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

In re: Certification Application of
NICHOLE B. TWISS.

DSE 2016-09

**ORDER REGARDING
SOUTH DAKOTA
CERTIFICATION**

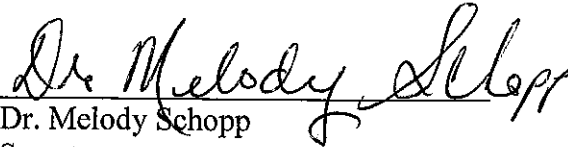
The Secretary has received a final proposed decision and findings of fact and conclusions of law from the independent hearing examiner pursuant to ARSD § 24:18:02:04. Prior to issuing the final proposed decision and findings and conclusions, the hearing officer provided the parties with the opportunity to present objections and proposals and considered the same. The Secretary has read and examined the entire file in the above named matter, in accordance with SDCL 1-26-24.

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 and Conclusions of Law 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. 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.
3. Twiss's application for a certificate is DENIED, and she cannot reapply before Midnight, July 31, 2018. If Twiss reapplies, she must meet all certification requirements at the time the application is submitted before a certificate could be issued. ARSD § 24:18:04:02.
4. 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 15 day of February, 2017.

A handwritten signature in cursive script that reads "Dr. Melody Schopp". The signature is written in black ink and is positioned above a horizontal line.

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

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| In re: Certification Application of NICOLE B. TWISS | DSE 2016-09 FINDINGS OF FACT AND CONCLUSIONS OF LAW |
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Nicole B. Twiss (Twiss) made a timely request for hearing in regard to a written "Notice of Intent to Deny Teaching Certificate" which notice was dated September 9, 2016.

A hearing on Twiss' timely request was held before Robert B. Anderson, duly appointed independent hearing examiner, on December 5, 2016, at 10:00 a.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 Twiss, and was held pursuant to written Notice of Hearing dated November 3, 2016.

The South Dakota Department of Education appeared through Carla Leingang, Administrator for the Office of Certification of the South Dakota Department of Education, and Holly Farris, Assistant General Counsel, South Dakota Department of Education. Twiss 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 all the testimony and reviewing of exhibits and other evidence offered and received into evidence, as well as the transcript of the December 5, 2016 hearing, as independent hearing examiner, I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Twiss was born [REDACTED]
2. On or about February 5, 2016, Twiss applied for a renewal of her South Dakota teaching certificate.
3. Prior to her renewal application of February 5, 2016, Twiss was last issued a South Dakota teaching certificate on August 13, 2007.
4. The last certificate held by Twiss expired on July 1, 2016.
5. The renewal application which Twiss activated on February 5, 2016, asks for information concerning events which occurred since her prior teaching certificate was issued on



or about August 13, 2007. This information included but was not limited to criminal history and other information relating to character and fitness.

6. Twiss signed her February 5, 2016 application (Hearing Exhibit 31) and in doing so affirmed that she provided truthful and complete information in that application.

7. In Twiss' application submitted on February 5, 2016, she answered questions 1 and 2 of the applicant conduct review statement by accurately admitting certain portions of her criminal history, but failed to accurately and truthfully disclose the entirety of her criminal history since August 13, 2007.

8. The Department of Education 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.

9. Based on Twiss' answers to questions 1 and 2 in her renewal application, the Department conducted an additional investigation and gathered additional information relevant to the application.

10. The Department's investigation led the department to conclude that the renewal application submitted by Twiss should be denied based on her criminal history, pattern of behavior and discrepancies in her application.

11. The reasons for the Department's denial of Twiss' February, 2016 application involved ethical violations.

12. In December, 2009, Twiss was arrested for open container in Pennington County, South Dakota. She ultimately pled guilty to that offense. At that time, she was employed as a teacher at Pine Ridge Elementary School.

13. In 2010, Twiss was arrested for and ultimately convicted of DUI in Charles Mix County, South Dakota. Her BAC at the time of her arrest was .313. She received a partially suspended jail sentence, served limited jail time, and had her driver's license revoked as a result of the 2010 conviction.

14. At the time of the 2010 conviction, she was employed as a teacher at Rocky Ford Elementary School.

15. In 2011, Twiss was convicted in Lawrence County, South Dakota, for entering property after notice. Other charges brought as a result of the same incident were dismissed. The incident was alcohol-related. At that time, she was employed as a teacher at Pine Ridge Elementary School.

51. The evidence does not indicate a long term pattern of criminal behavior and activity on the part of Twiss, and she has taken steps which, if followed, should reduce the likelihood of her repeated behavior.

52. Twiss is sincere about wanting to teach and help students succeed, and her background of education and experience is designed to help her in accomplishing that goal.

53. Twiss' behavior resulted in a violation of the code of ethics which applied to South Dakota teachers.

54. In order for her future success, it will be important for Twiss to establish a pattern of good behavior in the future, and avoid the abuse of alcohol.

CONCLUSIONS OF LAW

1. Robert B. Anderson was duly designated and appointed as independent hearing officer, pursuant to ARSD 24:18:02:03 by the South Dakota Secretary of Education, and thereby designated to preside over the contested case relating to the denial of Twiss' renewal application for teacher's certificate dated February 5, 2016.

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 § 13-42-9 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 Twiss 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 Twiss 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 Twiss 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 that Twiss engaged in acts that resulted in criminal convictions, and that she violated the South Dakota Teacher's Code of Ethics.

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

13. Twiss' omissions on her application for renewal of her 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 Twiss' renewal application or alternative certification for teacher's certificate, dated February 5, 2016.

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 Twiss the opportunity to receive or reapply for a teacher's certificate for some finite period, they do not support a decision to permanently prohibit Twiss from doing so. Therefore, it is both the finding and conclusion of this hearing officer that Twiss should be permitted to reapply for a South Dakota teaching certificate at some later date.

16. Having heard all of the testimony and having reviewed all the exhibits admitted into evidence at the hearing, having reviewed the transcript of the hearing, having reviewed oral and written arguments and statements made by the parties, based on a review of the record in its entirety, and a determination as to the credibility and sincerity of the witnesses, I conclude as the duly appointed hearing examiner that Twiss should be prohibited from holding or applying for, or seeking renewal of, a South Dakota teacher's certificate through midnight, July 31, 2018. After that date, Twiss 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 September 9, 2016, 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 Twiss' future behavior reflects a continuance of her prior criminal or alcohol-related problems.

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

Dated this 31 day of January, 2017

A handwritten signature in cursive script, appearing to read "Robert B. Anderson", written over a horizontal line.

ROBERT B. ANDERSON
Independent Hearing Examiner

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES) SOUTH DAKOTA DEPARTMENT OF EDUCATION

DIVISION OF THE SECRETARY

In re: Certification Application of NICOLE B. TWISS

DSE 2016-09

**ORDER DENYING RENEWAL
APPLICATION FOR TEACHING
CERTIFICATE**

Pursuant to the authority granted to the undersigned independent hearing examiner by SDCL 13-42, and ARSD 24:18, and based upon the Findings of Fact and Conclusions of Law which are hereby incorporated by this reference, it is hereby;

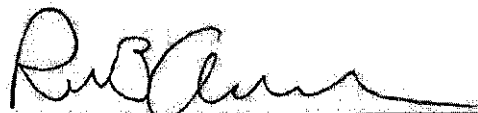
ORDERED, that the Secretary of the South Dakota Department of Education has a factual and legal basis to refuse to issue a teaching certificate to Nicole B. Twiss, pursuant to her renewal application for certification, dated February 5, 2016; it is further

ORDERED, that the renewal application of Nicole B. Twiss for certification dated February 5, 2016, should be and is hereby denied; it is further

ORDERED, that Nicole B. Twiss may not hold or reapply for a South Dakota teaching certificate until midnight, July 31, 2018. 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 September 9, 2016. However, if Twiss' 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 Nicole B. Twiss by the Department of Education, pursuant to statute.

Dated this 31 day of January, 2017.



ROBERT B. ANDERSON
Independent Hearing Examiner

