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STATE OF SOUTH DAKOTA )  
 )  
 ) :ss OFFICE OF THE SECRETARY  
 ) SOUTH DAKOTA DEPARTMENT OF EDUCATION  
 COUNTY OF HUGHES )

Professional Teachers Practices and )  
 Standards Commission )  
 700 Governors Drive )  
 Pierre, SD 57501 )  
 COMPLAINANT, )  
 v. )  
 Wade A. Mackey )  
 [REDACTED] )  
 RESPONDENT. )

Case No. TR 2010-4

ORDER  
 REVOKING RESPONDENT'S  
 SOUTH DAKOTA TEACHER CERTIFICATION

Pursuant to the authority granted to the Secretary of the South Dakota Department of Education by SDCL 13-43-28,1, 13-42-9 and 13-42-10, following receipt of a complaint for the Revocation or Suspension of a Teacher's Certificate dated September 22, 2009, from the South Dakota Professional Teachers Practices and Standards Commission, and after review of the entire record of the hearing before the Commission, the Secretary of Education hereby issues the following:

IT IS HEREBY ORDERED that after review of the entire record of the hearing before the South Dakota Professional Teachers Practices and Standards Commission, the attached Findings of Fact, Conclusions of Law of the Commission dated September 18, 2009, are hereby affirmed and adopted by the Secretary and incorporated into this Order by this reference as if set forth in full.

IT IS FURTHER ORDERED that based upon a review of the entire record of the hearing before the South Dakota Professional Teachers Practices and Standards Commission, there is clear and convincing evidence that Wade A. Mackey violated the South Dakota Code of Ethics for Teachers established under SDCL 13-43-25, namely ARSD 24:08:03:02 (7) & (8).

IT IS FURTHER ORDERED that the Teacher Certificate No. 48425-03 issued to Wade A. Mackey on May 17, 2006, be permanently revoked for violation of the South Dakota Code of Ethics for Teachers, namely ARSD 24:08:03:02 (7) and (8).

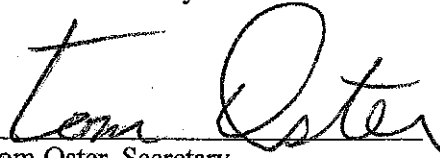
IT IS FURTHER ORDERED that notification of Wade A. Mackey's permanent revocation information be placed on the NASDTEC registry and to be placed in his permanent certification file within the Department of Education. This Order will be sent to the South Dakota Professional Teachers Practices and Standards Commission and its counsel, the complainant and their counsel, and the respondent. This Order does not restrict the Secretary of Education from forwarding this file to anyone that has the authority to employ Respondent, if requested in writing.

IT IS FURTHER ORDERED that pursuant to SDCL 13-42-15, Wade A. Mackey has ten (10) days after receipt of this notice to surrender his original South Dakota Teacher certificate No. 48425-03 to the Lisa Lomheim, Legal Assistant, South Dakota Department of Education, at 700 Governors

Drive, Pierre, SD 57501. As stated in SDCL 13-42-15.1, failure to surrender the certificate may be subject to a civil penalty.

This constitutes final agency action. Respondent shall have the right to appeal from this Order to circuit court as provided by law.

Dated this 14th day of October 2009.

A handwritten signature in cursive script, reading "Tom Oster". The signature is written in black ink and is positioned above a horizontal line.

Tom Oster, Secretary  
South Dakota Department of Education  
700 Governors Drive  
Pierre, SD 57501

STATE OF SOUTH DAKOTA )  
 ) SS  
COUNTY OF HUGHES )

SOUTH DAKOTA PROFESSIONAL  
TEACHERS PRACTICES AND  
STANDARDS COMMISSION

DEBORAH BARNETT, Deputy )  
Secretary of Education, )  
700 Governors Drive )  
Pierre, SD 57501 )  
Complainant, )  
 )  
vs. )  
 )  
WADE MACKEY, )  
 )  
 )  
Respondent. )

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
and ORDER**

Case PTPSC 2009-08

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 August 27, 2009 at Western Dakota Technical Institute, 800 Mickelson Drive, Rapid City, 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 (PTPSC) were present: Joseph Harrison, Nancy Decker, Patricia Benson, Becky Lamb, Bob Gill and Aaron Weaver. Paul E. Bachand, counsel for the PTPSC, and Lisa Lomheim, Executive Secretary for the PTPSC were also present. The complainant was represented by Deputy South Dakota Attorney General Robert Mayer, who appeared on behalf of Deborah Barnett, Deputy Secretary of the South Dakota Department of Education. Respondent Wade Mackey personally appeared.

Respondent was advised of the counts against him as contained in the complaint on file, which complaint having previously been served on Respondent. Respondent agreed to a public hearing regarding the matters contained in the complaint.

Based upon the admissions by Respondent, the evidence presented and the arguments of counsel, the South Dakota PTPSC hereby 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. 48425 issued on May 17, 2006 and expiring on July 1, 2011.
2. On May 20, 2009 Deborah Barnett, Deputy Secretary of the South Dakota Department of Education, filed a complaint against Respondent with the PTPSC.

3. The complaint alleged that Respondent violated the South Dakota Code of Professional Ethics for Teachers.
4. The complaint was served on Respondent on or about May 23, 2009.
5. A notice of hearing was sent for service on Respondent advising him that a hearing had been set for Thursday August 27, 2009 at 9:00 a.m. Mountain Daylight Time at Western Dakota Technical Institute, 800 Mickelson Drive, Rapid City, South Dakota.
6. On August 27, 2009 Respondent personally appeared at the hearing and was advised of the counts contained in the complaint on file against him.
7. On August 27, 2009 Respondent admitted to the allegations contained in Count 1, to wit, that he violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(8), by committing an act of moral turpitude or gross immorality by committing simple assault, domestic violence against Michelle Pierce, Respondent's former girlfriend.
8. On August 27, 2009 Respondent admitted to the allegations contained in Count 3, to wit, that he violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(7), in that in fulfilling their obligations to the public, educators shall engage in no act that results in a conviction. On or about May 30, 2008, Respondent was convicted of simple assault and a Judgment of Conviction was filed June 18, 2008, which took effect nunc pro tunc in Butte County Criminal Case 08-50.
9. On August 27, 2009 Respondent admitted to the allegations contained in Count 6, to wit, that he violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(7), in that in fulfilling their obligations to the public, educators shall engage in no act that results in a conviction. On or about May 4, 2009, Respondent was convicted of stalking and a Suspended Execution of Sentence and Judgment of Conviction, was filed in Butte County Criminal Case 09-31.
10. On August 27, 2009 Respondent admitted to the allegations contained in Count 7, to wit, that he violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(8), by committing an act of moral turpitude or gross immorality. On or about May 4, 2009, Respondent was convicted of violating a protection order and a Judgment of Conviction for that offense was filed in Butte County Criminal Case 09-31.
11. On or about April 9, 2008 Respondent committed an act of simple assault domestic violence against Michelle Pierce, Respondent's former girlfriend.
12. Respondent was arrested on that offense on April 9, 2008 and was subsequently released from custody on the condition that he not have any contact with Pierce.
13. On May 13, 2008 the Butte County Grand Jury indicted Respondent for two counts of simple assault. Pierce testified before the Butte County Grand Jury as a witness in regard to the indictment.

14. On May 16, 2008 Respondent appeared in court as a result of his April 9, 2008 arrest and he was reminded of the no contact provision of his bond. Respondent acknowledged that this was a condition of his bond.
15. On May 21, 2008 a petition was filed alleging that Respondent had contact with Pierce.
16. On or about May 30, 2008 Respondent was convicted of simple assault in Butte County Criminal Case 08-50.
17. On or about May 30, 2008 Respondent was placed on probation and ordered by the Court to not have any contact with Pierce for a period of two years. The only contact permitted with Pierce was through attorneys.
18. On or about May 30, 2008 Respondent was ordered to not be present on the property at 11352 Railway Lane in Belle Fourche, South Dakota, the property upon which Pierce was residing, unless the visits were supervised and after notice to Pierce.
19. On or about May 30, 2008 Respondent was ordered to not violate any laws for one year and he was placed on supervised probation for 18 months.
20. Respondent was ordered to serve three hundred sixty (360) days in jail with all but six (6) days suspended.
21. On June 4, 2008 Respondent executed a written acknowledgment of the conditions of probation imposed by the court on or about May 30, 2008.
22. On August 28, 2008 Respondent executed another written acknowledgment of his conditions of adult probation including a provision that he would have no contact with Pierce for a period of two years and that he would not be allowed on the property at 11352 Railway Lane in Belle Fourche, South Dakota unless the visits were supervised and after notice was given to Pierce.
23. On or about August 31, 2008 Respondent violated the conditions of probation that had been imposed on him on or about May 30, 2008 and agreed to by him on that date and on June 4, 2008 and August 28, 2008.
24. On or about August 30, 2008 Respondent was at a wedding reception near Rochford, South Dakota and Pierce was present at that reception. Respondent was aware that Pierce was present at that reception. Respondent was residing in Deadwood, South Dakota at that time.
25. Later in the evening of August 30, 2008 or in the early morning hours of August 31, 2008, Respondent saw Pierce's son driving in the vicinity of Deadwood, South Dakota. Respondent followed Pierce's son to Belle Fourche, South Dakota.

26. Respondent testified that he was concerned for the safety of Pierce's son due to Respondent's belief that Pierce's son had been drinking, yet Respondent never contacted law enforcement to report this to them. Respondent drove to a property adjacent to 11352 Railway Lane, Belle Fourche, South Dakota. After parking his car, Respondent walked onto the property at 11352 Railway Lane where he was discovered by Pierce's son. Respondent had no legitimate reason to go to Pierce's residence on that date.
28. On or about August 31, 2008 Law enforcement officers were dispatched to Pierce's residence where Respondent was located.
29. As a result of Respondent's actions on August 31, 2008 he was arrested for violating the previous court order and in addition, he was arrested for the offense of Stalking in violation of SDCL 22-19A-1.
30. Respondent was released on a Personal Recognizance Bond on August 31, 2008 and pursuant to that bond, he was once again ordered to have no contact with Pierce.
31. After being informed of Respondent's activities on or about August 31, 2008 Respondent's probation officer Tyler Bickerdyke placed a probation hold on Respondent and Respondent was taken to the Meade County Jail.
32. On September 9, 2008, Respondent was indicted by the Butte County Grand Jury with the criminal offense of Stalking in violation of SDCL 22-19A-1(1).
33. On September 16, 2008 an Order of Protection was entered in the matter of Michelle Pierce v. Wade Mackey, Butte Co. TPO 08-287.
34. On October 16, 2008 Respondent appeared in court in Butte County, South Dakota, and admitted that he violated the terms and conditions of his May 30, 2008 sentence. Respondent admitted that on August 31, 2008 he was on the property at 11352 Railway Lane in violation of the terms and conditions of his previous sentence.
35. On November 12, 2008 a sentencing hearing was held regarding Respondent's violation of the terms and conditions of his May 30, 2008 sentence. Respondent was ordered to not enter Butte County unless permission was granted by his court service officer. Respondent was ordered to not have any contact with Pierce either directly or indirectly except through attorneys.
36. On November 12, 2008 Respondent was ordered to serve 90 days in jail with credit for 73 days previously served.
37. On or about March 5, 2009 Respondent violated the Court's numerous previous no contact orders by phoning Pierce at least 78 times in a period of about 2 ½ hours.
38. Respondent's actions on or about March 5, 2009 caused Pierce great fear and she was visibly upset and scared.

39. The phone calls from Respondent to Pierce on March 5, 2009 were willful, malicious and repeated.
40. As a result of Respondent's actions on or about March 5, 2009 Respondent was indicted by the Butte County Grand Jury on March 10, 2009, for the crimes of felony Stalking in violation of SDCL 22-19A-1(3) and the misdemeanor crime of Violation of Protection Order in violation of SDCL 22-19A-16.
41. On March 11, 2009 Court Service officer Tyler Bickerdyke filed a violation report against Respondent alleging that Respondent violated the conditions of his probation by violating the law and by having contact with Pierce. Court Service Officer Bickerdyke requested a that a hearing be scheduled to address the violations.
42. On March 12, 2009 the Butte County State's Attorney filed a petition requesting that Respondent's probation be revoked as a result of Respondent's March 5, 2009 contact with Pierce.
43. On March 12, 2009 a complaint was filed by the Butte County State's Attorney charging the Respondent with the criminal offense of Entering or Surreptitiously Remaining in a Building in violation of SDCL 22-35-5.
44. On March 13, 2009 Respondent pled guilty to the criminal offense of Entering or Surreptitiously Remaining in a Building in violation of SDCL 22-35-5. Respondent pled guilty to this offense in order to obtain a dismissal of a stalking offense. Respondent would have been convicted of the stalking offense.
45. On or about April 9, 2009 Respondent entered into a plea agreement in which he agreed to plead guilty to the offenses of felony Stalking (SDCL 22-19A-1(3) and 22-19A-2) and the misdemeanor offense of Violation of Protection Order (SDCL 22-19A-16). Pursuant to that plea agreement, Respondent agreed to not have any contact with Pierce.
46. On or about April 9, 2009 Respondent pled guilty to the criminal offenses of felony Stalking (SDCL 22-19A-1(3) and 22-19A-2) and the misdemeanor offense of Violation of Protection order.
47. On or about May 1, 2009 Respondent was sentenced to the South Dakota State Penitentiary for a period of two (2) years, which sentence was suspended on a number of conditions including that the Respondent serve one hundred (100) days in the State Penitentiary and that he not have any contact with in any manner with Pierce, directly, indirectly or through third parties.
48. Between April 9, 2008 and March 5, 2009 Respondent violated the terms and conditions court orders and sentences on numerous occasions.
49. Respondent has exhibited a total and complete disregard for court orders.

50. Respondent's actions in violating court orders demonstrates that he lacks the good morals and judgment necessary to be employed in any educational capacity.
51. Respondent's criminal behavior demonstrates that he lacks the good morals and judgment necessary to be employed in any educational capacity.
52. The acts committed by Respondent on or about April 9, 2008 constitute acts of moral turpitude or gross immorality.
53. The acts committed by Respondent on or about August 31, 2008 constitute acts of moral turpitude or gross immorality.
54. The acts committed by Respondent on or about March 5, 2009 constitute acts of moral turpitude or gross immorality.
55. Any finding of fact improperly denoted as a conclusion of law is hereby incorporated as a finding of fact.

#### CONCLUSIONS OF LAW

56. The Professional Teachers Practices and Standards 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.
57. The burden of proof in this matter is clear and convincing evidence as provided by In Re: Setliff, 202 SD 58, 645 N.W.2d 601, 605.
58. 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) Commit no act that results in a conviction,
  - (8) Commit no act of moral turpitude or gross immorality.
59. Clear and convincing evidence exists that Respondent violated ARSD 24:08:03:02 (7) and (8).
60. Respondent violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(8), by committing an act of moral turpitude or gross immorality by committing simple assault, domestic violence against Michelle Pierce, Respondent's former girlfriend.
61. Respondent violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(7), in that in fulfilling their obligations to the public, educators shall engage in no act that results in a conviction. On or about May 30, 2008, Respondent



was convicted of simple assault and a Judgment of Conviction was filed June 18, 2008, which took effect nunc pro tunc in Butte County Criminal Case 08-50.

62. Respondent violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(8), by committing an act of moral turpitude or gross immorality, to wit, on August 31, 2008, while on probation and subject to a no contact provision, Respondent was present on Pierce's property, thus violating his probation and the no contact provision.
63. Respondent violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(8), by committing an act of moral turpitude or gross immorality, to wit, on or about March 5, 2009, he call Pierce at least 78 times in violation of his probation and the no contact provision.
64. Respondent violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(7), in that in fulfilling their obligations to the public, educators shall engage in no act that results in a conviction, as a result of his conviction on or about May 4, 2009, for felony stalking in which a Suspended Execution of Sentence and Judgment of Conviction was filed in Butte County Criminal Case 09-31.
65. Respondent violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(8), by committing an act of moral turpitude or gross immorality as a result of his May 4, 2009 conviction for violating a protection order in which a Judgment of Conviction for that offense was filed in Butte County Criminal Case 09-31.
66. Respondent violated the South Dakota Code of Professional Ethics for Teachers, ARSD 24:08:03:02(7), in that in fulfilling their obligations to the public, educators shall engage in no act that results in a conviction, as a result of his conviction on or about May 4, 2009 for Entering or Surreptitiously Remaining in a Building in violation of SDCL 22-35-5.
67. Complainant has failed to prove the allegations contained in Count 2 of the complaint which alleges that on or about May 21, 2008 Respondent violated ARSD 24:08:03:02(8).
68. 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 revoke the teaching certificate of Respondent as provided for in SDCL 13-43-28. It is further

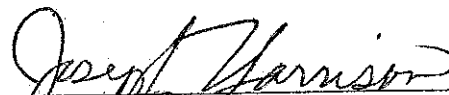
ORDERED that a copy of the Findings of Fact, Conclusions of Law and Order be sent to parties herein. It is further

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 NASDTEC clearing house and that it remain with the Department's permanent certification file.

Dated this 18<sup>th</sup> day of September 2009.

PROFESSIONAL TEACHERS PRACTICES  
and STANDARDS COMMISSION

By



Joseph Harrison Ed.D. Chair  
South Dakota Professional Teachers Practices  
and Standards Commission  
700 Governors Drive  
Pierre, SD 57501-2291