

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

In Re: Certification Application)
of **DANA K. HEIDRICH**)

DSE 2017-08

**ORDER DENYING RENEWAL
APPLICATION FOR TEACHING
CERTIFICATE**

Pursuant to the authority granted to the Secretary of the South Dakota Department of Education by SDCL 13-42-7 and 13-42-9, following application for renewal of Certificate (Application received July 31, 2015), later withdrawn, applicant filed a second application for renewal of Certificate (dated January 20, 2017). Department staff reviewed the Application and the record and conducted an interview with Applicant and issued a Notice of Intent to Deny Teaching Certificate, dated September 29, 2017. The appointed hearing examiner held a hearing on May 14, 2018, and issued proposed findings of fact, conclusions of law and a proposed order on August 14, 2018. The undersigned then gave the parties until the end of September 2018 to propose their own findings and conclusions, and to object to those proposed by the hearing examiner. No objections or additional proposals have been received. Based on a thorough reading and study of the entire record herein, the Secretary orders the following:

1. The Secretary affirms and adopts the Findings of Fact and Conclusions of Law of the Hearing Examiner in full. These findings and conclusions, attached as Exhibit A, are hereby incorporated into this Order by this reference as if fully set forth herein. The Secretary adopts fully the provisions of the Hearing Examiner's **ORDER DENYING RENEWAL APPLICATION FOR TEACHING CERTIFICATE**, attached hereto and incorporated herein as a part of Exhibit A.
2. A preponderance of the evidence shows that Dana Heidrich violated the South Dakota Teacher's Code of Ethics and pursuant to SDCL § 13-42-9 good cause exists to refuse to renew her teaching certificate based on her character and fitness. Further, good cause would exist pursuant to applicable law for revocation of Applicant's certificate if it had remained in force.
3. Based upon the foregoing Findings of Fact and Conclusions of Law, the Secretary hereby refuses to renew the teaching certificate of Dana Heidrich (#54709-03), and her application for certificate renewal is hereby denied.

4. Dana Heidrich may not hold or reapply for a South Dakota Teaching Certificate until midnight, December 31, 2020. Thereafter, she may reapply under terms and conditions set out in the Hearing Examiner's findings, conclusions, and order, attached hereto and incorporated as Exhibit A.

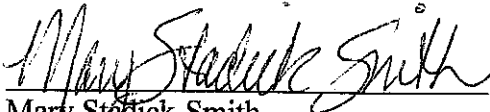
5. Notification of this Refusal to renew will be placed on the NASDTEC registry and be placed in Dana Heidrich's permanent certification file within the South Dakota Department of Education.

6. This Order and attached order, findings and conclusions will be provided to Dana Heidrich and the Certification Staff of the Department through their respective legal counsel.

7. This Order and incorporated order, findings and conclusions are a public record pursuant to SDCL 13-42-17.1

This Order constitutes final agency action. Dana Heidrich has a right to appeal pursuant to SDCL 13-42-16 unless appeal has been waived.

Dated this 12th day of October, 2018.


Mary Stadick-Smith
Interim Secretary
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501

STATE OF SOUTH DAKOTA)
)SS
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DIVISION OF THE SECRETARY
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<p>In re: Certification Application of DANA K. HEIDRICH</p>	<p>DSE 2017-08 ORDER DENYING RENEWAL APPLICATION FOR TEACHING CERTIFICATE</p>
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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,

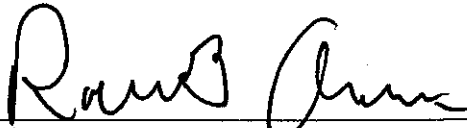
ORDERED, that the Secretary of the South Dakota Department of Education has a factual and legal basis to refuse to issue a renewal teaching certificate to Dana K. Heidrich, pursuant to her renewal application for certification, dated January 20, 2017; it is further

ORDERED, that the renewal application of Dana K. Heidrich for certification dated January 20, 2017, should be and is hereby denied and the Notice of Intent to Deny issuance of said certificate issued by the South Dakota Department of Education is affirmed; it is further

ORDERED, that Dana K. Heidrich may not hold or reapply for a South Dakota Teaching Certificate until midnight, December 31, 2020. 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 29, 2017. However, if Dana K. Heidrich's future behavior reflects a continuance past criminal and/or alcohol and drug 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 Dana K. Heidrich by the Department of Education, pursuant to statute.

Dated this 14 day of August, 2018.



ROBERT B. ANDERSON
Independent Hearing Examiner

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

DIVISION OF THE SECRETARY
S.D. DEPT. OF EDUCATION

In re: Certification Application of DANA K. HEIDRICH	DSE 2017-08 FINDINGS OF FACT AND CONCLUSIONS OF LAW
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Dana K. Heidrich (Heidrich) made a timely request for hearing in regard to a written “Notice of Intent to Deny Teaching Certificate” which notice was dated September 29, 2017.

A hearing on Heidrich’s timely request was held before Robert B. Anderson, duly appointed independent hearing examiner, on May 14, 2018, 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 public hearing, and was held pursuant to written Notice of Hearing dated April 12, 2018.

The South Dakota Department of Education appeared through Carla Leingang, Administrator for the Office of Certification of the South Dakota Department of Education, and Brett A. Arenz, Special Assistant Attorney General. Heidrich appeared personally and through her attorney, John A. Stielow of Sturgis, South Dakota. 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 having reviewed the exhibits and other evidence offered and received into evidence, as well as a written transcript of the May 14, 2018 hearing, as independent hearing examiner I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Heidrich was born September 27, 1968.
2. Heidrich first applied for and received a South Dakota Teaching Certificate in 1994.
3. Heidrich is a graduate of Black Hills State University in Spearfish, South Dakota, and received a post graduate education in special education.
4. At all times relevant, Heidrich resided in Rapid City, South Dakota.
5. The last South Dakota Teacher’s Certificate held by Heidrich expired in 2015.
6. Heidrich completed and signed a South Dakota Teacher’s Certificate renewal application dated July 28, 2015 in an effort to renew her South Dakota Teacher’s Certificate at that time. *See Hearing Exhibit 5.*

7. The renewal application which Heidrich signed on July 28, 2015 required Heidrich as applicant to give certain information regarding events which occurred since her prior Teaching Certificate was issued. This information included but was not limited to criminal history and other information relating to character and fitness.

8. When Heidrich signed her renewal application (*Hearing Exhibit 5*) on July 28, 2015, she affirmed that she provided truthful and complete information in that application.

9. In Heidrich's renewal application dated July 28, 2015, she answered questions 1 and 2 of the applicant conduct review statement by accurately admitting to her criminal history. She admitted that she had been charged with 2nd degree burglary and 2nd degree intentional damage to property, been "convicted" of some criminal offense and had been granted a suspended imposition of sentence. She further stated that she was currently on probation and gave the names and numbers of her probation officers.

10. In *Hearing Exhibit 5*, Heidrich also answered "No" to question 7 which inquired as to whether she had ever left employment, been discharged, terminated or resigned to avoid dismissal or disciplinary action.

11. The Department of Education most often becomes aware of "red flags" or concerns relating to the conduct of applicants by reviewing applications. Generally, that is the only source of information they have regarding acts which may affect the character and fitness of an applicant. Therefore, applications must be complete and accurate in order to give the Department of Education an accurate picture of the applicant's character and fitness.

12. Based on Heidrich's answers to questions 1 and 2 in her renewal application of 2015, the Department conducted an additional investigation and gathered additional information relevant to the application. This included conducting a telephonic interview with Heidrich.

13. During the telephonic interview, representatives of the Department learned that Heidrich had been arrested and convicted and that she had been using controlled substances for approximately 13 years prior to that time. Heidrich had denied taking drugs or drinking while at school or immediately prior to going to work but admitted that she would occasionally go to school still "high" from prior drug use or under the influence of alcohol from the previous day.

14. The Department also learned that Heidrich had violated her probation on one occasion since her conviction by testing positive for methamphetamine and marijuana.

15. The Department also learned that Heidrich had been released from her job as a teacher when she refused to take a drug test upon request. Although Heidrich's response to paragraph 7 is somewhat ambiguous and could be interpreted as inaccurate, she did admit at the hearing that she resigned her employment to avoid submitting to a drug test and that when doing so, she was concerned about the conditions of her probation.

16. By written Notice of Withdrawal of Application for Certification dated February 23, 2016, Heidrich withdrew her renewal application dated July 28, 2015 (*Hearing Exhibit 5*).

17. As a result of her felony arrests and charges, Heidrich pled guilty to one count of third degree burglary on August 2, 2013. The remaining charges were dismissed.

18. On or about October 13, 2013 Heidrich received a suspended imposition of sentence and two years of supervised probation based on her guilty plea.

19. On or about October 27, 2014 a Petition for Revocation of Heidrich's probation was filed alleging that she had possessed or consumed mind-altering substances and had been under the influence of drugs during the course of her employment at a Rapid City school.

20. On or about December 5, 2014 Heidrich admitted to violating the terms and conditions of her probation. In response to that admission, her probation was modified to include an extension of her probation time, 50 days in jail with credit for 50 days she had served, and enrollment and successful completion of the Northern Hills Drug Court Program.

21. There is no evidence that Heidrich has engaged in repeated drug use or continued violations of the law since October 23, 2014. However, she does admit she violated the terms of her probation by drinking alcohol on one occasion in 2015.

22. On or about October 20, 2016 Heidrich received an Order of Dismissal and Discharge/Suspended Imposition of Sentence after successful completion of her extended probationary period and compliance with the conditions which were attached to that probation.

23. Heidrich filed a South Dakota Certificate renewal application dated January 20, 2017 which sought renewal of her South Dakota Teacher's Certificate. *See Hearing Exhibit 13.*

24. In her January 2017 renewal application, Heidrich again answered yes to questions 1 and 2 of the applicant conduct review statement. In doing so she responded "3rd degree burglary/break and entering – October 2013. Granted suspended sentence October 21, 2016."

25. As a result of both the prior application and knowledge gained at that time, and Heidrich's responses to the conduct review portion of the 2017 application, the Department conducted an investigation into Heidrich's 2017 renewal application.

26. As part of the investigation the Department of Education conducted an in-person interview with Heidrich on July 11, 2017. Heidrich advised the Department that she had a history of substance abuse that had contributed to her criminal history. Heidrich further advised the Department that substance abuse had been an issue with her for some time – at least the prior 13 years during which she had been working as a teacher. She further advised them that she had at times appeared at work as an educator under the influence of drugs and/or alcohol. The drug use included methamphetamine and marijuana. She further advised the Department that she was asked to submit to a drug test and choose instead to resign her employment. This is the incident that led to the violation of her probation in October 2014.

27. Heidrich further disclosed that the administration at the school where she was employed in 2014 may not have been fully aware of the extent of her probation or her drug use.

28. Heidrich's answer to question 7 contained in the applicant conduct review statement, which is a portion of the 2017 renewal application, is somewhat vague and ambiguous. Heidrich did in fact leave employment or was discharged or terminated or resigned in order to avoid dismissal or disciplinary action which was almost certain to result from her refusal to submit to a drug test. Although somewhat unclear, Heidrich should have answered question 7 in *Exhibit 13* differently.

29. Ultimately, Heidrich self-reported her criminal history to the Department in *Exhibits 5 and 13*.

30. Ultimately, Heidrich reported her history of drug and alcohol use and abuse to the Department in her interview of July 2017.

31. Absent the self-reporting by Heidrich, the Department had no way of knowing what behavioral or character issues, if any, were affecting Heidrich or that she was engaging in the use and abuse of alcohol and controlled substances.

32. Based on the information acquired by the Department in regard to Heidrich and her history, including her character and fitness, the Department made the determination that the 2017 certificate renewal application should be denied.

33. A written "Notice of Intent to Deny Teaching Certificate" was issued advising Heidrich that her 2017 renewal application would be denied. *See Hearing Exhibit 14*.

34. The reasons for denial of Heidrich's 2017 renewal application are set forth in *Hearing Exhibit 14* and are supported by competent evidence in the record.

35. The Department's reasons for denial of Heidrich's 2017 renewal application include violations of the Teacher's Code of Ethics which require teachers to exemplify high moral standards by not engaging in or become parties to such activities such as deceit, moral turpitude, gross immorality or the use of illegal drugs.

36. Heidrich's criminal history and her use and abuse of alcohol and illegal drugs during a time period when she was working as a teacher and otherwise, are all legitimate reasons for denial of the application to renew her teacher's certificate.

37. Heidrich's primary reason for going into teaching involved her love of children and the fact that she had been greatly helped by influential teachers that assisted her in overcoming academic difficulties including a learning and reading disability.

38. Heidrich has worked at Black Hills Special Services and taught at the Meade County School District, including teaching a class for emotionally disturbed children. She also has taught in the Rapid City School District and substitute taught at Douglas School District.

39. Heidrich has a special education endorsement.

40. After she violated the terms and conditions of her probation, Heidrich successfully participated in the Drug Court program and appears to have been sincere and dedicated in her efforts at rehabilitation through that program.

41. In addition to completing a 19-month drug court program, Heidrich participated in an in-patient treatment program in Sturgis and was sincere in her efforts to rehabilitate herself through both such programs.

42. Heidrich graduated from Drug Court on October 13, 2016 and continues to be active in AA and NA. She also has embarked on a physical fitness program which is a support system for her in regard to maintaining sobriety and emotional, social and mentally healthy lifestyle.

43. Since leaving the teaching profession, Heidrich has successfully been employed in construction and as a furniture salesman at a large furniture store in Rapid City.

44. Heidrich does not agree that her answer to question 7 in the 2017 renewal application was false or misleading. She does agree that she resigned from employment when asked to take a drug test.

45. Heidrich presented herself in an articulate way at the time of the hearing. Her testimony reflected a sincere recognition of her past transgressions and a recognition that she cannot continue to use or abuse alcohol or controlled substances.

46. Heidrich's testimony and the record in its entirety demonstrates that she has had recent success – approximately 2.5 years – in her rehabilitation efforts.

47. There is no reason to believe that Heidrich could be a very effective and valuable teacher if granted the ability to resume teaching and obtain a teaching certificate.

48. Heidrich has taken rehabilitation seriously and although had one relapse involving the use of alcohol in 2015, does not appear to have relapsed into the same type of abusive and destructive behavior that brought her into the court system since the efforts to revoke her probation in October and November 2014.

49. Heidrich was honest and admitted her probation violations and admitted that she consumed alcohol one time after her probation was modified.

50. Heidrich appears to have a degree of accountability and responsibility now that she did not exhibit previously.

51. Arrest and/or conviction of a criminal offense does not automatically permanently disqualify an individual from holding a South Dakota Teaching Certificate.

52. Grounds for denial or non-renewal of a teaching certificate are set forth in SDCL § 13-42.

53. The Professional Teacher's 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.

54. The Code of Ethics, among other things, requires a teacher to "...engage in no act that results in a conviction."

55. The Code of Ethics requires teachers 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).

56. Heidrich did not live up to the standards required of those individuals holding a teaching certificate in South Dakota during the time when she abused alcohol and other controlled substances including methamphetamine and marijuana. In addition, Heidrich's criminal behavior resulted in a violation of the Code of Ethics.

57. The Department of Education based its decision to deny the January 2017 renewal application filed by Heidrich mainly based on her violation of the Code of Ethics whereby she engaged in activities that did in fact violate that Code, including but not necessarily limited to being convicted of a serious criminal offense and using illegal drugs.

58. Heidrich's behavior indicates a prior long-term pattern of use and abuse of alcohol and controlled substances. However, she appears to have broken that pattern and she has taken steps to alter her lifestyle through rehabilitation efforts which, if followed, should reduce the likelihood of repeated behavior.

59. The criminal behavior engaged in by Heidrich which brought her into the South Dakota court system was not a long pattern, but an incident or incidents which were contributed to by her alcohol and drug abuse.

60. Heidrich's behavior resulted in a violation of the South Dakota Teacher's Code of Ethics.

61. In order for future success in life, it will be important for Heidrich to establish a pattern of good behavior, maintain her rehabilitation efforts and avoid the use of alcohol and controlled substances.

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 Heidrich's renewal

application for teacher's certificate dated January 20, 2017.

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. *See* SDCL § 13-42-9(2).

4. 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 or suspended.

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

6. The South Dakota Department of Education had the burden of proof on the issue of whether Heidrich violated the South Dakota Teacher's Code of Ethics by a preponderance of the evidence.

7. The South Dakota Department of Education has met its burden of proof and shown by a preponderance of the evidence that Heidrich violated the South Dakota Teacher's Code of Ethics and that pursuant to SDCL § 13-42-9, good cause existed for the Department's refusal to grant renewal of Heidrich's teaching certificate based on her character and fitness.

8. The South Dakota Department of Education has met its burden of going forward.

9. The South Dakota Department of Education has met its burden of proof that Heidrich engaged in acts that resulted in a criminal conviction, and that she violated the South Dakota Teacher's Code of Ethics.

10. Heidrich 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."

11. Heidrich's criminal conviction violate ARSD 24:08:03:02(7).

12. The South Dakota Department of Education had good cause in issuing its Notice of Intent to Deny Heidrich's Renewal Application dated January 20, 2017.

13. The Department of Education has the power and authority to revoke or suspend any teaching certificate based on the nature of offenses which led to criminal convictions as noted above, their frequency and repetitive nature, and the time period which they cover. Criminal convictions, however, do not necessarily permanently render an applicant unfit to hold a South Dakota Teaching Certificate. Although the factors in their totality support the

Department of Education's intent to deny Heidrich the opportunity to receive or reapply for a teacher's certificate for some finite period, they do not support a decision to permanently prohibit Heidrich from doing so. Heidrich has shown a sincere effort at rehabilitation and at least for some period of time, a relative degree of success in achieving rehabilitation. Her problems, including but not limited to her criminal conviction, were caused or at least contributed to by her addiction to alcohol and illegal drugs.

14. It is both the finding and conclusion of this hearing officer that the Department's decision to deny Heidrich's application for a renewal certificate be upheld but that Heidrich be permitted in the future to reapply for a South Dakota teaching certificate at some later date. If and when that occurs, all of Heidrich's behavior and other appropriate circumstances occurring on and after January 20, 2017 should and shall be considered in the decision to grant such an application.

15. 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 who testified live (all witnesses with the exception of Jason James testified live), I conclude as the duly appointed hearing examiner that Heidrich should be prohibited from holding or applying for, or seeking renewal of, a South Dakota teaching certificate through midnight, December 31, 2020. After that date, Heidrich shall have the right to reapply for the issuance of a South Dakota teaching certificate and the factors relied on by the Department of Education in its Notice of Intent to Deny dated September 29, 2017, may not themselves be relied on as a basis for denial of such application. They may, however, be relied on to show a pattern or practice of behavior if Heidrich's behavior after that date reflects a continuance of her prior criminal, alcohol or drug-related problems.

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

Dated this 14th day of August, 2018.



ROBERT B. ANDERSON
Independent Hearing Examiner