

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

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In the Matter of the        )  
Teaching Certificate of    )  
Jessica Nielsen.            )

DSE 2015-17  
**ORDER REGARDING  
SOUTH DAKOTA TEACHING  
CERTIFICATION**

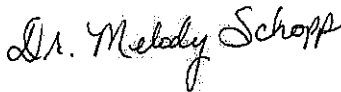
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Pursuant to the authority granted to the Secretary of the South Dakota Department of Education by SDCL 13-42-9, 13-42-15, and 13-43-28.1, following receipt of a Complaint from the South Dakota Professional Teachers Practices and Standards Commission, and after review of the entire record herein, the Secretary enters the following order:

1. The Secretary has entered Findings of Fact and Conclusions of Law, which are hereby incorporated into this Order by this reference as if set forth in full.
2. Based upon the foregoing Findings of Fact and Conclusions of Law, the South Dakota teacher Certificate No. 73095 issued to Jessica Nielsen is hereby **immediately permanently revoked**.
3. Notification of this Order will be placed on the NASDTEC registry and be placed in Nielsen's permanent certification file within the South Dakota Department of Education.
4. This Order and incorporated findings and conclusions are a public record pursuant to SDCL 13-42-17.1.

This constitutes final agency action.

Dated this 21st day of December, 2015.



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Dr. Melody Schopp, Secretary  
South Dakota Department of Education

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

In the Matter of the  
Teaching Certificate of  
Jessica Nielsen.

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)                                    DSE 2015-17  
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**FINDINGS OF FACT  
AND CONCLUSIONS OF LAW  
OF THE SECRETARY**

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FINDINGS OF FACT

1. Any Finding of Fact more properly designated as a Conclusion of Law is hereby so designated.
2. The Secretary adopts the following Findings of Fact of the South Dakota Professional Practices and Standards Commission, attached as Exhibit A: Findings of Fact 1-38 and 40-48.
3. The Secretary makes the following additional Findings of Fact based upon the record:
  - a. Nielsen testified that she replied to the student’s personal messages because they had established a “trust relationship” and he needed someone to talk to, so she returned his personal messages with “things he wanted to hear.”
  - b. At the time of the inappropriate communication between the student and Nielsen, student was sixteen years old, and Nielson was twenty-seven years old.
  - c. Nielsen, as the teacher, was in a position of authority over the student, whom she admitted was experiencing mental and physical difficulties.
  - d. Nielsen abused her authority through her actions.
  - e. At the hearing, the parties stipulated to supplement the record with the administrative decision regarding Nielson’s Nebraska teaching certificate.
  - f. The Nebraska Professional Practices and Standards Commission recommended, and the Nebraska State Board of Education imposed, a five year revocation of Nielson’s Nebraska teaching certificate effective August 31, 2015.

## CONCLUSIONS OF LAW

1. Any Conclusion of Law more properly designated as a Finding of Fact is hereby so designated.
2. The Secretary adopts Conclusions of Law 49-61 of the South Dakota Professional Practices and Standards Commission attached as Exhibit A.
3. The Secretary makes the following additional Conclusions of Law based upon the record:
  - a. The authority to issue, deny, suspend and revoke certificates is vested with the Secretary of the Department of Education, and the Secretary has personal and subject matter jurisdiction in this matter. SDCL 13-42-4, 13-42-7, 13-42-9, 13-42-15, 13-43-28.1.
  - b. Although the Commission can make a recommendation regarding a revocation or specific length of suspension, this recommendation is not binding on the Secretary.
  - c. The decision of the Nebraska State Board of Education is not binding regarding Nielson's South Dakota certificate.
  - d. Nielsen's admission that she made a mistake is a mitigating factor.
  - e. Nielsen's active participation in the exchange of sexual communications and at least one partially nude photograph with a current student over whom she was in a position of authority, amounting to numerous violations of the code of ethics, are aggravating factors.
4. Based upon the foregoing Findings of Fact and Conclusions of Law, Nielsen's South Dakota teacher Certificate No. 73095 should be permanently revoked, effective immediately.

Dated this 21st day of December, 2015.



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

STATE OF SOUTH DAKOTA	)	PROFESSIONAL TEACHERS
	ss:	PRACTICES AND STANDARDS
COUNTY OF HUGHES	)	COMMISSION
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EWING PUBLIC SCHOOLS,	)	
	)	PTPSC 2015-06
Complainant,	)	
	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
v.	)	AND ORDER
	)	
JESSICA NIELSEN,	)	
	)	
Respondent.	)	
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This matter came on for hearing pursuant to the provisions of SDCL § 13-43-28 before the South Dakota Professional Teachers Practices and Standards Commission on October 8, 2015, at 10:30 a.m. Central Time in Conference Room 1, MacKay Building, 800 Governors Drive, Pierre, South Dakota, as previously scheduled and duly and formally noticed for hearing.

The following members of the South Dakota Professional Teachers Practices and Standards Commission (Commission) were present at the hearing: Connie Gretschmann, Thomas Keck, Bev Kopren, and Kenneth "Lance" Vander Vorst. Paul E. Bachand and Holly Farris, counsel for the Commission, and Ferne Haddock, Executive Secretary of the Commission, were also present. Ewing Public School Superintendent Alberta Moore was present and appeared through counsel Thomas Harmon of Pierre, SD. Respondent Jessica Nielsen was personally present and represented by counsel Andrew Marshall of Creighton, NE.

Prior to the hearing, counsel for the complainant and respondent prepared and presented a joint stipulation to the Commission. Based upon the facts presented in the stipulation, evidence presented at the hearing, and the documents contained in the official file, the Commission makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Respondent is the holder of a valid South Dakota Teacher's Certificate, No. 73095-0, issued on February 1, 2011, and expiring on July 1, 2016.
2. On May 15, 2015, Ewing Public Schools, in Ewing, Nebraska, through its attorney Karen Haase, filed a complaint against Nielsen with the Commission.
3. The complaint alleged that Nielsen violated sections of the South Dakota Code of Professional Ethics for Teachers as a result of her interactions with a 16-year-old male student at Ewing Public School.
4. The complaint was served on Nielsen on or about May 20, 2015.



5. Nielsen admitted in her response to the complaint "that she engaged in inappropriate conduct through text messaging and Snapchat messages with a student."
6. In her response, Nielsen informed the Commission that a criminal charge stemming from the same underlying conduct as the South Dakota ethics complaint had been filed in Holt County, Nebraska. Nielsen also informed the Commission that a complaint was also pending in front of the Commission of Education for the State of Nebraska.
7. A notice of hearing was served on the parties on or about July 6, 2015. The notice of hearing advised the parties that a hearing had been set for August 10, 2015, at 1 p.m. or as soon thereafter as may be heard at Conference Room 4, Second Floor, 800 Governors Drive, Pierre, South Dakota.
8. Nielsen requested a continuance of the complaint until the resolution of the criminal charge against her in Holt County, Nebraska.
9. An order granting the continuance until the resolution of the criminal charges against Nielsen was entered by the Commission and served on the parties on or about July 31, 2015. By agreement of the parties, the order also prohibited Nielsen from accepting employment in a public or accredited school within the state of South Dakota until the resolution of the complaint.
10. Nielsen was charged with one count of Contributing to the Delinquency of a Minor (Class 1 Misdemeanor; Neb. Rev. Stat. § 28-709) in Holt County, Nebraska, as a result of the communications with T.B., a 16-year-old male sophomore at Ewing Public School.
11. On or about August 5, 2015, Nielsen pled guilty to and was convicted of Contributing to the Delinquency of a Minor in Holt County, Nebraska. Nielsen was sentenced to a fine of \$250.00.
12. An amended notice of hearing was served on the parties on or about August 21, 2015. The notice of hearing advised the parties that a hearing had been scheduled for October 8, 2015, at 10:30 a.m. or as soon thereafter as may be heard at Conference Room 1, First Floor, 800 Governors Drive, Pierre, SD.
13. On or about September, 2015, counsel for the parties filed a joint stipulation with the Commission, stipulating to certain facts and presenting a recommended sanction.
14. On October 8, 2015, Nielsen appeared at the scheduled hearing.
15. Nielsen was employed by Ewing Public Schools as a K-12 music education teacher, from the 2011-2012 school year through the 2014-2015 school year.
16. On or about April 23, 2015, Ewing High School Principal Greg Appleby was contacted by the parents of T.B. about text messages the parents had discovered on T.B.'s phone.

17. The parents discovered 99 text messages exchanged between their son and Nielsen on April 22, 2015.
18. The text messages, a partial transcript of which was attached to the complaint as Exhibit A, included the following exchange on April 22:

JN (Jessica Nielsen): Ok, you looked f\_cking hot today. That clear enough?  
TB (student): Really?  
JN: Mmmmm, YES  
TB: How?  
JN: Getting to see you again made my day!!!  
TB: How did I look good  
JN: You looked good with your shirt tucked in this morning, was kinda bummed when you undid it  
TB: Sorry  
JN: Yesterday and today, you look freaking ripped through your shoulders....major turn on  
TB: Really?  
JN: I struggle to keep my hands to myself

19. The text messages also included the following exchange on April 22:

JN (Jessica Nielsen): What are you doing now  
TB (student): Working on a disk  
JN: I'll give you something to work on (wink)  
TB: That's so hot  
JN: You might have to get dirty....with me  
TB: The bolt may get stuck in the hole  
JN: Oh my....gonna put it all the way in?  
TB: Oh yeah  
JN: I need it. I need you.  
JN: I need it. I need you.  
TB: I need you sucking it  
JN: Gonna have to put it somewhere else besides just my mouth  
TB: Oh yeah  
JN: You got me so f\_cking hot right now

20. After April 6, 2015, the communications between Nielsen and T.B. escalated into exchanging photos via Snapchat, a picture-sharing internet application.
21. T.B. sent Nielsen approximately ten photos via Snapchat, at least two of which depicted him nude from the waist down while sexually aroused.
22. Nielsen sent T.B. approximately four photos via Snapchat, at least one of which depicted her nude from the waist up.

23. T.B. was a 16-year-old sophomore at the time of the reported communications.
24. T.B. was enrolled in one of Nielsen's music education classes at the time of the communications and had been enrolled in her classes in prior academic years.
25. Nielsen and T.B. had communicated via text for school-related purposes such as scheduling or coordinating transportation during the spring 2015 semester, prior to April 1, 2015.
26. Nielsen and T.B. developed a "trust relationship" wherein Nielsen acted as someone for T.B. to talk to about issues he was dealing with in his personal life such as diabetes, anxiety, and bullying.
27. Nielsen did refer T.B. to seek out the school principal to discuss his issues with bullying at one point.
28. The inappropriate communication began on or about April 1, 2015, and ceased on or about April 23, 2015, when T.B.'s parents notified the school of the text messages found on their son's phone.
29. T.B. initiated the escalation of the text messages to a sexual nature, including sending the first nude photograph.
30. Nielsen did not notify either school administration or T.B.'s parents when the text messages became inappropriate and sexual.
31. Nielsen did not cut off communication with T.B. when the text messages became inappropriate and sexual.
32. Nielsen and T.B. had an "understanding" that they would not flirt at school.
33. Nielsen and T.B. had no additional contact in person or via phone after April 22, 2015.
34. No sexual contact occurred between Nielsen and T.B.
35. Nielsen was placed on administrative leave by Ewing Public Schools on April 23, 2015, and remained on administrative leave for the remainder of the 2014-2015 academic year.
36. Nielsen had submitted her resignation to Ewing Public School on March 27, 2015, informing them she would not be returning for the following academic year. Her resignation was accepted by the Ewing Board of Education at its meeting on April 16, 2015.
37. Nielsen had resigned from Ewing Public Schools in order to take a job in Bon Homme, South Dakota. Nielsen subsequently withdrew her acceptance of employment at the Bon Homme School District.

38. Nielsen testified that T.B. initiated the personal, non-school related, communications between them, including sending her a photo of himself nude from the waist down and asking her for a photo in return.
39. Nielsen replied to T.B.'s personal messages because they had established a "trust relationship" and he needed someone to talk to, so she returned his personal messages with "things he wanted to hear."
40. Nielsen admitted that she enjoyed the attention from T.B.
41. The text messages show that Nielsen was an active participant in the communications and did not stop the exchange of texts when they escalated into a sexual nature and nude photographs.
42. The testimony of Nielsen that she exchanged messages with TB because she felt he needed someone to talk to and that she felt she could not report the conversations without T.B. being subject to additional personal issues, bullying, or discipline at school is not consistent with the volume of messages exchanged, the inappropriate sexual innuendo and language used in the texts, or the photos that were sent and received.
43. Nielsen admitted that she made a mistake by sending text messages and photographs to T.B.
44. Nielsen has a strong desire to return to education.
45. The text messages and photos exchanged between Nielsen and T.B. constituted inappropriate communication between a teacher and a student.
46. Nielsen's inappropriate communications with T.B. demonstrate a lack of judgment as to what constitutes appropriate communication with students.
47. Nielsen's inappropriate communications with T.B. demonstrate a lack of judgment as to appropriate boundaries between students and teachers.
48. Any finding of fact improperly denoted as a conclusion of law is hereby incorporated as a finding of fact.

Based upon the foregoing findings of fact, the Commission hereby issues the following conclusions of law:

#### CONCLUSIONS OF LAW

49. The Commission has jurisdiction over this matter pursuant to SDCL §§ 13-43-28 and 13-42-28.1, SDCL Ch. 1-26, and the Administrative Rules of South Dakota, Chapters 24:08:03 and 24:08:04:01.



50. The burden of proof in this matter as a contested case hearing is clear and convincing. In re: Setliff, 2002 SD 58, 245 N.W.2d 601, 605.
51. The South Dakota Code of Professional Ethics for Teachers provides at ARSD 24:08:03:01 that in fulfilling their obligations to the students, educators shall act as follows:
- (4) Make a reasonable effort to maintain discipline and order in the classroom and the school system to protect the students from conditions harmful to learning, physical and emotional well-being, health, and safety;
  - (5) Conduct professional business in such a way that they do not expose the students to unnecessary intimidation, embarrassment, or disparagement;
  - (10) Not engage in or be a party to any sexual activity with students including sexual intercourse, sexual contact, sexual photography or illicit sexual communication.
52. The South Dakota Code of Professional Ethics for Teachers provides at ARSD 24:08:03:02 that in fulfilling their obligations to the public, educators shall act as follows:
- (7) Engage in no act that results in a conviction;
  - (8) Exemplify high moral standards by not engaging in or becoming a party to such activities as fraud, embezzlement, theft, deceit, moral turpitude, gross immorality, sexual contact with students, illegal drugs, or use of misleading or false statements.
53. The complainant has met its burden of proof as a result of the exhibits entered into the record and testimony presented at the hearing.
54. Clear and convincing evidence exists that Nielsen violated ARSD 24:08:03:01(4), (5), and (10).
55. Clear and convincing evidence exists that Nielsen violated ARSD 24:08:03:02(7) and (8).
56. Nielsen violated ARSD 24:08:03:01(4) in that she failed to protect her student from conditions that were harmful to learning, as well as the student's emotional well-being, health, and safety.
57. Nielsen violated ARSD 24:08:03:01(5) in that she failed to conduct professional business in a way that did not expose the student to unnecessary embarrassment or disparagement.
58. Nielsen violated ARSD 24:08:03:01(10) in that she engaged in or was a party to sexual activity with a student, including sexual photography and illicit sexual communication.
59. Nielsen violated ARSD 24:08:03:02(7) in that she engaged in an act that resulted in a conviction.
60. Nielsen violated ARSD 24:08:03:02(8), in that she did not exemplify high moral standards by engaging in and becoming a party to such activities as moral turpitude.

61. Any conclusion of law improperly denoted as a finding of fact is hereby incorporated as a conclusion of law.

Based upon the foregoing findings and conclusions, it is hereby

ORDERED that this matter be referred to the Secretary of the South Dakota Department of Education for proceedings to suspend the teaching certificate of Nielsen as provided for in SDCL § 13-43-28.1. The Commission recommends a suspension period effective of the date the applicable order is signed by the Secretary of Education and ending on July 1, 2018. The Commission also recommends that, upon her re-entry into the teaching profession, Nielsen be required to obtain a professional mentor within the teaching profession, inform the Commission of the mentor's identity, and maintain a mentor/mentee relationship with that person for a period of two years for the purpose of professional development and guidance. It is further

ORDERED that a copy of the Findings of Fact, Conclusions of Law, and Order be sent to the parties herein. It is further

ORDERED that a copy of the Findings of Fact, Conclusions of Law, and Order be provided to the Secretary of the South Dakota Department of Education for placement on the National Association of State Directors of Teacher Education and Certification Clearinghouse and that it remain with the Department's permanent certification file.

ORDERED that the Department may release the Findings of Fact, Conclusions of Law and Order to the certification office of any state in which the respondent holds or applies for a certificate.

Dated this 14<sup>th</sup> day of November, 2015.

PROFESSIONAL TEACHERS PRACTICES  
AND STANDARDS COMMISSION

By: Thomas J. Keck  
Thomas Keck, Chair