

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

DR. MELODY SCHOPP, SECRETARY,)
SOUTH DAKOTA DEPARTMENT OF)
EDUCATION,) DSE 2013-4
)
 PETITIONER) ORDER REGARDING RESPONDENT'S
) SOUTH DAKOTA TEACHING
V.) CERTIFICATE
)
ANDREA ROYER,)
)
 RESPONDENT.)

Pursuant to the authority granted to the undersigned independent hearing examiner by SDCL 13-42, 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 has a factual and legal basis to refuse to issue Andrea Royer a South Dakota Teacher's Certificate or renew her prior Teacher's Certificate pursuant to her Application of April 18, 2013. Royer's former Certificate issued on or about August 31, 2011 is expired by its terms and is no longer valid.


IT IS FURTHER ORDERED, that Royer may not apply for issuance of a South Dakota Teaching Certificate for a period of two (2) years from and after July 1, 2013.

IT IS FURTHER ORDERED, that on or after midnight on June 30, 2015 Royer may reapply for an issuance of a South Dakota Teaching Certificate with the South Dakota Department of Education.

IT IS FURTHER ORDERED, that this Order, the Memorandum Decision, and the Findings of Fact and Conclusions of Law will be served upon Royer by the Department of Education.

This constitutes final agency action. Respondent has the right to appeal from this Order to Circuit Court as provided by law.

Dated this 11th day of October, 2013.



ROBERT B. ANDERSON
Independent Hearing Examiner

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 PETITIONER) FINDINGS OF FACT AND
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 RESPONDENT.)

Respondent Andrea Royer (Royer) appealed from Notice of Intent to Deny her Application for a Teaching Certificate pursuant to SDCL § 13-42 and ARSD 24:08:03:02(7) and (8) dated July 22, 2013. On July 18, 2013 the South Dakota Board of Education designated and appointed Robert B. Anderson as independent hearing examiner pursuant to SDCL § 13-42-12 to preside over this proceeding. A private hearing, as requested by Andrea Royer, was held in conference room #111 at the MacKay Building, 800 Governors Drive, Pierre, SD 57501, on August 29th at 9:00 a.m. CDT pursuant to written Notice of Hearing dated August 14, 2013. Petitioner Dr. Melody Schopp, Secretary of the South Dakota Department of Education appeared through Carla Liengang, Administrator of the Office of Certification and Teacher Quality of the South Dakota Department of Education and attorneys Paul Bachand and Carrie Gonsor or the law firm of Schmidt, Schroyer, Moreno, Lee & Bachand in Pierre, SD. Respondent Andrea Royer appeared personally and chose to represent herself 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 after hearing all the testimony and

reviewing the exhibits and other evidence offered and received into evidence, as independent hearing examiner I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Andrea Royer was born December 24, 1979. On the date of this hearing she was 33 years of age.
2. Royer graduated from the University of Wyoming with a Bachelors Degree in Music Education in May, 2003.
3. After graduation Royer taught music for 6 years in Huston, TX from approximately 2003 through 2009. She thereafter taught 1 year in Rawlins, WY from 2009 to 2010.
4. Royer first applied and received a South Dakota Teaching Certificate on or about August 31, 2011.
5. Royer did not utilize the Teaching Certificate of August 31, 2011 to teach in South Dakota.
6. After teaching in Rawlins, WY, Royer enrolled in graduate school at the University of Oregon.
7. While a student at the University of Oregon, Royer was the victim of a sexual assault which caused significant, ongoing emotional and psychological trauma.
8. Royer did not finish her graduate education at the University of Oregon because of the effects of the sexual assault. She moved back to South Dakota and lived in the Black Hills area for a period of time after leaving Oregon.
9. Royer has no criminal record until sometime after she became 32 years of age.
10. Royer had no arrest record until May, 2012.

11. Royer was a successful and effective teacher in Texas and Wyoming prior to her enrollment in graduate school at the University of Oregon.

12. Prior to 2012 there is no record or history of Royer using or abusing illegal drugs or alcohol.

13. Sometime after the sexual assault in Oregon, Royer began using and abusing illegal drugs and alcohol.

14. After the sexual assault in Oregon, Royer's parents noted a dramatic and complete change in her personality and behavior and in the manner in which she dealt with problems and reacted to life situations.

15. Ultimately Royer's use and abuse of illegal drugs and alcohol lead to a variety of criminal problems, including arrests and convictions.

16. On or about May 30, 2012, Royer was arrested in Pennington County, South Dakota and charged by Complaint with the offenses of criminal trespass and possession of marijuana.

17. The charge of possession of marijuana was dismissed although Royer now admits that she had both marijuana and a marijuana pipe in her possession at the time of her May 30, 2012 arrest. She also admits that she had ingested marijuana on that date.

18. As the result of a plea bargain, Royer plead guilty to one count of entering or refusing to leave pursuant to SDCL § 22-35-6. Royer had legal counsel at the time of her plea. Among other things she received credit for 3 days in jail previously served.

19. On or about August 18, 2012 Royer was arrested in Spearfish, Lawrence County, South Dakota and charged by uniform traffic ticket with possession of drug paraphernalia in a motor vehicle, a violation of SDCL § 22-42A-3. She was arrested that day because a bench warrant had been issued for her failure to pay a prior speeding ticket.

20. Royer failed to appear for her scheduled court appearance resulting from the August 18, 2012 arrest and a bench warrant was issued for her arrest due to her failure to appear.

21. On or about August 29, 2012, Royer was arrested on one count of simple assault involving a threat allegedly made by her against her parents on that date.

22. On September 27, 2012 Royer was indicted in Lawrence County, South Dakota for three counts of simple assault (domestic violence) relating to two incidents of an alleged assault which occurred on or about August 15, 2012 and the August 29, 2012 incident. All three assault charges involved threats made to or against her parents.

23. Royer admits that she was smoking marijuana on August 29, 2012 and believes that it was laced with other drugs to make it more potent and have a more significant effect on her behavior.

24. Royer testified that when she was arrested on May 30, 2012 in Pennington County she was intoxicated, had smoked marijuana and was not in her "right mind".

25. On or about September 26, 2012 Royer was arrested in Lawrence County, South Dakota and charged with DUI, possession of marijuana and possession of drug paraphernalia.

26. Royer failed to appear for her initial court hearing on the charges of DUI, possession of marijuana and possession of paraphernalia and a bench warrant was issued for her arrest based on her failure to appear dated October 17, 2012.

27. Royer was indicted and separately charged with the offense of failure to appear on the DUI, possession of marijuana and possession of paraphernalia charges. The Indictment was dated October 25, 2012.

28. Royer testified that she failed to appear in court because she did not keep track of her court dates, was going through a lot of stress and "was not in my right mind".

29. Royer did not honor her obligation to appear in court based her arrests which took place in August and September, 2012.

30. Royer left South Dakota and moved temporarily to Colorado on or about October 17, 2012 knowing that a number of charges were pending against her and knowing that she was obligated to appear in court.

31. On or about September 22, 2012 Royer was the victim of a sexual assault in Spearfish, South Dakota. She did not feel she was treated well by the investigating officers and a counselor she was seeing advised that she move to Colorado to obtain help and other therapy for the results of the most recent sexual assault and her drug use.

32. Royer was visibly agitated when discussing her response to the incidents of sexual assault both in Oregon and South Dakota.

33. Royer does not appear to have obtained the type of effective help and assistance which she needed to deal with the sexual assaults in Oregon and South Dakota.

34. When discussing her music teaching career Royer's demeanor was significantly different. She seemed animated and happy to discuss her experience and abilities as a music teacher.

35. Royer testified that after moving to Colorado she learned about all the South Dakota charges when receiving a telephone call from a public defender who had been appointed to represent her in South Dakota. This telephone call took place sometime in November or December, 2012.

36. Royer did not return to South Dakota until sometime in May, 2013 to deal with the outstanding criminal charges against her.

37. Royer's stated reason for not returning to South Dakota was that she wanted to raise money for her court costs and fines, and that she wanted to be prepared and stable enough to do so. She realized she would have to come back and face everything eventually.

38. Royer knew that she had a variety of criminal charges pending against her in South Dakota when she left South Dakota for Colorado in October, 2012.

39. Royer knew, based on her contact from her public defender and from other reasons that she was required eventually to return to South Dakota to deal with the criminal charges against her.

40. Royer knew that she had been arrested on multiple occasions and had criminal charges pending against her in South Dakota when she filled out her Application for a South Dakota Teaching Certificate (Hearing Exhibit U) on or about April 18, 2013.

41. After her return to South Dakota Royer entered into a written plea agreement to resolve the various pending criminal charges against her in Lawrence County. She was represented by counsel when she did so.

42. As part of the plea bargain Royer agreed to and did in fact plead guilty on May 6, 2013 before the Magistrate Judge in Lawrence County, the Fourth Judicial Circuit to charges of disorderly conduct, reckless driving and failure to appear. The remaining charges against Royer were dismissed pursuant to the plea bargain.

43. Royer was sentenced on May 13, 2013 which sentence included, among other things, payment of fine and costs and unsupervised probation of 360 days.

44. The Application completed by Royer on or about April 18, 2013 for the issuance of a South Dakota Teaching Certificate among other things asked: "Since your last certification was issued, have you been arrested or charged with any criminal offense?"

45. Royer's response to the above question was: "In September of 2012, I was arrested for DUI. I have not yet been convicted of this as a Court date has not been assigned as I now live in Colorado".

46. Royer's answer to question number 1 on the April 18, 2013 Application for Teaching Certificate was false and misleading. At the time Royer completed it she knew it was false and misleading.

47. Although Royer testified that she felt that all of the arrests were being "taken care of" at the time she complete the teaching certificate and that perhaps she had been misinformed by her attorney, she ultimately did admit that she had been arrested on a number of occasions and that therefore her answer should have been different in question number 1.

48. Question number 2 of the Application for Teaching Certificate completed by Royer on or about April 18, 2013 asked "Since your last certification was issued, have you been convicted or pleaded guilty to any criminal offense?" The term "conviction" was further defined in the Application.

49. Royer's answer to question number 2 was: "I plead no contest to criminal trespassing in May of 2012 in Rapid City, SD and was fined."

50. In fact, Royer had plead guilty to the charge in question in Rapid City, Pennington County.

51. Question 9 on the Application for Teaching Certificate competed by Royer on or about April 18, 2013 stated:

"Is there any information not disclosed by your answers concerning your background, history, experience, education or activities which may have some barring on your character, moral fitness or eligibility to teach or hold an administrative position in South Dakota and which should be placed at the disposal or brought to the attention of the South Dakota Department of Education."

52. Royer's answer to the proceeding question was "no".

53. If Royer was confused or uncertain about the answers she made to various questions on the Application for Teaching Certificate, including questions number one and two, which she completed on or about April 18, 2013 question 9 should have prompted her to ask further questions or make note of that confusion.

54. Royer failed to answer questions on the Application for Teaching Certificate completed by her on or about April 18, 2013 in a forthright, honest and complete fashion.

55. At the time she completed her Application for Teaching Certificate on or about April 18, 2013 Royer was not familiar with the Teacher's Code of Ethics as adopted by the State of South Dakota although she had previously been issued a South Dakota Teaching Certificate for portions of 2011 and 2012.

56. Royer made inaccurate, incomplete and misleading answers to questions contained in the Application for Teaching Certificate she completed on or about April 18, 2013.

57. Royer had been arrested on multiple occasions from the time her initial South Dakota Teaching Certificate was issued on or about August 31, 2011 through the date she completed her Application on or about April 18, 2013.

58. Carla Leingang, the Administrator of the Office of Certification of Teacher Quality for the South Dakota Department of Education testified in person at the August, 29, 2013 hearing.

59. When an application for issuance or renewal of a Teaching Certificate is received by the South Dakota Department of Education the Application is reviewed more carefully if it shows recent criminal arrests or convictions.

60. Because Royer's Application of April 18, 2013 showed a recent arrest and a recent conviction the Department of Education requested additional information in the form of a records review and search.

61. After completing the investigation the Department determined that Royer's Application for a South Dakota Teaching Certificate should be denied because of her failure to provide accurate and truthful information on the application and because of her criminal history.

62. Since returning to South Dakota and entering into the plea bargain and resulting pleas of guilty in May, 2013 Royer has had no additional arrests or convictions.

63. Royer has diligently worked to put her life back in order, to obtain effective help for her emotional and psychological problems which resulted from her two prior sexual assaults, and overall appeared to be sincere and forthright about her criminal history and her problems.

64. Royer quit using marijuana in May, 2013 prior to the time she returned from Colorado to South Dakota.

65. A person of Royer's experience and intelligence should have known that the answers given on the April 18, 2013 Application for Teaching Certificate were false, misleading and incomplete.

66. Royer's personal experiences were obviously painful for her and caused her to lose a number of things in her life that she valued highly including her ability to teach music.

67. Royer's father Randall Royer was himself a music teacher at Black Hills State University and observed a drastic change in Royer's demeanor and personality after the first sexual assault incident in Oregon.

68. Randall Royer's testimony concerning Royer's abilities as a music teacher was compelling and very supportive of her returning to her life as a music teacher at some point.

69. It was clear from the testimony that although Royer may not acknowledge she needs additional help to deal with her past problems, members of her family disagree.

70. Given Royer's fairly recent criminal history, the total absence of criminal history prior to 2012 and the fact that she has only recently began serious efforts towards rehabilitation she should be prevented from applying for or receiving a South Dakota Teaching Certificate for a period of time.

71. During the period of suspension Royer will have an opportunity to deal with her history of alcohol use and abuse, drug use, and depression.

72. Under the circumstances, Royer's failure to truthfully, accurately and fully disclose the nature and extent of her criminal history on her April 18, 2013 Application was more damaging than her actual criminal history.

73. The Complainant is not seeking a lifetime ban on Royer applying for or obtaining a Teaching Certificate.

74. Based on the record in its entirety, the facts support some type of punitive action against Royer in regard to her ability to apply for and be issued a South Dakota Teaching Certificate. The extent of punitive action to be taken against Royer is mitigated in part by the fact that she lived a productive and totally crime free life for more than 30 years.

75. Royer's criminal history is also somewhat mitigated by the fact that her criminal history was not generated during a time period when she was employed by a teacher or utilizing a teaching certificate.

76. Royer's criminal history is also mitigated somewhat by the fact that she appears sincere in her efforts to stabilize her life, return to teaching and not repeat the mistakes she made in 2012 and early 2013.

77. The Complainant through her counsel of record suggests that a two year prohibition preventing Royer from applying for or receiving a South Dakota Teaching Certificate would be appropriate punitive action.

CONCLUSIONS OF LAW

1. Robert B. Anderson was duly designated and appointed as independent hearing examiner pursuant to SDCL 13-42-12 by the South Dakota Board of Education acting through Donald A. Kirkegaard, its President, by written Order dated July 18, 2013.

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

3. A South Dakota Teaching Certificate maybe revoked, suspended or not issued for violation of the code of ethics.

4. SDCL 13-42-10 provides that the Department of Education may revoke or suspend a teaching certificate or refuse to issue a certificate to an applicant for such period of time as the secretary considers advisable if the person has been convicted of any crime involving moral turpitude.

5. The Teacher's Code of Ethics states in part: "In fulfilling their obligations to the public educators shall....commit no act of moral turpitude or gross immorality." ARSD 24:08:03:02(8).

6. The fact that Royer plead guilty to some criminal offenses and was sentenced by a Court of competent jurisdiction does not preclude revocation, suspension, or refusal to issue or renew a teaching certificate to her since the legislature allows both criminal penalties and suspension, revocation or non-renewal of a teaching certificate for the same course of conduct.

7. The Complainant as Secretary of the South Dakota Department of Education had the burden of going forward and had the burden of proof on whether Royer has committed acts or omissions which justify the denial or non-issuance of a teaching certificate as permitted by SDCL 13-42-10.

8. The Complainant as Secretary of the South Dakota Department of Education has the burden of proof on the issue of whether Royer violated the South Dakota Teacher's Code of Ethics by "clear and convincing evidence".

9. The Complainant as Secretary of the South Dakota Department of Education has met her burden of proof and shown by clear and convincing evidence that Royer violated the South Dakota Teacher's Code of Ethics and administrative rules promulgated by the State of South Dakota, Department of Education.

10. The Complainant as Secretary of the South Dakota Department of Education has met her burden of proof and shown by clear and convincing evidence that Royer engaged in acts that resulted in criminal convictions.

11. Royer violated that portion of the South Dakota Teacher's Code of Ethics which requires a teacher to "exemplify a high moral standards by not engaging in or becoming a party to such activities as fraud...deceit, moral turpitude, gross immorality...illegal drugs, or use of misleading or false statements."

12. Royer's criminal convictions violate ARSD 24:08:03:02(7).

13. Royer's possession of marijuana and drug paraphernalia admitted to by her involved the use of illegal drugs and violate ARSD 24:08:03:02(8).

14. Royer's failure to appear on the criminal charges described in the Findings of Fact herein violate ARSD 24:08:03:02(8).

15. Royer's omissions and misrepresentations on her Application for Teaching Certificate of April 18, 2013 violate ARSD 24:08:03:02(8).


16. The Department of Education was justified in issuing its written Notice of Intent to Deny Teaching Certificate dated July 22, 2013 based on Royer's conduct during 2012 and 2013.

17. Because Royer's prior Teaching Certificate which was issued on or about August 31, 2011 had expired as of the time she applied for her teaching certificate on April 18, 2013, a revocation of Royer's Teaching Certificate amounts to a permanent non-renewal, and a suspension amounts to non-renewal for a finite period of time.

18. Having heard all of the live testimony and having reviewed all of the exhibits admitted into evidence at the hearing, and based on a review of the record in its entirety, I conclude that some punitive action should be taken and is justified.

19. Royer's right to apply for and receive a South Dakota Teaching Certificate should be suspended for a finite period of time commencing retroactively to July 1, 2013 with such suspension expiring at midnight, June 30, 2015.

Dated this 11th day of October, 2013.


ROBERT B. ANDERSON
Independent Hearing Examiner