

STATE OF SOUTH DAKOTA) DIVISION OF THE SECRETARY
) :SS
 COUNTY OF HUGHES) SOUTH DAKOTA DEPT. OF EDUCATION

In re: Certification Application of) DSE 2015-13
 BRIAN SIEH.)
) **ORDER REGARDING**
) **SOUTH DAKOTA**
) **CERTIFICATION**
)

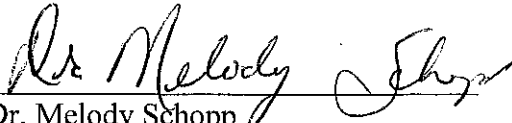
The Secretary has received a final proposed decision and findings of fact and conclusions of law from the independent hearing examiner pursuant to ARSD § 24:18:02:04. Prior to issuing the final proposed decision and findings and conclusions, the hearing officer provided the parties with the opportunity to present objections and proposals and considered the same.

Pursuant to the authority granted to the Secretary by SDCL 13-42-4, 13-42-7, 13-42-9, and ARSD article 24:18, and after review of the record herein, the Secretary issues the following ORDER:

1. The Secretary affirms and adopts the final proposed Findings of Fact and Conclusions of Law of the independent hearing officer. These findings and conclusions, attached as Exhibit A, are hereby incorporated into this Order by this reference as if set forth in full.
2. The Secretary affirms and adopts the final proposed order issued by the independent hearing officer, which is attached as Exhibit B and incorporated into this Order by this reference as if set forth in full.
3. Sieh’s application for a certificate is DENIED, and he cannot reapply before December 31, 2017. If Sieh reapplies, he must meet all certification requirements at the time the application is submitted before a certificate could be issued. ARSD § 24:18:04:02.
4. This Order and attached exhibits are a public record pursuant to SDCL 13-42-17.1.

This constitutes final agency action and may be appealed to circuit court pursuant to ARSD § 24:18:02:06.

Dated this 21 day of March, 2016.



Dr. Melody Schopp
Secretary
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501

In re: Certification Application of BRIAN CHARLES SIEH

DSE 2015-13

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In August, 2015, Brian Charles Sieh filed a written application for the renewal of his South Dakota Teacher's Certificate with a Superintendent's Endorsement. On October 1, 2015, the South Dakota Department of Education gave written notice of intent to deny Sieh's application. Sieh appealed in a timely manner. The Secretary of South Dakota Department of Education designated and appointed Robert B. Anderson as Independent Hearing Examiner, pursuant to ARSD 24: 18:02:03 to preside over a hearing on Sieh's appeal. A public hearing, as requested by Sieh, was held in Conference Room 1 at the MacKay Building, 800 Governor's Drive, Pierre, SD 57501, on December 30, 2015 at 10:00 a.m. CST pursuant to an Amended Notice of Hearing. The South Dakota Department of Education appeared through Bobbi J. Rank, Special Assistant Attorney General for the Department of Education, and Abby Javurek-Humig, a representative of the South Dakota Department of Education. The Applicant and Appellant, Brian Charles Sieh, appeared personally and 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 and reviewing all the testimony and exhibits and all other evidence, as Independent Hearing Examiner I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Brian Charles Sieh (Sieh) was born [REDACTED]
2. Sieh received a Bachelor's of Science degree from Dakota State University in physical and health education in 1996. In 2003, he received Master's of Science from Northern State University, K-12 Educational Administration. In 2009, he received a Specialist Degree with a Superintendent Endorsement from the University of Sioux Falls. In addition, he has successfully completed credits towards a Doctorate degree.
3. In July 2013, Sieh filed a written application for renewal of his Administrator's Certificate.
4. In response to that application of July 2013, the South Dakota Department of Education (Department) issued a written Notice of Intent to Deny his application based on criminal history and his failure to disclose that criminal history accurately as required on his



application.

5. A hearing was held on that application on February 28, 2014. (2014 Hearing)
6. Subsequent to the 2014 Hearing, Findings of Fact and Conclusions of Law and an Order were entered on May 2nd, 2014. The Findings of Fact and Conclusions of Law and Order suspended Sieh's Certificate and prohibited him from reapplying until August 5, 2015.
7. Sieh did reapply in August, 2015.
8. In response to Sieh's application of August, 2015, the Department issued a Notice of Denial of Certificate dated October 1, 2015. In general, the basis for denial related to allegations that Sieh had engaged in additional criminal behavior between the time of his July, 2013 application and the 2014 Hearing, that Sieh failed to disclose those criminal charges at the 2014 Hearing, that he testified inconsistently and untruthfully at the 2014 Hearing regarding his alcohol and gambling problems and that subsequent to the 2014 Hearing he was charged and convicted with additional criminal offenses (which were in fact listed on his 2015 application).
9. The prior Findings of Fact and Conclusions of Law and Order previously entered in proceeding DSE 2013-7 resulting from Sieh's July, 2013 application and 2014 Hearing are hereby incorporated by reference as if fully set forth herein.
10. On or about February 2, 2014, in the early morning hours, Sieh was arrested and charged with DUI in Buffalo County, South Dakota. Although originally a misdemeanor, he was later recharged with a Class 6 Felony based on the same incident. This arrest took place less than four weeks prior to the 2014 Hearing.
11. Sieh did not disclose the pending Buffalo County criminal charges at the 2014 Hearing, although he had ample opportunity to do so when questioned.
12. Sieh was also charged with a Class 1 Misdemeanor of driving while under revocation as a result of a February 2, 2014 arrest.
13. On or about April 9, 2014, Sieh was also charged with no driver's license in Tripp County, South Dakota. He pled guilty by power of attorney.
14. On or about September 9, 2014, Sieh pled guilty to DUI 3rd (Class 6 Felony) in Buffalo County, South Dakota, as a result of the February 2nd, 2014 incident. He received penitentiary time which was suspended on various conditions.
15. At no time prior to the entry of Findings of Fact, Conclusions of Law and the Order on May 2nd, 2014, did Sieh disclose the charges arising from the Buffalo County arrest of February 2nd, 2014.

16. Sieh worked for Colby LaCompte as a farm laborer until September, 2015.
17. In September 2015, Sieh was hired by the St. Francis Indian School as a substitute teacher.
18. Later in 2015, Sieh was hired as middle school Dean of Students at the St. Francis Indian School and has recently been hired as the Dean of Students for grades 7-12.
19. Sieh testified that he disclosed to the people at St. Francis Indian School that his last application for renewal of his Teacher's Certificate had been denied. He informed the principal there that one of the reasons for denial was failure to disclose certain criminal charges on his application.
20. Sieh agrees that teaching is a noble profession and that teachers should be held to a high standard of behavior and character. Those standards which teachers are expected to have include positive behavior, honesty, integrity and living in conformance with rules and regulations.
21. Sieh agrees that school administrators should be held to an even higher standard.
22. Sieh was convicted of DUI in Buffalo County on May 13, 2013. As part of his judgment and sentence in that case, he was to commit no like-violations of the law and obey all laws for a period of 360 days.
23. The actions which lead to Sieh's conviction of felony DUI occurred less than 12 months after the May 2013 conviction. Sieh did not disclose his arrest in Buffalo County to anyone connected with the hearing process regarding the 2014 Hearing.
24. At the 2014 Hearing, Sieh testified that he had complied with everything the court asked him. That testimony was not true.
25. He also testified at the 2014 Hearing that he would never intentionally hide anything from anyone, and that he had no secrets in his life. That testimony was not true.
26. Sieh explains that prior testimony at the 2014 Hearing, which was false, as being a product of his alcoholism and alcoholic behavior.
27. On his 2015 application, Sieh stated that he had been sober since July 5, 2014.
28. Sieh's statement on his application that he had been sober since July, 2014 was false. He submitted to PBT's – one on September 12, 2014 and one on September 19, 2014 that indicated he had been using alcohol.
29. Based on his prior application process and hearing, Sieh should have realized the importance of being fully accurate and truthful when he completed his 2015 application.

30. In both April 2014 and April 2015, Sieh was arrested and charged with no driver's license.
31. Sieh has not had a driver's license for some time, and did not have a license as of December 30, 2015. He does have a work permit. It is clear that on at least two occasions since the 2014 Hearing, he drove without a license in violation of the law.
32. Sieh's testimony at the 2014 Hearing was forceful and direct concerning his alleged lack of criminal violations and compliance with prior court orders.
33. Sieh's testimony at the December 30, 2015 hearing was equally forceful and direct concerning compliance with court orders and other similar requirements.
34. Sieh completed alcohol treatment in May, 2015. He testified that he last had an alcoholic drink in September, 2014. There is no evidence that Sieh's testimony in this regard is untrue.
35. To a point, Sieh feels that he has been treated unfairly in the application process and not given enough credit for participating in rehabilitation. Sieh's mother testified and referred to the proceedings before the Department in regard to Sieh's application process as ridiculous. Both she and Sieh believe that to a certain degree.
36. Sieh's daughter testified that he is a different person since he no longer drinks.
37. Sieh's former coworker testified that Sieh had undergone a total transformation and had improved 100% since he quit drinking.
38. Sieh's mother testified that Sieh had improved in almost every way since he quit drinking. The testimony at the hearing reflects that Sieh has improved his behavior and character since he completed alcohol treatment and quit drinking.
39. Sieh's testimony, and in particular the testimony that he believes he is being unfairly in the application process and that the process is somewhat ridiculous, is troublesome, and reflects that Sieh may not understand the serious nature of the behavior which led to the denial of his applications and the importance of the duty which the Department has in the reviewing and regulating South Dakota teachers and administrators.
40. Through his testimony at this hearing, and the hearing examiner's opportunity to observe Sieh at this hearing, it was not apparent that Sieh has sufficiently acknowledged personal responsibility for his prior actions in not being totally truthful in his application, or prior testimony. To his credit, Sieh has used his past experiences as a foundation for improving his teaching, improving his relationship with students, and imparting valuable life lessons to students in that regard.
41. Roger Wonnemberg has known the Sieh family and Sieh himself for many years. Although a former teacher at Winner, Wonnemberg now works at the St. Francis Indian

School.

42. Wonnenberg was instrumental in finding employment for Sieh at the St. Francis Indian School.
43. Sieh has been open and honest with Wonnenberg concerning Sieh's problems with his certification applications in recent years.
44. Children at the St. Francis Indian School have apparent respect for Sieh and Sieh is able to get a lot out of the kids there for that reason and other reasons.
45. Wonnenberg believes that Sieh is honestly and justifiably proud of the work that Sieh is doing at the St. Francis Indian School.
46. Wendy Castaneda-Leel is the middle school principal at the St. Francis Indian School and was a persuasive and objective witness as to Sieh's performance at that institution.
47. Castaneda-Leel hired Sieh in September 2015 for his current job at the St. Francis Indian School.
48. Sieh has been open and honest with her about his past and his prior problems.
49. Because of concerns based on his past, Castaneda-Leel kept a close eye on Sieh and he has not let her down.
50. Sieh should be commended for his efforts and performance at the St. Francis Indian School.
51. Sieh would be an asset to South Dakota schoolchildren if he performed in the same manner he has performed at the St. Francis Indian School.
52. Sieh made a good witness concerning his efforts at the St. Francis Indian School.
53. Sieh was overly defensive concerning questions about his past behavior and apparently fails to recognize its relevance.
54. Sieh's defense to his prior behavior and lack of truthfulness and completeness in his application process is that he was an alcoholic and now has gone through rehab.
55. Sieh completed rehab as an outpatient in May, 2015, and has a track record of sobriety for approximately 8 months after that rehab completion.
56. In order to reinforce the importance of going through rehabilitation and remaining clean and sober, Sieh needs to be aware that there are consequences to his prior actions and that there will be consequences if he fails to remain clean and sober.

57. Sieh must have some time to prove his dedication to sobriety, accept responsibility for his prior actions, and realize the significance of the Department's responsibilities in the certification process.
58. It is important that Sieh realizes that he is not being persecuted as an alcoholic or punished for going through rehabilitation. His behavior and actions are the basis for his inability thus far to obtain renewal of his certificate.
59. It cannot be overlooked that Sieh has had a felony conviction resulting from alcohol use since the 2014 Hearing and that he had been arrested and charged prior to the hearing.
60. Sieh needs to accept more responsibility for his own problems and not simply blame alcohol and others.
61. It is commendable that Sieh has performed well after completing rehabilitation in May, 2015, but needs additional time to prove his dedication.
62. Sieh can offer much to South Dakota schoolchildren, provided he maintains his sobriety and should not be permanently banned from obtaining a teacher's certificate.
63. Sieh's failure to be completely truthful on his 2015 application and Sieh's untruthful testimony at the 2014 Hearing is troubling and constitutes violations of the Teachers and Administrators Code of Ethics in South Dakota.
64. Because of his actions, Sieh should be prohibited from applying for or receiving a South Dakota teaching certificate or administrator's certificate for a finite period of time.
65. The Professional Administrators' Practices and Standards Commission has promulgated rules for a code of professional ethics for administrators. ARSD 24:11:03.
66. Among other things, the code of ethics requires administrators 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." ARSD 24:11:03:01(3).
67. Sieh's arrest in February 2014, unknown to the Department at the time of the 2014 Hearing, and his arrest for driving without a license violate the administrator's code of ethics.
68. Sieh's failure to disclose the arrest resulting from the February 2, 2014 arrest at the time of the 2014 Hearing violates the Administrator's Code of Ethics.
69. Sieh's guilty plea and sentence on his conviction for a felony DUI violates the administrator's code of ethics.

70. The Professional Teacher's Practices and Standards Commission has also been given authority and has promulgated rules for a code of professional ethics for teachers in South Dakota. This code is found in ARSD 24:08:03.
71. Sieh's failure to report his February 2, 2014 arrest at the time of the 2014 Hearing violates the teacher's code of ethics.
72. Sieh's untruthful testimony at the 2014 Hearing and felony DUI conviction in 2014 violate both the teacher's code of ethics and administrator's code of ethics. ARSD 24:11:03:01(3) and ARSD 24:08:03:02(7)(8).
73. Sieh is obligated to comply with codes of ethics for both teachers and administrators. Sieh admits this.

CONCLUSIONS OF LAW

1. Robert B. Anderson was duly designated and appointed as independent hearing examiner pursuant to ARSD 24:18:02:03 by the Secretary of the Department to hear this matter relating to the Department's Notice of Denial of Certificate issued to Sieh.
2. The Department has jurisdiction over the parties and the subject matter of this proceeding.
3. A South Dakota Teaching Certificate or an Administrator's Certificate may be revoked, suspended, or not issued for violation of the Teacher's and/or Administrator's code of ethics as set forth by South Dakota administrative rule.
4. SDCL 13-42-7 and 13-42-9 provide that the South Dakota Department of Education may refuse to issue or renew, revoke or suspend any certificate for violation of the applicable code of professional ethics or moral turpitude.
5. The Secretary of the South Dakota Department of Education had the burden of going forward and had the burden of proof on whether Sieh committed acts or omissions which justified the denial, non-issuance, suspension or revocation of his teaching certificate and administrator's certificate as permitted by South Dakota Law.
6. The Secretary of the South Dakota Department of Education has the burden of proof on the issue of whether Sieh violated the South Dakota Teacher's Code of Ethics and/or the South Dakota Administrator's Code of Ethics by a preponderance of the evidence.
7. The Secretary of the Department of Education has met her burden of proof and shown by a preponderance of the evidence that Sieh violated both the South Dakota Teacher's Code of Ethics, and the South Dakota Administrator'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. The Secretary has also met her burden of proof on these subjects by


clear and convincing evidence.

8. The Secretary of the Department of Education has met her burden of proof and shown by a preponderance of the evidence that Sieh engaged in acts which resulted in criminal convictions.
9. Sieh violated that portion of the South Dakota Teacher's and Administrator'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." ARSD 24:08:03:02(8) and ARSD 24:11:03:01(3).
10. Sieh's felony conviction resulting from the February 2, 2014 arrest violates ARSD 24:08:03:02 (7).
11. The Department has the power and authority to refuse to issue or renew, revoke or suspend any certificate for violation of the code of professional ethics.
12. Sieh has offered evidence of mitigating circumstances as it relates to his good faith participation in alcohol rehabilitation and his employment activities at the St. Francis Indian School. Those things will be considered.
13. No criminal convictions which were made known at the 2014 Hearing are being relied upon by the Independent Hearing Examiner in determining the present issues.
14. Sieh should not be permanently prohibited from holding either a teacher's or administrator's certificate in the state of South Dakota.
15. Having heard all the live testimony and having reviewed all of the exhibits admitted into evidence at the hearing, 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 Independent Hearing Examiner that some punitive action should be taken and is justified.
16. Sieh has not held a valid certificate since July, 2013.
17. Any teacher's or administrator's certificate held by Sieh issued by the state of South Dakota should be suspended retroactively to July 4, 2013, and remain suspended until such time as Sieh applies for and has a new certificate granted or renewed.
18. Sieh shall be prohibited from applying for and receiving either a South Dakota teaching certificate or a South Dakota administrator's certificate for a finite period of time, commencing retroactively to August, 2015, with such suspension expiring at midnight, December 31, 2017.
19. At the conclusion of this period of suspension, Sieh must reapply and meet all requirements for certification at that time to qualify for a certificate. ARSD 24:18:04:02.

An Order consistent with these Findings of Fact and Conclusions of Law shall be issued.

Dated this 5th day of February, 2016.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
ROBERT B. ANDERSON
Independent Hearing Examiner

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

DIVISION OF THE SECRETARY
SOUTH DAKOTA DEPARTMENT OF EDUCATION

In re: Certification Application of BRIAN
CHARLES SIEH

DSE 2015-13

**ORDER REGARDING RESPONDENT'S
SOUTH DAKOTA TEACHER'S AND
ADMINISTRATOR'S CERTIFICATE**

Pursuant to the authority granted to the undersigned Independent Hearing Examiner by SDCL 13-42 and ARSD Art. 24:18 and his prior appointment, and based on the Findings of Fact and Conclusions of Law which are hereby incorporated by this reference, it is hereby

ORDERED, that the South Dakota Department of Education through the Office of Certification and Teacher Quality has a factual and legal basis to refuse to issue Brian Charles Sieh either a South Dakota Teacher's Certificate or a South Dakota Administrator's Certificate, or renew said Certificates, pursuant to his application which was activated in August, 2015. It is further

ORDERED, that any active Teacher's or Administrator's Certificate held by Sieh and issued by the state of South Dakota be suspended unless and until the Department of Education grants and approves some additional application for issuance or renewal of said Certificate. It is further

ORDERED, that on or after midnight on December 31, 2017, Sieh may reapply for an issuance of either a South Dakota Teacher's Certificate and/or a South Dakota Administrator's Certificate with the South Dakota Department of Education. It is further

ORDERED, that this Order and the Findings of Fact and Conclusions of Law will be served upon Sieh by the Department of Education.

Dated this 5th day of February, 2016.

MAY, ADAM, GERDES & THOMPSON LLP

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

