problems were due to his own acts and behavior and not

attributable to others.

41. Brewer began alcohol treatment approximately two years prior to the hearing, and is currently involved in a twelve-step program.
42. Brewer has significantly curtailed his drinking and has no alcohol-related problems since his 2010 DUI arrest in Custer County, although alcohol abuse may have been a factor in his failure to acknowledge his responsibilities and respond to the outstanding bench warrants in Custer and Pennington County during the years of 2010-2014.
43. Brewer admits that he did consume alcohol approximately 5-8 months ago, but the record does not reflect any additional legal problems based on alcohol abuse in recent years.
44. Brewer could serve as a role model for students, particularly Native American students on the Pine Ridge Reservation, but his ability to do so would be enhanced by further acceptance of responsibility for his own problems, and a greater degree of repentance for his prior actions.
45. Brewer violated the code of ethics applicable to teachers in South Dakota.
46. Brewer failed at all times to act as a suitable role model for his students while holding a South Dakota teacher's certificate.
47. Brewer failed to accurately and completely disclose his applicable criminal history on his 2014 application for renewal.
48. Misrepresentations concerning his criminal history contained on his 2006 application (if any) are not being considered as a basis for any action in this matter due to Brewer's denial that he completed the 2006 application and the lack of any evidence to contradict that denial. However, Brewer did utilize the certificate that was issued based on his 2006 application and should have been more attentive as to how and why it was issued.

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 hearing relating to Brewer's application for a teacher's certificate filed by him in December, 2014.
2. The Department of Education has jurisdiction over the parties on the subject matter of this proceeding.
3. A South Dakota teaching certificate may be revoked, suspended, or not issued for violations of the teacher's code of ethics as set forth by South Dakota Administrative Rule.

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 Professional Ethics or for gross immorality.
5. SDCL 13-42-10 provides that the Department of Education may revoke or suspend a teaching certificate, or refuse to issue a 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. SDCL 13-42-7 provides that the secretary of the Department of Education has the power and authority to refuse to issue or renew a certificate for any reason which would have caused it to be revoked.
7. The South Dakota Department of Education had the burden of going forward, and had the burden of proof based on a preponderance of the evidence as to whether Brewer committed acts or omissions which justify the denial or non-issuance of his teaching certificate as permitted by South Dakota Law.
8. The South Dakota Department of Education had the burden of proof on the issue of whether Brewer violated the South Dakota Teacher's Code of Ethics by "a preponderance of the evidence".
9. The South Dakota Department of Education has met its burden of proof and shown by a preponderance of the evidence that Brewer 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.
10. The South Dakota Department of Education has met its burden of proof and shown by a preponderance of the evidence that Brewer engaged in acts that resulted in criminal convictions while holding a valid South Dakota teaching certificate.
11. Brewer 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."
12. Brewer's criminal convictions as found herein violate ARSD 24:08:03:02 (7).
13. Brewer's omissions on his application for renewal of his teacher's certificate in December, 2014, violate ARSD 24:08:03:02 (8).
14. The South Dakota Department of Education acted appropriately in issuing its denial of Brewer's application for renewal of teacher's certificate dated December 5, 2014.

15. Having heard all the testimony and having reviewed all of the exhibits admitted into evidence at the hearing, having reviewed the transcript of the hearing, having reviewed the oral arguments and statements made by the parties and based 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 Brewer's application for renewal of teacher's certificate dated December 5, 2014, should be denied and that Brewer should be prohibited from reapplying for any such certification or any other certification through the Department of Education up through and including December 31, 2016, provided that he has been released from Court supervision under the terms and conditions of the second judgment suspending imposition in Pennington County on or before December 31, 2016. If Brewer remains under the supervision of that Court for that reason after December 31, 2016, he is prohibited from applying or reapplying for any certification through the Department of Education until such time as he is released by said Court.

16. An order shall be entered consistent with these findings of fact and conclusions of law denying Brewer's application for renewal of teacher's certificate dated December 5, 2014.

Dated this 30^r day of October, 2015.

BY: Robert B. Anderson
Robert B. Anderson
Independent Hearing Examiner