

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

In re: Certification Application of)
OSCEOLA BLUEHORSE) **DSE: 2022-06**
) **ORDER DENYING**
) **EDUCATOR CERTIFICATE**

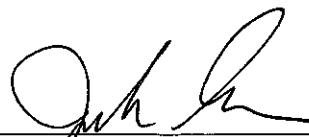
In accordance with and pursuant to the authority granted to the Secretary by SDCL § 13-42-4 and ARSD article 24:18, and after review of the record herein, the Secretary issues the following Order:

1. The Secretary affirms and adopts the proposed Findings of Fact #1, 2, and 4- 41, and Conclusions of Law #1, 2, 4-6, and 8-9.
2. Finding of Fact #3 is revised to read: The Department’s decision to issue the Notice of Intent to Deny in regard to the 2022 Application of Bluehorse was based, in whole or in part, on the Department’s determination that Bluehorse actions constituted moral turpitude when he failed to disclose his complete criminal history on his application and failed to disclose the nature of certain criminal charges that had been filed against him in 2019 based on the altercation with his son.
3. Conclusion of law #3 is revised to read: SDCL 13-42-9 provides that the Secretary of the Department of Education has the power and authority to refuse to issue an Educator’s Certificate for a variety of reasons including but not limited to committing act or acts that constitute moral turpitude as defined in SDCL 22-1-2(25).

4. Conclusion of law #7 is revised to read: Bluehorse committed acts that constituted acts of moral turpitude by not completing his Application under oath with full candor and honesty.
5. The Application of Osceola Bluehorse for certification is DENIED.
6. Osceola Bluehorse is prohibited from reapplication for an educator certificate in the State of South Dakota until December 31, 2023. Thereafter, he may apply for such certificate, and the Department of Education may not rely solely on the specific events described in the Findings of Fact and Conclusions of Law dated February 8, 2023.
7. The Order and Findings of Fact and Conclusions of Law are a public record pursuant to SDCL 13-42-17.1 and ARSD 24:18:04:05.
8. Notification of this denial is to be placed on the NASDTEC registry and be placed in applicant's permanent certification file within the South Dakota Department of Education.

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

Dated this the 6th of April, 2023.



Dr. Joseph Graves
Secretary
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

DIVISION OF THE SECRETARY

S.D. DEPT. OF EDUCATION

In Re: Certification Application of OSCEOLA BLUEHORSE	DSE 2022-06 FINDINGS OF FACT AND CONCLUSIONS OF LAW
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Osceola Bluehorse (Bluehorse) made a timely request for hearing in regard to a written "Notice of Intent to Deny Educator's Certificate" which notice was dated July 20, 2022.

A hearing on Bluehorse's timely request was held before Robert B. Anderson, duly appointed independent hearing examiner, on November 29, 2022, at 10:00 o'clock a.m. CST in the Library Commons of the MacKay Building, First Floor, 800 Governor's Drive, in Pierre, South Dakota. The hearing was a private hearing pursuant to the request of Bluehorse. The hearing was held pursuant to written Notice of Hearing.

The South Dakota Department of Education appeared through Kathy Riedy, Administrator of Accreditation of the South Dakota Department of Education, and Amanda LaCroix, Senior Staff Attorney for the South Dakota Department of Education. Bluehorse 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 all the testimony, and having reviewed the exhibits and other evidence offered and received into evidence, as well as a written transcript of the November 29, 2022 hearing, as independent hearing examiner, I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Bluehorse initiated his application for an Alternative Preliminary Initial Certificate with the South Dakota Department of Education on or about March 31, 2022.
2. Based primarily on a character and fitness review, the South Dakota Department of Education (Department) issued a "Notice of Intent to Deny" the application initiated by Bluehorse through a Notice of Intent to Deny dated July 20, 2022.
3. The Department's decision to issue the Notice of Intent to Deny in regard to the 2022 Application of Bluehorse was based, in whole or in part, on the Department's determination that Bluehorse failed to disclose his complete criminal history on his application and failed to disclose the nature of certain criminal charges that had been filed against him in 2019 based on an altercation with his son.

4. In his Application, Bluehorse responded to the question number 1 “Have you ever been arrested or charged with any criminal offense?” by answering “Yes”.

5. Bluehorse explained the answer described in the preceding finding by stating that it arose when he was a teenager.

6. There is no reason to believe that the answer Bluehorse gave to question number 1 on his Application was incorrect or misleading as it related to the 1999 incident.

7. Bluehorse did not mention or identify the criminal charges from 2019 that had been filed against him which included 6 counts, including one of aggravated assault – domestic, one of abuse or cruelty to minor – victim age 7 or above, and four counts of simple assault – domestic.

8. In regard to the 2019 charges, Bluehorse was charged by indictment in the Circuit Court for Lincoln County, Second Judicial Circuit. He was arrested and jailed for a time. He was released on bond, and the charges were ultimately dismissed. He was represented by legal counsel in regard to those charges.

9. Question number 1 on the conduct review portion of his Application was very plain and easily understandable by anyone seeking any type of an Educator’s Certificate in South Dakota. Nevertheless, Bluehorse did not respond to that question accurately and did not reveal the 2019 criminal charges.

10. Bluehorse should have identified the 2019 charges in his response to question number 1 of the conduct survey and, potentially, in regard to question number 3 since the offenses related to an alleged assault on his son, who was a minor at the time.

11. In a telephonic interview with Department personnel after the Department conducted a character and fitness review and assembled certain records which identified the 2019 incident, Bluehorse did discuss the incident.

12. Bluehorse has satisfied the educational and preliminary requirements for an Alternative Preliminary Initial Certificate.

13. Bluehorse has obtained a bachelor’s degree and participated in the requisite suicide prevention training for the certificate he applied for.

14. At the time of the hearing, Bluehorse was teaching at the Tiospa Zina School which is not accredited by the South Dakota Department of Education.

15. Subsequent to his arrest and release in 2019, the Court modified the conditions of Bluehorse's release indicating a decreased level of concern over his behavior and the likelihood that he would repeat that behavior.

16. The South Dakota Department of Social Services became involved through Child Protection Services after the January, 2019 incident.

17. For a period of time, the minor children of Bluehorse, who lived in his home, were removed from his home and custody.

18. Ultimately, Child Protection Services determined that they could not substantiate that Bluehorse had committed any acts of abuse towards his son, who was involved in the January, 2019 incident.

19. Bluehorse began teaching math-related subjects at Tiospa Zina in 2019 and has worked there continuously since.

20. Bluehorse has been a valued teacher at Tiospa Zina and is dedicated to the performance of his duties in that capacity.

21. There is no reason, in this proceeding, to resolve the exact details of what occurred in the January, 2019 incident which led to the criminal charges against Bluehorse.

22. The January, 2019 altercation between Bluehorse and his son did occur, and Bluehorse admits that some type of altercation occurred which led to his arrest and criminal charges.

23. Bluehorse failed to disclose the 2019 incident, the criminal charges against him which resulted from the incident, and the involvement of Child Protection Services in his Educator's Certificate Application to Department of Education.

24. A person of Bluehorse's intelligence and education should have determined that disclosure of the events described in the preceding finding was necessary and required by the application he initiated.

25. The 1999 incident, standing alone, was not relied on as a basis by the Department of Education for denial of the Application of Bluehorse.

26. At the time of the 1999 incident, Bluehorse was 16 years old and a juvenile.

27. Bluehorse's desire to teach is sincere, and he appears to be a good candidate to teach in the future.

28. The evidence on the record reflects that Bluehorse is a thoughtful, intelligent, and dedicated teacher and parent with many positive personal characteristics.

29. The evidence in the record reflects that Bluehorse is a valued teacher at Tiospa Zina and has a positive effect on his students.

30. At the hearing, Bluehorse had no credible explanation as to why he failed to disclose the arrest and criminal charges arising from the January, 2019 incident.

31. His attempted explanations were not credible or persuasive.

32. This Hearing Officer has had an opportunity to observe all witness testimony other than those two witnesses who testified by telephone, and he has read the transcript of the hearing as well as reviewed all exhibits received into evidence. This enables the Hearing Officer to make a determination on both credibility and demeanor.

33. Bluehorse did not respond to the character and fitness questions contained in his Application for Alternative Preliminary Initial Certificate with full candor and honesty.

34. A denial of the Application of Bluehorse in this proceeding should not prevent Bluehorse from applying again in the future for some type of South Dakota Educator's Certificate given his positive characteristics.

35. It is this Hearing Officer's determination that the evidence proffered by the Department of Education is credible and persuasive.

36. Bluehorse should have answered yes to question number 9 of the conduct review statement portion of the application.

37. When completing the Application he initiated, Bluehorse completed the Application online and electronically signed an oath of affirmation prior to submitting the Application, which declared under penalty of perjury that the Application and accompanying documents are true, accurate, complete, and correct to the best of his knowledge.

38. Contrary to his oath of affirmation, the Application completed and signed by Bluehorse was not true, accurate, complete, and correct.

39. Bluehorse was cooperative during a telephone conversation with representatives of the Department of Education which was scheduled after they determined his written Application may not be accurate and complete.

40. After the January, 2019 incident, Bluehorse's minor daughter was returned to him by Child Protection Services in three days, but his son was returned to him in approximately two months.

41. When Bluehorse applied for employment at Tiospa Zina, he disclosed the January, 2019 incident, and the School Board reviewed the facts and circumstances related to that incident prior to his hiring.

CONCLUSIONS OF LAW

1. Robert B. Anderson was duly designated and appointed as Independent Hearing Officer pursuant to ARSD 24:18:02:03 by the South Dakota Secretary of Education, and thereby designated to preside over the contested case relating to the denial of the Bluehorse Application for an Alternative Preliminary Initial Certificate with the South Dakota Department of Education.

2. The Department of Education has jurisdiction over the Parties and the subject matter of this proceeding.

3. SDCL 13-42-9 provides that the Secretary of the Department of Education has the power and authority to refuse to issue an Educator's Certificate for a variety of reasons including but not limited to violation of the Code of Ethics, failure to fulfill any requirement for certification imposed pursuant to SDCL 13-42 or 13-43 or Administrative Rules promulgated thereto, or moral turpitude as defined in SDCL 22-1-2.

4. The South Dakota Department of Education has the burden of going forward and the burden of proof on whether Bluehorse's actions as described in the Notice of Intent to Deny justifies denial of his Application by a preponderance of the evidence.

5. The South Dakota Department of Education had the burden of proof and the burden of going forward to show by a preponderance of the evidence that it is justified in denying Bluehorse's Application for the issuance of an Alternative Preliminary Initial Certificate.

6. The South Dakota Department of Education met its burden of proof and its burden of going forward as to why it denied the issuance of the Alternative Preliminary Initial Certificate applied for by Bluehorse.

7. Bluehorse violated the South Dakota Teachers' Code of Ethics by not completing his Application under oath with full candor and honesty.

8. The South Dakota Department of Education had good cause in issuing its Notice of Intent to Deny Bluehorse's Application for the Alternative Preliminary Initial Certificate.

9. It is both the finding and conclusion of this Hearing Officer that the Department of Education's decision to deny the Application of Bluehorse for an Alternative Preliminary Initial Certificate be upheld and that Bluehorse be precluded from applying for such certification in the State of South Dakota for a period of time up through and including December 31, 2023. Thereafter, Bluehorse may apply for any type of Educator's Certificate in the state of South Dakota, through the Department of Education, and the events described in these Findings of Fact and Conclusions of Law may not be utilized to deny such application.

An Order should be entered consistent with these Findings of Fact and Conclusions of Law.

Dated this 8 day of February, 2023.



Robert B. Anderson
Independent Hearing Examiner