

STATE OF SOUTH DAKOTA) DIVISION OF THE SECRETARY
) :SS
COUNTY OF HUGHES) SOUTH DAKOTA DEPT. OF EDUCATION

In the Matter of the)
Suspension of the)
Teaching Certificate of)
SARAH SCHMASOW)
)
)
)

DSE 2015-03
**ORDER SUSPENDING
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 and 13-42-9, following receipt of a Complaint requesting suspension of a certificate from the South Dakota Professional Teachers Practices and Standards Commission, and after review of the entire file herein, the Secretary enters the following order:

1. The Secretary has entered Findings of Fact and Conclusions of Law, which are hereby incorporated into this Order by this reference as if set forth in full.

2. Based upon the foregoing Findings of Fact and Conclusions of Law, the teacher Certificate No. 66410 issued to Sarah Schmasow is hereby **suspended for a period of one year, from July 1, 2015, through July 1, 2016.**

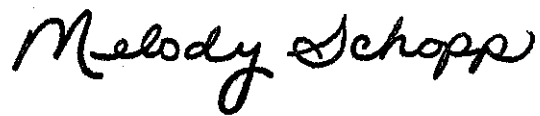
3. In order to be considered for certification in South Dakota at the conclusion of the suspension period, Schmasow must reapply and meet all legal requirements for certification at the time of the application.

4. Notification of this suspension will be placed on the NASDTEC registry and be placed in Schmasow's permanent certification file within the South Dakota Department of Education.

5. This Order and incorporated findings and conclusions are a public record pursuant to SDCL Chapter 1-27 and 1-26-2.

This constitutes final agency action.

Dated this 30th day of June, 2015.



Dr. Melody Schopp, Secretary
South Dakota Department of Education

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) **FINDINGS OF FACT AND**
) **CONCLUSIONS OF LAW OF**
) **THE SECRETARY**
)

FINDINGS OF FACT

1. Any Finding of Fact more properly designated as a Conclusion of Law is hereby so designated.

2. Sarah Schmasow ("Schmasow") is the holder of a valid South Dakota Teaching Certificate, No. 66410-2, issued on September 13, 2011, and expiring on July 1, 2016.

3. On or about July 29, 2014, the McLaughlin School District ("District") Board of Education approved a contract with Schmasow to be a fourth grade teacher in the District. Schmasow signed the contract on August 11, 2014.

4. The contract specifically stated that the employee would comply with the board policy handbook and the code of ethics for teachers. In addition, the contract stated:

It is further agreed that this contract may be terminated only by mutual consent of the contracting parties ... and if no mutual consent as to termination exists and if the Teacher initiates the termination of the contract prior to its termination date, the District may assess liquidated damages by withholding money due to or collect from the Teacher pursuant to McLaughlin School Board Policy.

5. On or about July 30, 2014, Angie Thunker ("Thunker") from the District emailed Schmasow the phone number of an individual who had upstairs living space to rent in the District.

6. On or about August 5, 2014, Schmasow informed Thunker via email that she did not have funds to relocate. The school board approved expending funds to assist Schmasow in moving to the District, and \$786.00 was wired to Schmasow via Western Union on or about August 7, 2014. This money was not part of Schmasow's employment contract with the District. There was no signed, written agreement regarding these funds.

7. The District held in-service training for new and returning staff the week of August 11-15, 2014. Schmasow was present at the District for this training.

8. Schmasow never moved to the District.

9. On or about August 17, 2014, Schmasow submitted her resignation via email to Thunker. Schmasow stated that she was taking her granddaughter because of personal issues and therefore could not make the upstairs housing work. Schmasow also stated, "I know that you provided travel expenses and since I have worked 5 days, I hope that we can just call it even."

10. District school board policy stated that the District could withhold or collect \$800 in liquidated damages when a teacher terminated a contract after August 1.

11. On or about September 7, 2014, Schmasow purported to accept a teaching position with Sitting Bull School in Little Eagle, South Dakota, which included a \$5,000 sign on bonus and free housing and utilities. However, the contract was ultimately not approved by the school board.

12. On or about September 8, 2014, the District school board unanimously accepted the resignation of Schmasow and authorized the assessment of \$800 in liquidated damages. In addition, the board authorized the superintendent, Scott Lepke ("Lepke"), to pursue a complaint with the Professional Teachers Practices and Standards Commission ("Commission") "if the District is not reimbursed the traveling expenses ... and/or the liquidated damages are not paid."

13. The District was not able to find a permanent replacement for Schmasow's position and was forced to utilize a long-term substitute teacher to instruct students.

14. In correspondence dated September 17, 2014, Lepke informed Schmasow that her resignation had been accepted and that the District had assessed liquidated damages against her. Lepke also provided an explanation of the wage calculations and payroll deductions. An invoice reflecting Lepke's explanation was enclosed with the letter.

15. The District calculated the amount due to Schmasow for hours worked during the week of in-service at \$28.38/hour for 36 hours, or \$1,021.68 in gross wages. Taxes and withholding were calculated and the amount of \$786.00 for reimbursement of the travel expenses was deducted, with a remainder of \$48.49 owed to Schmasow. Liquidated damages of \$800.00 were applied to the remaining amount, leaving a net amount of \$751.51 in liquidated damages owed to the District.

16. On or about October 9, 2014, Lepke filed a complaint against Schmasow with the Commission for alleged violations of the code of ethics surrounding the breach of her contract with the District and pursuit of another contract with a different school.

17. The complaint was served via certified U.S. mail on Schmasow on or about October 15, 2014, at 14 19th St. N., Great Falls, MT, 59401.

18. On or about October 21, 2014, Schmasow contacted Lepke via email offering to return to finish out the contract or asking for time to pay the liquidated damages. Lepke responded that the complaint would remain in place until the liquidated damages were paid.

19. Schmasow submitted a response to the complaint to the Commission on or about October 21, 2014. The return address on Schmasow's response was 14 19th St. N., Great Falls, MT, 59401.

20. A notice of hearing was served on the parties via first class U.S. mail on or about December 19, 2014. The notice of hearing advised Schmasow that a hearing had been set for January 22, 2015, at Conference Room 2, Kneip Building, 800 Governors Drive, Pierre, South Dakota, at 1:00 p.m. Central Time.

21. The notice of hearing was mailed to Schmasow's last known address of 14 19th St. N., Great Falls, MT, 59401.

22. The notice of hearing informed Schmasow that the purpose of the hearing was to determine whether Schmasow violated Sections 24:08:03:02(4) and 24:08:03:03(5) of the South Dakota Code of Professional Ethics for Teachers, as found in the South Dakota Administrative Rules, as set out in the complaint before the Commission.

23. No mailing addressed to Schmasow was returned to the Commission as undeliverable.

24. At some point after submitting her response to the Commission, Schmasow moved to Arizona. Despite responding to the original complaint and knowing of the pending complaint against her, at no time prior to the hearing did Schmasow notify the Commission that her mailing address had changed or that she had not received the notice of hearing.

25. A hearing on the complaint was held on January 22, 2015, at Conference Room 2, Kneip Building, 800 Governors Drive, Pierre, South Dakota, at 1:00 p.m. Central Time.

26. Schmasow failed to appear at the January 22, 2015, hearing to request a private hearing. As a result, a public hearing was held in front of the Commission.

27. Even though Schmasow failed to appear at the hearing, the Commission took notice of the information provided by Schmasow in her response to the complaint.

28. Schmasow claimed to receive the Notice of Hearing after the hearing. At that point, she provided the Commission by phone with an incomplete address in Arizona.

29. On or about February 27, 2015, the Commission filed a complaint with the Secretary recommending a suspension of five years, with a reduction to three years if Schmasow remitted the outstanding liquidated damages within 60 days of the Commission's order. This complaint, along with the Commission's findings and conclusions, were served upon Schmasow at the Arizona address she had provided.

30. Schmasow subsequently contacted the South Dakota Department of Education claiming that she had not received proper notice of the hearing and providing her complete address in Arizona.

31. Schmasow was provided with copies of all documents, and Schmasow and District were given the opportunity to supplement the record through written submissions and testimony before the Secretary issued the final decision in this case.

32. Schmasow's last known address at the time of the Secretary's decision is 2901 S. Palo Verde Lane #49, Yuma, Arizona 85365.

33. In response to the complaint filed by with the Commission, Schmasow filed a complaint against Lepke with the South Dakota Professional Administrators Practices and Standards Commission, which was dismissed. She has also filed complaints against the District with various state and federal agencies alleging discrimination due to her race.

34. There is no credible evidence that the District's filing of a complaint with the Commission, through Lepke, was motivated by anything other than perceived violations of the code of ethics by Schmasow.

35. Schmasow has not paid the outstanding liquidated damages amount and has indicated that she does not intend to pay.

36. Schmasow has refused to accept responsibility for her actions in regard to breaking her contract with the District.

CONCLUSIONS OF LAW

1. Any Conclusion of Law more properly designated as a Finding of Fact is hereby so designated.

2. The authority to issue, deny, suspend and revoke certificates is vested with the Secretary of the Department of Education. SDCL §§ 13-42-4, 13-42-7, 13-42-9, 13-42-15, 13-42-28.1.

3. The Secretary has personal and subject matter jurisdiction in this matter pursuant to the complaint for suspension filed by the Commission. SDCL §§ 13-42-10; 13-43-28.1. Although the Commission can make a recommendation regarding a revocation or specific length of suspension, this recommendation is not binding on the Secretary.

4. The burden of proof in this matter is clear and convincing. In re: Jarmon, 2015 S.D. 8, 860 N.W.2d 1.

5. Schmasow received proper notice of the hearing before the Commission. Notice was mailed to the address she provided, and she provided no notice before the hearing that the address had changed. ARSD § 24:08:04.01:03; SDCL § 1-26-16; Americana Healthcare Center v. Randall, 513 N.W.2d 566, (S.D. 1994), citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (Due process requires notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections).

6. In addition, Schmasow was provided with ample opportunity to supplement the record after the Commission hearing and before the final decision. SDCL 13-43-28.1.

7. Schmasow's email of resignation acknowledged that there was an implied agreement that she would pay back the \$786 travel expenses advanced by the District. Additionally, allowing Schmasow to retain those funds would have been inequitable because she did not utilize them for the intended purpose of moving to the District. SDCL § 53-1-3; Bollinger v. Eldredge, 524 N.W.2d 118, 123 (1994).

8. Schmasow's actions of accepting the travel advance and then not moving to the District were timely mitigated by the fact that the District was reimbursed in full through withholding of Schmasow's wages, with her consent.

9. A teaching contract is a binding legal document, and both the school district and the teacher are presumed to have read and understood its terms. Ryken v. Blumer, 307 N.W.2d 865, 868 (S.D. 1981).

10. Schmasow breached her teaching contract with the District.

11. The District's imposition of liquidated damages as a result of Schmasow's breach was authorized by the contract.

12. Under the facts of this case, Schmasow's alleged reasons for breaching her contract are not mitigating factors.

13. Schmasow's refusal to accept available housing in the District was due to a change in her family status regarding the care of a grandchild and should not be attributed to the District.

14. Schmasow's negotiation with Sitting Bull School for what amounted to a better compensated position, before the District had formally accepted her resignation, calls into question Schmasow's claim that breaching the contract with District was based entirely on housing.

15. However, there is no evidence that Schmasow engaged in a pattern of breaching contracts or accepting signing bonuses or expenses that she did not intend to pay back.

16. Schmasow's offer to fulfill her contract more than two months after the breach, and only after the imposition of liquidated damages, is not a mitigating factor.

17. SDCL § 13-42-9 authorizes the Secretary to revoke or suspend a certificate for violation of the code of ethics.

18. However, SDCL § 13-42-9 also states:

The secretary ... may suspend any certificate for a period not to exceed one year for breaking or jumping a contract, if such suspension is requested by the school board. However, the secretary may not suspend a certificate for breaking or jumping a contract if the school board collected liquidated damages pursuant to the terms of the contract.

19. Therefore, although the remedy for a violation of the code of ethics is normally within the Secretary's discretion, the Legislature has specifically limited that discretion in breach of contract cases to a maximum one year suspension if the school board has not collected outstanding liquidated damages.

20. Schmasow has violated ARSD 24:08:03:03(5), which states, "Adhere to the terms of a contract or appointment unless the contract has been altered without the consent of the affected parties, except as provided by law, legally terminated, or legally voided."

21. Even if Schmasow's actions in regard to Sitting Bull School would amount to a separate violation of the code of ethics, those actions are so interwoven with the breach of contract that I cannot conclude the Legislature intended to allow a penalty beyond the one year suspension authorized by SDCL 13-42-9.

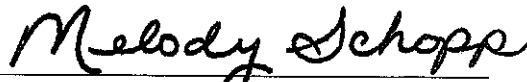
22. Schmasow's refusal to accept responsibility for her actions is an aggravating factor.

23. The limit of the Secretary's discretion in this case is a one year suspension, so the Secretary rejects the recommendation of the Commission.

24. There is clear and convincing evidence to suspend Schmasow's teaching certificate for one year.

25. Based upon the foregoing Findings of Fact and Conclusions of Law, the teacher Certificate No. 66410 issued to Sarah Schmasow should be **suspended for a period of one year**, effective July 1, 2015.

Dated this 30th day of June, 2015.



Dr. Melody Schopp
Secretary
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501