

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

In Re: Certification Application of)
LYNES VINCENT END OF HORN)

DIVISION OF THE SECRETARY

S.D. DEPT. OF EDUCATION

DSE 2014-02

ORDER DENYING APPLICATION FOR TEACHING CERTIFICATE

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 Lynes Vincent End of Horn a South Dakota Teachers Certificate pursuant to his application which was activated July 16, 2013; it is further

ORDERED, that the application of Lynes Vincent End of Horn for a South Dakota Teaching Certificate, such application dated July 16, 2013, should be and is hereby denied; 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 Lynes Vincent End of Horn by the Department of Education pursuant to statute.

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

Dated this 17th day of June, 2014.



ROBERT B. ANDERSON
Independent Hearing Examiner

STATE OF SOUTH DAKOTA)
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AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant Lynes Vincent End of Horn (End of Horn) requested a hearing in regard to a written "Notice of Intent to Deny Teaching Certificate" which notice was dated January 13, 2014.

A hearing on End of Horn's timely request was held before Robert B. Anderson, duly appointed hearing examiner, on Friday, April 11, 2014, at 9:00 a.m. CDT in conference room 1, MacKay Building, 800 Governors Drive, Pierre, SD 57501. The hearing was a private hearing as requested by End of Horn, and was held pursuant to written Notice of Hearing dated March 18, 2014.

The South Dakota Department of Education appeared through Carla Leingang, Administrator of the Office of Certification and Teacher Quality of the South Dakota Department of Education and Special Assistant Attorney General Bobbi J. Rank. End of Horn appeared personally and chose to represent himself 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. End of Horn was born January 31, 1946.

2. End of Horn was first issued a South Dakota teachers certificate in 1984. On his application for that certificate, he disclosed no criminal history.
3. End of Horn filed an application to renew his teacher's certificate in 1990. The certificate was renewed through 1995. On that application, he disclosed no criminal history.
4. End of Horn applied to have his teacher's certificate renewed again in 1995. The certificate was renewed through the year 2000. On his application for that certificate, he disclosed no criminal history.
5. End of Horn permitted his teachers certificate to lapse thereafter and applied for another South Dakota teacher's certificate by electronic application dated July 16, 2013. His prior certificate had expired on July 1, 2000, according to its terms.
6. On July 16, 2013, Deedra Geisenger of the South Dakota Department of Education met personally with End of Horn when End of Horn came to Pierre to apply for his certificate. She instructed him on the electronic application process and permitted him to use her computer.
7. In particular but not in limitation, Geisenger advised End of Horn to read the instructions and to disclose all criminal convictions.
8. Prior to July 16, 2013, the last time End of Horn had applied for a South Dakota teachers certificate was June 27, 1995. Therefore, questions which sought information relating to his record of arrests and convictions since his last application required responses from the period of June 27, 1995 through July 16, 2013. The application clearly directs applicants to make such disclosures.
9. On or about September 22, 1996, End of Horn was arrested for driving under the influence and driving with a revoked license in Pennington County, South Dakota. This was ultimately charged as a class 6 felony.

10. On or about March 12, 1997, End of Horn failed to appear for trial on the Pennington County felony DUI charge referred to in the preceding paragraph and was charged with the additional offense of failure to appear.

11. On or about May 1, 2001, End of Horn pled guilty to driving under the influence, third offense, a class 6 felony in Pennington County. He was sentenced to two years in the state penitentiary. He received credit for time served in the county jail and had the remainder of his penitentiary time suspended.

12. On or about March 24, 2004, End of Horn was arrested for driving with a revoked license in Potter County, South Dakota. As a result of that charge, End of Horn pled guilty to no driver's license, a class two misdemeanor.

13. On or about October 23, 2004, End of Horn was arrested for driving under the influence and driving under revocation in Walworth County, South Dakota. On or about April 8, 2005, he was convicted by a jury of driving under the influence – third offense, a class six felony and driving with a revoked license, a class one misdemeanor. As a result he was sentenced to two years in the state penitentiary with credit for time served in the county jail.

14. On or about September 3, 2007, End of Horn was arrested for driving with a revoked license in Walworth County, South Dakota. He pled guilty to this offense and was sentenced.

15. On or about October 17, 2007, End of Horn was charged with the use of substitute license plates, a violation of SDCL 32-5-103, a class two misdemeanor and driving with a revoked license in Walworth County.

16. On or about March 18, 2008, End of Horn was convicted by a jury of the offenses described in the preceding paragraph and was sentenced.

17. On or about March 2, 2008, End of Horn was cited for the use of substitute license plates (SDCL 32-5-103) a class two misdemeanor, in Walworth County, South Dakota. He was convicted by the court and sentenced.

18. On or about June 7, 2010, End of Horn was charged with driving under the influence and no driver's license in Walworth County.

19. On or about March 29, 2011, End of Horn was convicted by a jury of driving under the influence – third offense, a class six felony and sentenced to two years in the penitentiary.

20. No direct appeal to the South Dakota Supreme Court was filed by End of Horn in regard to the conviction of March 29, 2011. However, he did file a habeas corpus proceeding – evidently in federal court in the Northern Division for the District of South Dakota. It is understandable that a layman may confuse a habeas corpus proceeding with a direct appeal.

21. On or about January 3, 2013, End of Horn was arrested for driving with a revoked license (SDCL 32-12-65), a class one misdemeanor in Davison County. He pled guilty to a lesser charge and was sentenced.

22. In the electronic application to renew his teaching certificate which was dated July 16, 2013, End of Horn was asked to state whether he had been arrested or charged with any criminal offense since his last certificate was issued.

23. In response to the question described in the preceding paragraph, End of Horn listed only his 2010 arrest in Walworth County, and stated that the DUI from Walworth County was being appealed to the South Dakota Supreme Court. (As noted in number finding 20 above, it appears that at some point a habeas corpus proceeding was filed and it is understandable that a layman could confuse an appeal with a habeas corpus proceeding. No finding is made here that End of Horn was intentionally misstating the status of that conviction.)

24. In the electronic application to renew his teaching certificate which was dated July 16, 2013, End of Horn was asked to state whether he had been convicted or pleaded guilty to any criminal offense since his last certificate was issued.

25. In response to the question described in the preceding paragraph, End of Horn listed only his 2010 DUI conviction in Walworth County.

26. In the electronic application to renew his teaching certificate dated July 16, 2013, End of Horn failed to disclose any of the arrests or convictions referred to in Findings of Fact 9, 10, 11, 12, 13, 14, 15, 16, 17 or 21 above.

27. The Professional Teacher's Practices and Standards Commission has promulgated rules for a code of professional ethics for teachers in South Dakota pursuant to authority granted by South Dakota Law. This code of ethics is found in ARSD 24:08:03.

28. The teachers code of ethics provides that teachers "engage in no act that results in a conviction" see ARSD 24:08:03:02(7).

29. The code of ethics requires a teacher to "exemplify high moral standards by not engaging in or becoming a party to such activities as deceit, moral turpitude, gross immorality...or use of misleading or false statements." ARSD 24:08:03:02(8).

30. In recent years End of Horn has worked as a substitute teacher and a replacement teacher.

31. End of Horn enjoys teaching – especially junior high students – and has an ability to communicate well with them.

32. End of Horn last worked as a full time teacher in Rapid City in 1995.

33. End of Horn agrees that teachers need to be good role models.

34. When asked if teachers should exemplify honesty and integrity and reflect good moral character, End of Horn testified that this is "somewhat important".

35. End of Horn does not believe teachers are or should be placed on a pedestal.
36. End of Horn can no longer do physically demanding work because of his general health and physical condition.
37. The fact that End of Horn is experienced in dealing with disadvantaged students and junior high aged students and has an ability to communicate well with them does not excuse compliance with rules governing character and fitness for teachers.
38. End of Horn testified that he has been sober for 10 years, has no issues with alcohol, and that he last drank in 2008. However, End of Horn was convicted for DUI in Walworth County arising from an arrest which took place in 2010.
39. End of Horn's testimony concerning his court appearances and facts relating to his 2010 Walworth County DUI and his innocence of that charge is not credible.
40. No testimony or evidence on the record indicates that End of Horn's criminal record as shown by the exhibits offered and introduced into evidence at the hearing are not reliable and accurate.
41. End of Horn's history shows a disregard of rules, law and personal responsibility.
42. End of Horn successfully completed all terms and conditions of his sentence from his 2010 DUI and has had his civil rights restored.
43. There is no excuse or explanation for End of Horn omitting reference to various criminal arrests and convictions on his July 16, 2013, electronic application.
44. End of Horn's omissions and misrepresentations on his July 16, 2013 electronic application violate ARSD 24:08:03:02(8).
45. The criminal record of arrests and convictions which End of Horn has acquired since his last certificate was issued in 1995 is so extensive and covers such a period of time that the acts

giving rise to those arrests and convictions rise to the level of and do constitute moral turpitude and gross immorality as those terms are used in ARSD 24:08:03:02(8) and SDCL 13-42-9 and SDCL 13-42-10.

46. The evidence on the record indicates a long term pattern of criminal activity and failure to accept responsibility for his actions by End of Horn.

47. The evidence on the record proves satisfactorily that End of Horn has violated the Teacher's Code of Ethics and lacks the character and fitness to have and hold a South Dakota Teacher's Certificate.

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 preside over the contested case relating to End of Horn's application for a teacher's certificate dated July 16, 2013.

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

3. The South Dakota teaching certificate may be revoked, suspended or not issued for violations of the Teacher's 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 a teacher's certificate for violation of the Teacher's Code of Professional Ethics for gross immorality.

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 a

secretary considers advisable if the person has been convicted of any crime involving moral turpitude.

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

7. The South Dakota Department of Education had the burden of going forward and had the burden of proof on whether End of Horn committed acts or omissions which justified the denial or non-issuance of his teaching certificate as permitted by South Dakota law.

8. The South Dakota Department of Education had the burden of proof on the issue of whether End of Horn violated the South Dakota teacher's code of ethics by "clear and convincing evidence."

9. The South Dakota Department of Education has met its burden of proof and shown by clear and convincing evidence that End of Horn violated the South Dakota Teacher's 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 South Dakota Department of Education has met its burden of proof and shown by clear and convincing evidence that End of Horn engaged in acts that resulted in criminal convictions.

11. End of Horn violated that portion of the South Dakota Teacher's Code of Ethics which requires a teacher 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."

12. End of Horn's criminal convictions violate ARSD 24:08:03:02(7) and (8).

13. End of Horn's omissions on his application for a South Dakota teacher's certificate dated July 16, 2013 violate ARSD 24:08:03:02(8).


14. The South Dakota Department of Education acted appropriately in issuing its denial of End of Horn's application for a South Dakota Teacher's Certificate dated January 13, 2014, based on his application which was dated July 16, 2013.

15. The Department of Education has the power and authority to revoke or suspend any certificate based on the nature of offenses which lead to End of Horn's convictions noted above, their frequency and repetitive nature, and the time period which they cover indicate that End of Horn lacks the character and fitness to hold a South Dakota teacher's certificate.

16. Having heard all of the testimony and having reviewed all of the exhibits admitted into evidence at the hearing, and having reviewed the transcript of the hearing, and having reviewed oral and written arguments and statements made by the parties 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 hearing examiner that End of Horn's application for a South Dakota teacher's certificate should be denied.

17. An order should be entered consistent with these Findings of Fact and Conclusions of Law denying End of Horn's application for a South Dakota teacher's certificate pursuant to the application dated July 16, 2013.

Dated this 17th day of June, 2014.


ROBERT B. ANDERSON
Independent Hearing Examiner