

6. A hearing on the complaint was held on October 8, 2015, in Conference Room 1, MacKay Building, 800 Governors Drive, Pierre, South Dakota, at 1:00 p.m. Central Time.

7. Wilkinson appeared at the October 8, 2015, hearing and requested that a private hearing be held. Wilkinson appeared pro se at the hearing.

8. When asked whether he admitted or denied the allegations made in the complaint, Wilkinson, on the prior advice of counsel, invoked his Fifth Amendment right against self-incrimination and did not provide either admissions or denials to the allegations.

9. As a result of Wilkinson's invocation of his Fifth Amendment right against self-incrimination, the Commission continued the hearing until the resolution of criminal charges pending against Wilkinson in Minnehaha County, South Dakota.

10. On October 26, 2015, Wilkinson submitted a statement of voluntary surrender of his South Dakota teaching certificate to the Commission.

11. On or about April 22, 2016, the Commission received information that the criminal case against Wilkinson in Minnehaha County had been resolved.

12. A due and proper amended notice of hearing was served on Wilkinson advising him of the time and place of the continued hearing.

13. A continued hearing on the complaint was held on May 24, 2016, in Conference Room 1, MacKay Building, 800 Governors Drive, Pierre, South Dakota, at 1:00 p.m. Central Time.

14. Wilkinson failed to appear at the May 24, 2016, hearing. Because the hearing was continued from the previous hearing on October 8, 2015, wherein Wilkinson had requested a private hearing, however, a private hearing was held on May 24, 2016. Counsel for the Complainant did not object to a private hearing being held.

15. Because the October 8, 2015, hearing was continued prior to Wilkinson admitting or denying the allegations of the Complaint, Wilkinson's failure to appear at the May 24, 2016, hearing constitutes an admission to the allegations contained in the Complaint.

16. On or about July 10, 2015, Wilkinson was charged with four counts of use of a camcorder/camera to secretly record body of persons (SDCL § 22-21-4; class 1 misdemeanor) in Minnehaha County, South Dakota.

17. The complaint, Minnehaha Co. CRI15-4568, alleged that Wilkinson had, between June 2013 and June 2015, utilized a visual recording or photographic device to photograph or visually record Jane Does #1-3 and an additional victim without clothing or under or through the clothing, for the purpose of viewing the body of, or the undergarments worn by that other person, without the consent or knowledge of that person, with the intent to self-gratify, to harass or embarrass and invade the privacy of that other person, under circumstances in which the other person has a reasonable expectation of privacy.

18. The affidavit in support of an arrest warrant on the charges states that Wilkinson was observed utilizing a camera located in his shoe to photograph up women's skirts in public locations such as a HyVee grocery store in Sioux Falls, South Dakota.

19. Wilkinson informed investigating law enforcement officers that he knew what he was doing was wrong, had been doing this behavior for approximately two years, and had been doing this behavior an average of twice a week in retail-type stores. Wilkinson also stated to law enforcement that this is a behavior that needs to be corrected, that it was a horrible decision, and that it needs to stop.

20. Wilkinson informed investigating law enforcement officers that his shoe camera could store videos, which he would download on his home computer and watch. Wilkinson would then delete the videos. He did save two on the camera, as those two videos were his favorites.

21. After executing a search warrant, law enforcement did locate two videos on Wilkinson's shoe camera, as well as numerous still shots recovered from the camera's memory. These files showed footage and images of under women's skirts/dresses showing bare legs, buttocks, and crotch areas. The images showed easily identifiable popular retail locations, such as the Sioux Falls area Farmer's Market.

22. At the time the criminal complaint was filed, Mr. Wilkinson was employed by the Sioux Falls School District as a 9-12 social studies teacher and soccer coach at Roosevelt High School.

23. Roosevelt High School Principal Tim Hazlett was informed by law enforcement on July 10, 2016, that Wilkinson would be arrested on charges of utilizing a shoe camera to photograph up women's skirts in the Sioux Falls area.

24. Hazlett was informed by law enforcement that there was no evidence that Wilkinson had used the shoe camera while at Roosevelt High School.

25. Wilkinson resigned from all positions at Roosevelt High School via an email to Hazlett on July 10, 2016.

26. Wilkinson subsequently pled guilty to two counts of use of a camcorder/camera to secretly record the body of persons (SDCL 22-21-4; class 1 misdemeanor). On April 1, 2016, he was sentenced to 365 days in jail on Count 1 and 120 days in jail, with 120 days suspended, on Count 2. Conditions of the suspended jail time for Count 2 included: no contact with the victim or locations of the offenses until April 1, 2018; attend counseling and provide proof of attendance to the state's attorney's office every other month until April 1, 2018, or until released by the counselor; attend AA twice a week with proof of attendance to the state's attorney's office until April 1, 2018; and to obey all laws until April 1, 2020.

27. Complainant orally alleged at hearing that Wilkinson had violated the provision of the Code of Ethics that requires educators to engage in no act resulting in a conviction. ARSD 24:08:03:02(7).

28. As shown by a majority of the evidence introduced, Wilkinson did not exemplify the high moral standards expected of educators by engaging in use of a shoe camera to take photographs up the skirts of unknowing women in public places.

29. As shown by the evidence presented at hearing, Wilkinson engaged in conduct resulting in a conviction.

30. Wilkinson's statement of voluntary surrender of his teaching certificate, combined with his guilty pleas to the charges described above, supports the finding that Wilkinson does not exemplify the high moral standards expected of educators.

31. 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

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

33. Only the Secretary of Education has the authority to issue, suspend, or revoke a teaching certificate. SDCL § 13-42-4, 13-42-9. Accordingly, the Commission does not have authority to accept Wilkinson's voluntary surrender of his teaching certificate.

34. Wilkinson's failure to appear at the continued hearing acts as an admission to all items alleged in the complaint.

35. 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.

36. 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 . . . moral turpitude[.]

37. The Complainant has met its burden of proof as a result of the exhibits entered into the record regardless of Wilkinson's default due to his failure to appear at the hearing.

38. Clear and convincing evidence exists that Wilkinson violated ARSD 24:08:03:02(7).

39. Clear and convincing evidence exists that Wilkinson violated ARSD 24:08:03:02(8).

40. 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 permanently revoke the teaching certificate of Wilkinson as provided for in SDCL § 13-43-28.1. 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 the State Directors of Teacher Education and Certification Clearinghouse and that it remain with the Department's permanent certification file. It is further

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 21st day of June, 2016.

PROFESSIONAL TEACHERS PRACTICES
AND STANDARDS COMMISSION

By: Connie Gretschmann
Connie Gretschmann, Acting Chair