

STATE OF SOUTH DAKOTA)	DIVISION OF THE SECRETARY
	ss:	
COUNTY OF HUGHES)	SOUTH DAKOTA DEPT. OF EDUCATION
In re: certification application of)	DSE 2017-04
KORY S. FOSS)	
)	AMENDED
)	SETTLEMENT
)	AGREEMENT
)	

This Agreement is hereby entered into by the South Dakota Department of Education (“Department”) and Kory S. Foss (“Foss”) regarding his application for a renewed teacher certificate. In the respective opinions of the parties, this Agreement is fair, reasonable, and in the public interest.

The parties agree as follows:

1. This Agreement shall be effective from the date it is signed by both parties.
2. The parties agree to the Stipulated Findings of Fact and Conclusions of Law attached hereto as Exhibit A.
3. Foss has applied for a renewed teacher certificate.
4. Investigation into Foss’ application has revealed the conduct history attached as Exhibit A.
5. The Department shall issue a five-year teacher certificate, effective January 23, 2017, to July 1, 2022.
6. In order to be eligible to maintain or renew this certificate, Foss must comply with all of the following conditions:
 - a. As of the date of his signature on this Agreement, he has not been charged with and will not be charged with a violation of any state, federal, tribal, county, or municipal law or ordinance not already referenced in Exhibit A.

b. He has not committed and will not commit any violations of the code of ethics not already referenced in Exhibit A.

c. He will commit no new violation of any state, federal, tribal, county, or municipal law or ordinance.

d. He will immediately provide notice to the Department of any new citation or arrest for any violation of state, federal, tribal, county, or municipal law or ordinance and will provide a copy of any charging documents.

e. He will comply with all provisions of the applicable code of ethics.

f. He will meet all other requirements for certification. Nothing in this paragraph is intended to abrogate or avoid any other applicable requirements for certification.

g. He will obtain an alcohol evaluation no later than 60 days from the date both parties sign the Agreement and provide a copy of the results of the evaluation to the Department. Foss shall be responsible for the cost of the alcohol evaluation.

h. He will comply with all recommendations of the alcohol evaluation obtained under paragraph 6.g. and provide signed written documentation to the Department of his completion of all recommendations of the evaluation.

i. He will regularly attend Alcoholics Anonymous meetings or another suitable support program for treatment and/or recovery from alcohol or substance abuse.

j. He shall submit reports to the Department every six months describing his compliance with the terms and conditions of this Agreement and will provide such additional documentation as the Department may require to monitor compliance with this Agreement.

7. The conditions in paragraph 6(a) through 6(h) of this Agreement shall remain in effect for the entire duration of any certificate (including renewals) issued to Foss by the Department.

8. The conditions in paragraph 6(i) through 6(j) of this Agreement shall remain in effect for three years from the date this Agreement is signed by both parties.

8. If Foss violates any of the conditions listed in paragraph 6, then the Department or Professional Teachers Practices and Standards Commission may consider all criminal charges and conduct referenced in Exhibit A and all other relevant facts in determining whether to revoke, suspend, or non-renew the certificate.

9. Any notice or other communication required from Foss pursuant to this Agreement shall be in writing and mailed via first class mail to the following:

Ferne Haddock
South Dakota Department of Education
800 Governor's Drive
Pierre, SD 57501

10. Foss agrees that by entering into this Agreement, he has waived all rights to appeal any matter addressed in this Agreement.

11. Each party to this Agreement shall bear their own costs and attorney's fees.

12. The terms of this Agreement may be modified only by a subsequent written agreement signed by the parties.

13. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized to enter into this Agreement and each of the terms and conditions hereof, and to execute and legally bind such party to it.

14. This Agreement shall constitute the entire agreement between the parties. This Agreement supersedes any other written or oral agreements between the parties. If any term or

provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement.

15. Under the requirements of SDCL ch. 1-27 and 1-26-2, this Settlement Agreement and attached exhibit are public documents.

16. Foss fully and forever discharges the State of South Dakota, and its officers, assigns, agents, and employees, from any and all liability whatsoever, including punitive damages, losses, costs, attorney's fees, or expenses of any nature, whether joint and several, on all claims, actions, and demands whatsoever that now exist or may hereafter accrue, and including all claims, actions, and demands whatsoever based on matters now unknown, as well as known, and unanticipated as well as anticipated, in any manner whatsoever, directly or indirectly, resulting or to result of any matter related to the above-captioned action or this Settlement Agreement.

[SIGNATURES ON FOLLOWING PAGE]

Dated this 22 day of May, 2017.

[Signature]
Kory S. Foss

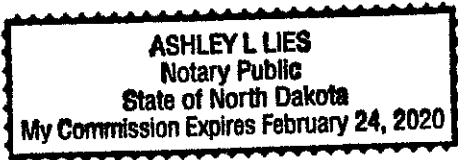
State of ~~South~~ ^{North} Dakota
County of Eddy

On this 22nd day of May, 2017, before me, the undersigned officer, personally appeared Kory S. Foss, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I set my hand and official seal.

My commission expires:
Feb 24, 2020
(Seal)

[Signature]
Notary Public-South Dakota
North



Dated this 25 day of May, 2017.

[Signature]
Dr. Melody Schopp
Secretary
South Dakota Department of Education

State of South Dakota
County of Hughes

On this 25th day of MAY, 2017, before me, the undersigned officer, personally appeared Dr. Melody Schopp, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

In witness whereof, I set my hand and official seal.

My commission expires:
1/16/2019
(Seal)



[Signature]
Notary Public-South Dakota

EXHIBIT A—STIPULATED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On or about July 24, 2010, the South Dakota Professional Teachers Practices and Standards Commission (PTPSC) entered Findings of Fact and Conclusions of Law that Foss violated the South Dakota Code of Professional Ethics for Teachers ARSD 24:08:03:02(8) and 24:08:03:01(9), due to being convicted of driving or being in actual physical control of a vehicle while under the influence of an alcoholic beverage, and his conduct of hitting and kicking a former student.

2. On or about July 24, 2010, the PTPSC entered an Order that Foss abstain from the use or possession of alcohol and not frequent any establishments in which the primary purpose is the service of alcohol.

3. On or about October 31, 2016, in Eddy County, North Dakota, Foss was charged with Driving a Motor Vehicle While Under the Influence/Refusal of Chemical Test (N.D.C.C. 39-08-01, class B misdemeanor). On or about November 15, 2016, Foss pled guilty to Driving a Motor Vehicle While Under the Influence/Refusal of Chemical Test. Foss was sentenced to probation from November 15, 2016, until May 14, 2017, with conditions including: completion of a chemical dependency evaluation, participation in the 24/7 sobriety program, compliance with recommended treatment, compliance with a payment agreement in the amount of approximately \$750.00, and violation of no laws during his probationary period.

4. On or about January 23, 2017, Foss applied for a renewed teacher certificate from the Department of Education. As part of this application, Foss completed the Applicant Conduct Review Statement and answered yes to Question One, which asks:

“Since your last certification was issued, have you been arrested or charged with any criminal offense?”

The term criminal offense includes misdemeanor and felony offenses. It does not include petty offenses such as minor traffic offenses including but not limited to: speeding tickets, stop sign violations, or careless driving offenses. If you are not sure whether the crime would be a minor offense, include the offense. All Class I misdemeanor offenses and Class II non-traffic misdemeanor offenses must be disclosed.”

5. In his answer to Question One, Foss stated:

“In October of 2016 I received a DUI 1st Offense charge while driving my golf cart to my home. I pleaded guilty and have met all the conditions of said charge. ”

6. Foss also answered yes to Question Two, which asks:

“Since your last certification was issued, have you been convicted or pleaded guilty to any criminal offense?

The term conviction includes a finding of guilt by a judge or jury, or admission of guilt or plea of guilty, or a plea without an admission of guilt. You must include those crimes where the sentence was stayed, suspended, executed or you received a suspended imposition of sentence. . .”

7. In his answer to Question Two, Foss stated:

“Pleaded guilty to above charge of 1st Offense DUI.”

8. The South Dakota Code of Professional Ethics for Teachers requires that, in fulfilling their obligations to the public, educators shall engage in no act that results in a conviction.

ARSD 24:08:03:02(7).

9. The South Dakota Code of Professional Ethics for Teachers requires that, in fulfilling their obligations to the public, educators shall exemplify high moral standards by not engaging in or becoming a party to such activities as. . . moral turpitude. ARSD 24:08:03:02(8).

10. Foss’ criminal conduct and convictions referenced herein violate ARSD 24:08:03:02(7) and (8).

11. Foss’ failure to abide by the Commission’s condition regarding the use or possession of alcohol, and the consequential recurring conduct of excessive use of alcohol and DUI conviction referenced herein, violate ARSD 24:08:03:02(8).