

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

In re: Certification Application of JULIE A. LAKOTA)	DSE 2015-20
)	
)	FINAL ORDER REGARDING
)	SOUTH DAKOTA
)	CERTIFICATION

The Secretary has received a final proposed decision and findings of fact and conclusions of law from the independent hearing examiner pursuant to ARSD § 24:18:02:04. Prior to issuing the final proposed decision and findings and conclusions, the hearing officer provided the parties with the opportunity to present objections and proposals and considered the same.

Pursuant to the authority granted to the Secretary by SDCL 13-42-4, 13-42-7, 13-42-9, and ARSD article 24:18, and after review of the record herein, the Secretary issues the following ORDER:

1. The Secretary affirms and adopts the final proposed Findings of Fact 1-58 and Conclusions of Law 2-3, 7-14, and 16-17 of the independent hearing officer. These findings and conclusions, attached as Exhibit A, are hereby incorporated into this Order by this reference as if set forth in full.
2. Conclusion of Law 1 is revised to: Robert B. Anderson was assigned as independent hearing examiner pursuant to ARSD 24:18:02:03 to preside over the contested case relating to the denial of Lakota’s application for teacher’s certificate dated September 1, 2015.
3. Conclusion of Law 4 is revised to: SDCL 13-42-9 provides that the Secretary may refuse to issue or renew, revoke, or suspend any certificate for violation of the teacher’s code of professional ethics or moral turpitude.
4. Conclusion of Law 5 is revised to: SDCL 23A-27-14.2 provides that receipt of a suspended imposition of sentence does not affect the Department’s ability to deny, revoke, or suspend a certificate.
5. Conclusion of Law 6 is revised to: SDCL 13-42-7 provides that the Secretary may refuse to issue or renew a certificate at any time for any of the reasons referenced in SDCL 13-42-9.

6. Conclusion of Law 15 is revised to: The Department of Education has the power and authority to refuse to issue or renew, revoke or suspend any certificate based on the nature of offenses which led to convictions as noted above, their frequency and repetitive nature, the time period which they cover, and the omissions on the application. Although these factors support the Department's intent to deny Lakota the opportunity to receive or reapply for a teacher's certificate for some finite period, they do not support a decision to permanently prohibit Lakota from doing so.

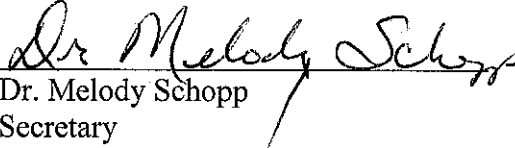
7. The Secretary affirms and adopts the final proposed order issued by the independent hearing officer, which is attached as Exhibit B and incorporated into this Order by this reference as if set forth in full.

8. Lakota's application for a certificate is DENIED, and she cannot reapply before December 31, 2017. If Lakota reapplies, she must meet all certification requirements at the time the application is submitted. ARSD 24:18:04:02.

9. This Order and attached exhibits are a public record pursuant to SDCL 13-42-17.1.

This constitutes final agency action and may be appealed to circuit court pursuant to ARSD § 24:18:02:06.

Dated this 23 day of May, 2016.


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

<p>In re: Certification Application of JULIE A. LAKOTA</p>	<p>DSE 2015-20</p> <p>FINDINGS OF FACT AND CONCLUSIONS OF LAW</p>
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Julie A. Lakota (Lakota) made a timely request for hearing in regard to a written "Notice of Intent to Deny Teaching Certificate" which notice was dated December 16, 2015.

A hearing on Lakota's timely request was held before Robert B. Anderson, duly appointed independent hearing examiner, on Tuesday, March 8, 2016, at 1:30 p.m. CST in Conference Room 1, MacKay Building, First Floor, 800 Governor's Drive, in Pierre, South Dakota. The hearing was a private hearing as requested by Lakota, and was held pursuant to written Notice of Hearing dated February 8, 2016.

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 Holly Farris, Assistant General Counsel, South Dakota Department of Education. Lakota 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 all the testimony and reviewing of 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. Lakota was born March 1, 1958.
2. On or about April 22, 2009, Lakota applied for an initial alternative certification teaching certificate from the Department of Education.
3. Lakota was issued a South Dakota teaching certificate, effective April 22, 2009, and expiring July 1, 2010.
4. The last certificate held by Lakota expired on July 1, 2010.



5. On or about September 21, 2015, Lakota applied for a teaching certificate through the Department's alternative route to certification.

6. In Lakota's application which was submitted on or about September 21, 2015, she answered questions 1 and 2 of the applicant conduct review statement by accurately admitting certain portions of her criminal history.

7. The Department is only aware of "red flags" or concerns relating to conduct of applicants by reviewing applications. Therefore, the applications must be complete and accurate in order to give the Department an accurate picture of the applicant's character and fitness.

8. Based on Lakota's answers, the Department conducted an additional investigation in regard to Lakota's background and criminal history. That investigation led to the Department deciding that her Lakota's application should be denied based on her criminal history, pattern of behavior, and discrepancies in her application.

9. The reasons for the Department's denial of Lakota's 2015 application involved ethical violations.

10. Lakota has not held any South Dakota Teacher's Certificate since July 1, 2010.

11. From 1993 through August 15, 2008, Lakota was charged with a variety of misdemeanor traffic offenses and related offenses, including charges for failure to use a child passenger restraint system, speeding, driving with a suspended license, and also had a number of bench warrants issued against her for such things as failure to appear and failure to pay fines or comply with sentences.

12. Lakota's violations of the law prior to August, 2008, including such things as speeding, failure to use child restraints, and driving with a suspended license are not viewed as being significant enough under the circumstances to constitute a basis for the denial or limitation of a teacher's certificate. Those violations were not serious, and in the opinion of the Hearing Examiner do not represent a basis for denying Lakota's application independently. They may be considered, in view of all the facts and circumstances, as part of a pattern of conduct or behavior when combined with other, subsequent offenses. Further, those offenses prior to August, 2008 were not alcohol-related offenses and appear to have been committed mainly due to practical considerations on Lakota's part.

13. On December 31, 2008, Lakota was arrested for her first alcohol-related driving offense. She was charged with DUI, Simple Assault, Third-Degree Intentional Damage to Property, Failure to Maintain Financial Responsibility, and Open Container.

14. On or about February 4, 2009, Lakota pled guilty to driving under the influence and third degree intentional damage to property, and was sentenced by the court. The remaining charges were dismissed.

15. At the time of her December, 2008 arrest for DUI, Lakota had never had a serious criminal charge filed against her, and had no history of alcohol-related offenses.

16. At the time of the December, 2008 offense, Lakota was 50 years of age.

17. Lakota was arrested for her 2nd DUI on September 2, 2009 in Pennington County, South Dakota. On or about February 8, 2010, Lakota pled guilty to that offense and was sentenced.

18. Lakota was arrested for her 3rd DUI on September 4, 2009 in Pennington County, South Dakota. On or about February 8, 2010, Lakota pled guilty to this charge and was sentenced.

19. Lakota was arrested and convicted for three DUI's in approximately a 9-month period in 2008 and 2009.

20. Lakota was arrested for her 4th DUI on May 22, 2014 in Pennington County, South Dakota. In addition to being charged with driving under the influence, pursuant to SDCL 32-23-4.6 (a Class 5 Felony), Lakota was also charged with 3rd Degree Intentional Damage to Property as a result of that incident. On or about July 24, 2014, Lakota pled guilty to the DUI charge and the remaining charges were dismissed. The Court imposed a suspended imposition of sentence, including some jail time, probation, and revocation of her driver's license.

21. In specific, as part of the conditions of her suspended imposition of sentence, Lakota served 100 days in jail and engaged in court-ordered alcohol evaluation.

22. On or about October 20, 2009, Lakota was charged with Simple Assault in Pennington County. She failed to appear, a bench warrant was returned and the charge was ultimately dismissed.

23. On or about June 24, 2010, Lakota was charged with 5 criminal offenses in Minnehaha County, including:

- 1) Possessing an altered or invalid driver's license;
- 2) Driving with revoked (not suspended) license;
- 3) Failure to maintain financial responsibility;
- 4) Seatbelt violation;
- 5) Wrong way on a one-way street

On or about August 6, 2010, Lakota pled guilty to possession of an altered or invalid driver's license and the remaining charges were dismissed. She was sentenced by the court, and the sentence included jail time.

24. Since 1993, there have been 12 bench warrants issued against Lakota. Six of them for failure to appear, three for non-payment of fines and costs, and three for other counts of non-

compliance with court orders.

25. Lakota's behavior over a period of time in her life (but not her entire lifetime) shows a disregard for personal obligations and a disregard of the judicial system.

26. On her 2009 application for certification (Hearing Exhibit 5), Lakota omitted to mention the fact that she had been charged with Intentional Damage to Property and simple assault in her response to Question 1. She omitted that she had pled guilty to 3rd Degree Intentional Damage to Property.

27. In her 2015 application (Hearing Exhibit 21), Lakota omitted that she had been charged with Simple Assault and 3rd Degree Intentional Damage to Property.

28. Lakota testified that she did not believe that she was required to list misdemeanors and other less-serious offenses on her application.

29. The directions and definitions contained in the applications which Lakota completed in 2009 and 2015 are plain and straightforward, and clearly require applicants to list misdemeanors and other charges, whether resulting in convictions or not.

30. At the hearing, Lakota did admit that the various criminal charges against her were, in her own words, "severe."

31. At the hearing, Lakota admitted and acknowledged that she made a number of bad choices for approximately seven years during her life. Those years coincided with her DUI arrests and convictions.

32. Lakota lived approximately 50 years being sober, not abusing alcohol, and seldom drinking alcohol.

33. For a period of approximately seven years – which time period included the more severe and alcohol-related offenses which are contained in her record – Lakota abused alcohol and did other things that in her own words "made a mess of my life."

34. Lakota testified that her alcohol abuse result from emotional and personal problems that arose for a variety of reasons.

35. Lakota correctly believes that her criminal problems were mainly alcohol related.

36. Since approximately May 22, 2014, Lakota has not been drinking alcohol. There is no evidence that Lakota has experienced any criminal or personal problems since the May 22, 2014, DUI arrest which resulted from her alcohol use.

37. Lakota seems sincere about acknowledging and admitting her prior problems, the fact that no one is to blame for those problems other than herself, and also seems to be insightful

about her problems and the importance of not drinking again in the future.

38. Lakota was aware of the serious nature of her alcohol abuse and criminal history because she admitted that prior to the hearing she had read laws and rules governing teachers, and because of those laws and rules and her past record, she thought she would probably not be issued a teacher's certificate.

39. Lakota presented herself as honest and sincere at the hearing as it related to her acknowledgement of personal responsibility and her desire to remain alcohol free in the future.

40. Lakota has now paid her fines and costs which have been imposed and not suspended or otherwise forgiven.

41. Grounds for denial or non-renewal of a teacher's certificate are set forth in SDCL 13-42.

42. The Professional Teachers Practices and Standards Commission has been given the authority and has promulgated rules for a code of professional ethics for teachers in South Dakota pursuant to authority granted by South Dakota law. The Code of Ethics is found in ARSD 24:08:03.

43. The Code of Ethics requires a teacher to "... engage in no act that results in a conviction."

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

45. At the time of the hearing, Lakota was employed at Marty Indian School as a library aide and credit recovery teacher. She had been so employed there since August, 2015.

46. Lakota applied at Marty Indian School because that is the high school from which she attended and graduated.

47. When Lakota first applied at Marty Indian School, she did not think she would obtain employment there because she knew that her employer was doing a background check and knew that it would disclose a number of criminal convictions. She was employed regardless.

48. Lakota testified that the applications in 2009 and 2015 were completed by her to the best of her ability and that she thought her responses were accurate and that she has been honest.

49. Lakota did not live up to the standards required of those holding a teacher's certificate in South Dakota during the time which she was abusing alcohol and engaging in a repeated pattern of criminal behavior.

50. Lakota engaged in a pattern of irresponsible behavior, alcohol abuse, and criminal behavior over a relatively short period of time, and that behavior caused her a number of significant problems.

51. Lakota's problems during that period of time resulted from conscious choice on her part in terms of her behavior.

52. Lakota's behavior evidenced a disregard of laws and the requirements of the judicial system.

53. The evidence on the record however, does not indicate a long term pattern of criminal activity and behavior, particularly in view of the fact that Lakota had very little significant criminal history and no record of alcohol use or abuse until she was almost 50 years old.

54. Lakota is sincere about wanting to teach and help students succeed. It is a credit to Lakota that she has ceased using alcohol and evidently been successful at alcohol treatment through her efforts.

55. If Lakota's alcohol use resurfaces in the future, it would be very damaging to any future application for teacher's certification, and her ability to successfully teach.

56. Lakota's behavior resulted in a violation of the code of ethics which apply to South Dakota teachers.

57. In her present alcohol-free status, Lakota is capable and desirous of complying with the laws and regulations applicable to South Dakota teachers.

58. At the hearing, the Department of Education withdrew allegations in paragraphs 44-49 of their Notice of Intent to Deny Certificate and withdrew the basis for denial set forth in those paragraphs.

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 of the contested case relating to the denial of Lakota's application for teacher's certificate dated September 1, 2015.

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

3. A 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 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 the 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 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 Lakota committed acts or omissions which justified the denial or non-issuance of a 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 Lakota violated the South Dakota Teacher's Code of Ethics by a preponderance of the evidence.

9. The South Dakota Department of Education has met its burden of proof and shown by a preponderance of the evidence that Lakota 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 Lakota engaged in acts that resulted in criminal convictions.

11. Lakota 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. Lakota's criminal convictions violate ARSD 24:08:03:02(7).

13. Lakota's omissions on her application for a South Dakota Teacher's Certificate violate ARSD 24:08:03:02 (8).

14. The South Dakota Department of Education acted appropriately in issuing its denial of Lakota's application or alternative certification for teacher's certificate, dated August 19, 2015.

15. The Department of Education has the power and authority to revoke or suspend any certificate based on the nature of offenses which led to convictions as noted above, their

frequency and repetitive nature, and the time period which they cover. Although these factors support the Department's intent to deny Lakota the opportunity to receive or reapply for a teacher's certificate for some finite period, they do not support a decision to permanently prohibit Lakota from doing so.

16. Having heard all of the testimony and having reviewed all 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 Lakota should be prohibited from holding or applying for a South Dakota teacher's certificate through midnight, December 31, 2017. After that date, Lakota shall have the right to reapply for the issuance of a South Dakota teaching certificate and the factors relied on by the Department in its Notice of Intent to Deny dated December 16, 2015, may not themselves be relied on as a basis for denial of that certificate. They may, however, be relied on to show a pattern or practice of behavior if Lakota's future behavior reflects a continuance of her prior criminal alcohol-related problems.

17. An Order should be entered consistent with these Findings of Fact and Conclusions of Law.

Dated this 4 day of May, 2016.



ROBERT B. ANDERSON
Independent Hearing Examiner

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

DIVISION OF THE SECRETARY
SOUTH DAKOTA DEPARTMENT OF EDUCATION

In re: Certification Application of JULIE A.
LAKOTA

DSE 2015-20

**ORDER DENYING APPLICATION FOR
TEACHING CERTIFICATE**

Pursuant to the authority granted to the undersigned Independent Hearing Examiner by SDCL§13-42 and ARSD Art. 24:18, and based upon the Findings of Fact and Conclusions of Law which are hereby incorporated by this reference, it is hereby;

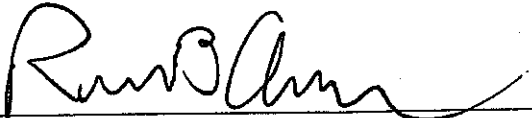
ORDERED, that the Secretary of the South Dakota Department of Education has a factual and legal basis to refuse to issue a teacher's certificate to Julie Lakota, pursuant to her application for alternative certification, dated August 19, 2015; it is further

ORDERED, that the application of Julie Lakota for alternative certification dated August 19, 2015, should be and is hereby denied; it is further

ORDERED, that Julie Lakota may not hold or reapply for a South Dakota teacher certificate until midnight, December 31, 2017. Thereafter, she may reapply for such a certificate and the Department of Education may not rely on the specific factors set forth in their Notice of Intent to Deny dated December 16, 2015. However, if Lakota's future behavior reflects a continuance of her past criminal and/or alcohol related problems, those factors may be relied on to show a continuing course of conduct; 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 Julie Lakota by the Department of Education, pursuant to statute.

Dated this 4 day of May, 2016.



ROBERT B. ANDERSON
Independent Hearing Examiner

