

STATE OF SOUTH DAKOTA )  
 )SS  
COUNTY OF HUGHES )

DIVISION OF THE SECRETARY  
SD DEPARTMENT OF EDUCATION

SECRETARY DR. MELODY SCHOPP, )  
SOUTH DAKOTA DEPARTMENT OF )  
EDUCATION, )

FILE NO. DSE 2013-7

Complainant, )

ORDER REGARDING RESPONDENTS  
SOUTH DAKOTA TEACHERS AND  
ADMINISTRATORS CERTIFICATE

vs. )

BRAIN CHARLES SIEH, )

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 Brian Charles Sieh either a South Dakota Teachers Certificate or a South Dakota Administrators Certificate, or renew said certificates, pursuant to his application which was activated July 4, 2013, and had a signoff date of July 8, 2013. It is further

ORDERED, that any active teachers or administrators certificate held by Sieh and issued by the State of South Dakota be suspended effective July 4, 2013, for a period of two years and one month with said suspension lifted without further notice or hearing effective midnight, August 4, 2015. It is further

ORDERED, that on or after midnight on August 4, 2015, Sieh may reapply for an issuance of either a South Dakota teaching certificate and/or a South Dakota administrators certificate with the South Dakota Department of Education. It is further

ORDERED, that this Order and the Findings of Fact and Conclusions of Law will be served upon Sieh and his counsel Brooke D. Swier-Schloss 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 2 day of <sup>May</sup> ~~April~~, 2014.



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ROBERT B. ANDERSON  
Independent Hearing Examiner

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FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

vs. )

BRAIN CHARLES SIEH, )

Respondent. )

Complainant Secretary Dr. Melody Schopp, South Dakota Department of Education, filed a written Amended Complaint for Revocation, Suspension, or Non-Renewal of Respondent, Brian Charles Sieh's Teacher's and Administrator's Certificate. 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 Brain Charles Sieh, was held in conference room #111 at the MacKay Building, 800 Governors Drive, Pierre, SD 57501, on February 28, 2014, at 8:30 a.m. CST pursuant to an amended notice of hearing dated January 17, 2014. Complainant, Dr. Melody Schopp, Secretary of the South Dakota Department of Education, appeared through Carla Leingang, administrator of the office of Certification and Teacher Quality, South Dakota Department of Education and attorneys Paul Bachand and Carrie Gonsor of the law firm of Schmidt, Schroyer, Moreno, Lee and Bachand of Pierre, SD. Respondent Brian Charles Sieh appeared personally and through his legal counsel Brooke D. Swier Schloss. 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 and reviewing all the testimony and 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. Brian Charles Sieh (Sieh) was born March 5, 1972.
2. Sieh received a bachelor of science degree from Dakota State University in physical and health education in 1996. In 2003 he received a master's of science from Northern State University, K-12 educational administration. In 2009 he received a specialist degree with a superintendent endorsement from the University of Sioux Falls.
3. Sieh was first issued an Administrator's Certificate in 2003. Sieh was issued administrator certificate #56986 in May of 2006. That administrator certificate expired on July 1, 2013, and was considered lapsed 90 days after the expiration date pursuant to ARSD § 24:15:02:03.
4. Since 2003, Sieh has been employed in 6 separate school districts.
5. Late June and early July, 2013 Sieh completed an application for renewal of his Administrator's Certificate. The application was activated on July 4, 2013.
6. In the spring of the 2011, Sieh was employed by the Crow Creek Tribal Schools.
7. For the 2011/2012 school year Sieh was employed by the Oldham-Ramona School District. Sieh was terminated from the Oldham-Ramona School District in March of 2012.
8. At Oldham-Ramona Sieh served as the K-12 principal and superintendent.
9. Between July 18, 2011 and May 17, 2012, Sieh wrote and passed 22 insufficient funds checks in the amount of approximately \$1,649.
10. In March, 2012, Sieh entered a plea and received a suspended imposition of sentence on a DUI first, violation of SDCL 32-23-2.

11. On or about December 27, 2012, Sieh was arrested in Buffalo County and charged with DUI first offense, a violation of SDCL 32-23-1.

12. On or about April 24, 2013, Sieh plead guilty to the charge of DUI first in Buffalo County, South Dakota by power of attorney.

13. On May 1, 2013, Sieh was sentenced in Buffalo County on the DUI first conviction.

14. As the result of the DUI arrest and conviction in Buffalo County, South Dakota, Sieh had his driver's license revoked, served jail time, was ordered to obtain a chemical dependency evaluation and pay certain finds and costs. He satisfactorily completed all requirements of his sentence

15. In his application for renewal of certificate, Sieh included both the DUI conviction and the DUI suspended imposition of sentence.

16. On September 11, 2009, Sieh was charged by complaint in Codington County for simple assault (domestic). The simple assault charge was dismissed on June 4, 2010.

17. Prior to the simple assault (domestic) arrest in Codington County in 2009, Sieh had no criminal record.

18. The simple assault (domestic) charge in Codington County resulted from complaints made by Sieh's girlfriend and mother of his child.

19. Sieh's daughter Tessa had lived with her mother and the mother and Sieh were involved in a custody dispute when Tessa's mother was arrested sometime in mid-May, 2013.

20. Sieh took custody of Tessa when Tessa completed school near the end of May, 2013 and has had custody since that time.

21. Tessa's mother died of a drug overdose on July 10, 2013.

22. In the summer of 2013, Sieh was living in Herrick with his daughter Tessa, commuting to work at LaCompte Farms and returning home at night.

23. On or about September 22, 2011, Sieh was charged in Brule County, South Dakota with theft by insufficient funds check (SDCL 22-38-24) which is a class two misdemeanor resulting from a check passed on or about July 18, 2011.

24. Between February 24, 2012 and October 5, 2012, Sieh was charged with a minimum of 15 counts of theft by insufficient funds check (SDCL 22-38-24) in 8 different South Dakota counties. The complaints arose from at least seventeen separate checks passed between November 11, 2011 and May 17, 2012.

25. On or about August 6, 2012, in Brookings County, South Dakota. Sieh plead guilty to theft by insufficient funds check for a check passed on or about March 9, 2012.

26. On or about April 29, 2013, in McCook County Seih plead guilty to theft by insufficient funds check for a check passed on or about March 9, 2012 and a judgment of conviction was entered accordingly.

27. In his application for renewal of certificate, Sieh made the follow affirmation:

“I declare and affirm under penalties of perjury pursuant to SDCL 22-29-9.1 that this application has been examined by me, and to the best of my knowledge and belief, is and all things true, accurate, complete and correct. I understand that any intentional falsification, misrepresentation or omission of facts or falsification of statements on accompanying documents may result in criminal charges and/or the denial of certification and could affect the status of my teaching or school administrative certificate.”

28. In his application for renewal of certificate, Sieh answered “yes” to the following question: “Since your last certification was issued, have you been arrested or charged with any criminal offense?”

29. Sieh provided an explanation for his answer to the proceeding question by identifying his two DUI pleas but omitted reference to his arrests for theft by insufficient funds check, his convictions for theft by insufficient funds check and his arrest for simple assault.

30. A person with Sieh's education and experience should have realized that the answer and explanation to question 1 on his application for renewal of certificate was partially false, misleading and contrary to his affirmation.

31. A school administrator is and should be held to a higher standard than a teacher. Sieh agrees that as an administrator he is held to a higher standard than a teacher.

32. Each of Sieh's criminal convictions is a direct violation of the administrators and teachers code of ethics. Sieh agrees that the convictions are a direct violation of his administrators and teachers code of ethics.

33. The Department of Education, after confirming Sieh's criminal history, conducted an investigation after receipt of his application for renewal. This included an in-person meeting with Sieh.

34. The Department determined that Sieh's application should be denied because of his criminal convictions, his failure to respond completely and truthfully in the application regarding his criminal history and the violations of the teachers and administrators code of ethics which he committed.

35. Sieh alleges that he had no memory of his April, 2013, check conviction in June, 2013, when he filled out his application. He never thought the check charge was significant and he attributes his non-disclosure of certain of his convictions to fatigue which he was experiencing at the time.

36. Beginning March, 2013, Sieh was employed as a farm laborer at LaCompte Farms.

37. Sieh's employer at LaCompte Farms – Colby LaCompte – has found Sieh to be honest and hard working. He agrees that Sieh had many different responsibilities in the spring and summer of 2013.

38. In the fall of 2013, Sieh served as athletic director at the Lower Brule High School.

39. Testimony from Sieh and Kyle Middletent indicates that Sieh was good at working with students at Lower Brule High School and performed well with troubled students.

40. Sieh appears to have performed well in his role at Lower Brule High School.

41. Sieh has not worked at Lower Brule High School since December, 2013. He was terminated there on January 2, 2014.

42. Sieh has paid off all of his insufficient funds checks.

43. Sieh has complied with all court requirements and sentences in regard to his various criminal convictions.

44. Despite his fatigue and schedule in June, 2013, a person of Sieh's education and experience should not have omitted the various arrests and criminal convictions which were omitted from his application.

45. For a period of time, for whatever reason or reasons, Sieh made a number of bad decisions in 2012 and 2013 which led to both criminal and personal problems of his own creation.

46. Although the assault charges which arose from complaints made by his girlfriend and mother of his child were dismissed, Sieh was terminated from his employment at the Henry School District because of those charges. Under those circumstances a person of Sieh's education and experiences should be expected to recall and list that arrest on his application.

47. Sieh was not completely truthful or honest in completing his application.



48. Sieh has apparently continued to work hard – in education when possible and outside the area of education when necessary – to pay off his financial responsibilities and provide for himself and his daughter.

49. Sieh appears to have a passion and interest in education and in particular education involving troubled or disadvantaged students.

50. Both Sieh's failure to truthfully, accurately and fully disclose the nature and extent of his criminal history on his application and his actions which lead to the various arrests and convictions are troubling and constitute violations of the teachers and administrators code of ethics.

51. Because of his actions Sieh should be prohibited from applying for or receiving a South Dakota teaching certificate or administrators certificate for a finite period of time.

52. The Professional Administrators Practices and Standards Commission has promulgated rules for a code of professional ethics for administrators. This code is found in ARSD Chapter 24:11:03.

53. Among other things the code of ethics requires and administrator to "exemplify high moral standards by not engaging in or becoming a party to such activities as fraud...deceit, moral turpitude, gross immorality...or use of misleading or false statements."

54. Sieh's arrests and convictions for insufficient funds checks violate the administrator's code of ethics.

55. Sieh's failure to disclose all charges and convictions on his renewal application violate the administrators code of ethics.

56. Sieh's guilty plea and suspended imposition sentence and Seih's later conviction for driving under the influence violates the administrators code of ethics.

57. The Professional Teachers Practices and Standards Commission has also been given authority and has promulgated rules for a code of professional ethics for teaches in South Dakota. This code is found at ARSD Chapter 24:08:03.

58. Sieh's criminal convictions violate the teacher's code of ethics.

59. Sieh is obligated to comply with the codes of ethics for both teachers and administrators. Sieh admits this.

### **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 to hear the amended complaint for revocation, suspension or non-renewal of certificate filed by Complainant in this proceeding.

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

3. A South Dakota teaching certificate or an administrators certificate may be revoked, suspended or not issued for violation of the teachers and/or administrators code of ethics as set forth by South Dakota administrative rule.

4. SDCL 13-42-9 provides that the South Dakota Department of Education may revoke or suspend any certificate for violation of the applicable code of professional ethics.

5. 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.

6. SDLC 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.

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 Sieh committed acts or omissions which justified the denial, non-issuance or revocation of his teaching certificate and administrators certificate as permitted by South Dakota law.

8. The Complainant as secretary of the South Dakota Department of Education has the burden of proof on the issue of whether Sieh violated the South Dakota teachers code of ethics and/or the South Dakota administrators 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 Sieh violated both the South Dakota teacher’s code of ethics and the South Dakota administrators code of ethics and other administrative rules promulgated by the state of South Dakota, Department of Education as it relates to character and fitness.

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 Sieh engaged in acts that resulted in criminal convictions.

11. Sieh violated that portion of the South Dakota teachers code of ethics which requires a teacher to “exemplify high moral standards by not engaging in or become a party to such activities as fraud...deceit, moral turpitude, gross immorality..., or use of misleading or false statements.”

12. Sieh’s criminal convictions violate ARSD 24:08:03:02(7).

13. Sieh's omissions and misrepresentations on his application for renewal of his certificate violate ARSD 24:08:03:02(8).

14. The Complainant as secretary of the South Dakota Department of Education is entitled to the relief sought in her amended complaint in this proceeding.

15. The secretary of the Department of Education has the power and authority to revoke or suspend any certificate for violation of the code of professional ethics.

16. The secretary of the South Dakota 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.

17. Sieh has shown diligence in obtaining further education and training in his chosen field of education.

18. The problems which lead to Sieh's various criminal convictions although not excusable are somewhat understandable given the problems in his personal life.

19. Sieh has shown an ability and willingness to work with difficult and disadvantaged students effectively.

20. Sieh should not be permanently prohibited from holding either a teachers or administrators certificate in the State of South Dakota.

21. 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 and a determination as to the credibility of the witnesses, I conclude as the duly appointed independent hearing examiner that some punitive action should be taken and is justified.

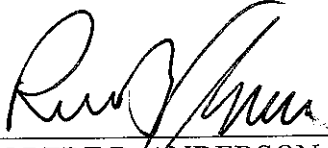
### **CONCLUSION**

By its terms Sieh's administrators certificate expired on July 1, 2013.

It is determined that the Complainant should have the following relief in response to her complaint for revocation, suspension or non-renewal:

1. Any teachers or administrators certificate held by Sieh issued by the State of South Dakota should be suspended retroactively to July 4, 2013.
2. Sieh shall be prohibited from applying for and receiving either a South Dakota teaching certificate or a South Dakota administrators certificate for a finite period of time commencing on retroactively to July 4, 2013, with such suspension expiring at midnight, August 4, 2015.

Dated this 2<sup>c</sup> day of May, 2014.

  
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ROBERT B. ANDERSON  
Independent Hearing Examiner