

STATE OF SOUTH DAKOTA)	DIVISION OF THE SECRETARY
)	
COUNTY OF HUGHES)	SOUTH DAKOTA DEP. OF ED.
)	
In re: Certification Application of)	DSE 2022-10
DAVID DESHLER)	ORDER DENYING
)	EDUCATOR CERTIFICATE

Pursuant to the authority granted to the Secretary of the South Dakota Department of Education by SDCL §§ 13-42-4, 13-42-9, and ARSD article 24:18, and after review of the record herein, the Secretary of the Department of Education enters the following ORDER:

1. The Secretary affirms and adopts the Findings of Fact #1-31 and Conclusions of Law #1-16 of the Independent Hearing Examiner, Robert B. Anderson (“Examiner”). 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 Examiner concluded Deshler’s application should be denied for several reasons:
 - a. Deshler failed to complete all application requirements, including completing a suicide awareness and prevention course, completing an Indian studies course, and payment of the full application fee. *Conclusions of Law #5.*
 - b. Pursuant to ARSD 24:18:03:02, proof of revocation or suspension from another jurisdiction “is prima facie evidence that the applicant does not meet the requirements for certification in this state.” New Mexico and California previously suspended or revoked Deshler’s teaching credentials. Deshler’s other teaching credentials in Arizona, North Carolina, and South Dakota expired and were not renewed. He taught only briefly overseas in Iraq, China, Thailand, and Dubai. Deshler’s teaching history is plagued with conduct issues, including allegations of sexual harassment and choking a student in California, a New Mexico conviction for sexual touching of a minor, and an Arizona conviction for criminal trespass at a school where Deshler previously taught. *Findings of Fact #6-7, 10-19, 21-22; Conclusions of Law #9-11, 13.*
3. The Secretary affirms the Examiner’s conclusions that “[t]he South Dakota Department of Education had good cause in issuing its Notice of Intent to Deny Deshler’s application” and that “Deshler lacks the requisite character and fitness to be issued a South Dakota Educator’s Certificate.” *Conclusions of Law # 12, 14.*
4. Based upon the foregoing Findings of Fact and Conclusions of Law, the application of David Deshler for a teaching certificate is PERMANENTLY DENIED.
5. Notification of this denial will be placed on the NASDTEC registry and be placed in

Deshler's permanent certification file within the South Dakota Department of Education.

6. The Order and incorporated Findings of Fact and Conclusions of Law are public record pursuant to SDCL 13-42-17.1 and ARSD 24:18:04:05.

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

Dated this 13th of January, 2023.



Dr. Joseph Graves
Secretary
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:	DSE 2022-10
Certification Application of DAVID DESHLER	FINDINGS OF FACT AND CONCLUSIONS OF LAW

David Deshler (Deshler) made a timely request for hearing in regard to a written "Notice of Intent to Deny Educator's Certificate" which notice was dated August 4, 2022.

A hearing on Deshler's timely request was held before Robert B. Anderson, duly appointed independent hearing examiner, on October 19, 2022, at 2:00 o'clock p.m. CDT 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 Deshler. The hearing was held pursuant to written Notice of Hearing and both parties, including Deshler, agreed that the Notice of Hearing was sufficient.

The South Dakota Department of Education appeared through Kathryn Blaha, Director for Accreditation and Certification of the South Dakota Department of Education, and Amanda LaCroix, Senior Staff Attorney for the South Dakota Department of Education. Deshler 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 October 19, 2022 hearing, as independent hearing examiner, I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Deshler initiated his current application for an Educator's Certificate with the South Dakota Department of Education effective June 10, 2022.
2. Deshler had previously held a South Dakota Educator's Certificate, which he initially applied for on April 7, 2007. That certificate was issued and expired on its own terms.
3. Deshler never utilized the Educator's Certificate, which was issued in 2007, within the State of South Dakota.



4. The South Dakota Department of Education (Department) issued a "Notice of Intent to Deny" the application initiated by Deshler on June 10, 2022, through a Notice of Intent to Deny dated August 4, 2022.

5. The Department's decision to issue the Notice of Intent to Deny in regard to Deshler's 2022 application was based, in part, on the fact that Deshler held a California Teacher's Credential which was revoked by the California Commission on Teacher Credentialing in January, 2021.

6. In addition, Deshler held teaching credentials from the state of New Mexico which were revoked in 2008.

7. The revocation of Deshler's New Mexico Teaching Certificate was, in whole or in part, based on a conviction for criminal sexual touching of a minor.

8. Deshler obtained an expungement order from the state of New Mexico in regard to the sexual touching charge.

9. Since that expungement, Deshler has not applied to be recertified in the state of New Mexico.

10. As of the date of the hearing in this proceeding on October 19, 2022, Deshler's teaching credentials were revoked in both the state of New Mexico and the state of California.

11. Deshler was also convicted of a criminal offense for trespassing in the state of Arizona. The trespass involved Deshler being or remaining on property owned or controlled by a school district where he had taught prior to that incident.

12. Deshler also held teacher's credentials in the state of Arizona which expired according to their terms and for which he has never sought renewal.

13. Deshler also held teacher's credentials in the state of North Carolina during the same approximate timeframe as he held credentials in the state of South Dakota beginning in 2007. The North Carolina credentials expired of their own terms.

14. Deshler's first teaching job was at Santa Rita Union School District in California. While teaching there, he was accused of sexual harassment by a woman. He denies the accusations. Santa Rita non-renewed Deshler because of an incident involving some girls sitting on his knee or lap during a field trip. He does not believe the non-renewal was justified.

15. Deshler's next teaching job was in Konocti, California. At Konocti, a young male student accused him of choking him. Deshler denies the allegations. The Superintendent at

Konocti advised Deshler that, if he did not resign, he would be dismissed. Konocti paid him a \$4,000.00 severance payment, and Deshler left employment there.

16. Deshler then moved to Arizona and taught computer science. In Arizona, Deshler was placed on administrative leave because a grandparent of a student complained about him (according to his own testimony).

17. Deshler returned to the Arizona school to say goodbye to staff and students, and he was arrested there for trespassing.

18. Deshler had a trial with an attorney on the trespass charge, and he was convicted.

19. After leaving the school in Arizona, Deshler applied for a continuation of his California credentials so he could teach science. He testified that he described his teaching history to California, they chose not to revoke his teaching certificate, and granted him the science supplement.

20. Prior to revocation of his California teaching credentials, Deshler's credentials were temporarily suspended.

21. In addition to teaching in California, Arizona, and New Mexico, Deshler has taught overseas at a number of teaching jobs, including in Iraq, China, Thailand, and Dubai.

22. A number of Deshler's teaching jobs have been very short in duration and have not lasted through the school year or current term.

23. There is no credible or persuasive evidence in the record to explain away the adverse employment actions such as suspension and revocation of his teaching credentials or the filing of criminal charges against him that would mitigate in favor of Deshler.

24. Based upon the entirety of the record, Deshler does not meet the qualifications for character and fitness required for a holder of a South Dakota Educator's Certificate.

25. No evidence was offered or provide in the record to explain the nature or requirements for expungements of criminal convictions in either New Mexico or California. In reviewing Hearing Exhibit 7, it appears that an expungement is similar to a suspended imposition of sentence in South Dakota.

26. Deshler did not respond to the character and fitness questions contained in his application for Educator's Certificate in South Dakota with full candor and honesty.

27. The various adverse employment actions and history of short-term employment have existed throughout Deshler's approximately 22-year career as a teacher.

28. Deshler's experience in the educational world has evidently been positive in some schools where he taught. In many others, his experience has led to one or more complaints about his relationships with students and others and has reflected questionable judgment on his part. As a result, many of his teaching jobs have been brief and were terminated prior to the end of the school year or term. Many were very short in duration.

29. Deshler's history in other jurisdictions where he has been certified as an educator reflects that a number of character and fitness-related complaints have been made against him.\

30. This Hearing Officer has had an opportunity to observe all witness testimony and has read the transcript of the hearing as well as reviewed all exhibits received into evidence. This has enabled the Hearing Officer to make a determination on credibility and demeanor.

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

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 Deshler's application for an Educator's Certificate which was made in the calendar year 2022.

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

3. *SDCL 13-42-7* provides that the Secretary of the Department of Education has the power and authority to refuse to renew a certificate for any reason which would have caused it to be revoked or suspended.

4. The South Dakota Department of Education has the burden of going forward and the burden of proof on whether Deshler's actions, history, character, and fitness justifies denial of his application by a preponderance of the evidence.

5. Both Deshler and the South Dakota Department of Education agree that Deshler is not in compliance with certain requirements relating to the issuance of a South Dakota Educator's Certificate, including but possibly not limited to complying with requirements requiring a suicide awareness and prevention course and a course in Indian studies as well as payment of his full application fee. These areas of noncompliance should not be relied upon as a basis for the denial of Deshler's application, at present, since they could be cured at a later date.

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

DIVISION OF THE SECRETARY
S.D. DEPT. OF EDUCATION

In Re: Certification Application of DAVID DESHLER	DSE 2022-10 ORDER DENYING APPLICATION FOR EDUCATOR'S CERTIFICATE
---	--

Pursuant to the authority granted to the undersigned Independent Hearing Examiner by *SDCL 13-42* and *ARSD 24:18* and based upon the 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 is determined to have both a factual and legal basis to refuse to issue an Educator's Certificate to David Deshler pursuant to his application for certification which was effective June 10, 2022; it is further

ORDERED, that the application of David Deshler for an Educator's Certificate dated approximately June 10, 2022, should be and is hereby denied, and the Notice of Intent to Deny issuance of said certificate issued by the South Dakota Department of Education and dated August 4, 2022, is hereby affirmed; it is further

ORDERED, that David Deshler, the applicant, be precluded from applying for the issuance of an Educator's Certificate in the State of South Dakota on a permanent basis; it is further

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

Dated this 19 day of December, 2022.



Robert B. Anderson
Independent Hearing Examiner