

STATE OF SOUTH DAKOTA	)	DIVISION OF THE SECRETARY
	SS:	
COUNTY OF HUGHES	)	SOUTH DAKOTA DEPT. OF EDUCATION
In re: certification application of	)	DSE 2017-09
JANA L TUFTY	)	
	)	SETTLEMENT
	)	AGREEMENT
	)	

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This Agreement is hereby entered into by the South Dakota Department of Education (“Department”) and Jana I. Tufty (“Tufty”) regarding her application for an initial education specialist 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. Tufty has applied for an initial education specialist certificate.
4. Investigation into Tufty’s application has revealed the conduct history attached as Exhibit A.
5. The Department shall issue a five-year education specialist-school counselor certificate, effective May 29, 2017.
6. In order to be eligible to maintain or renew this certificate, Tufty must comply with all of the following conditions:
  - a. As of the date of her signature on this Agreement, she 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. She has not committed and will not commit any violations of the code of ethics not already referenced in Exhibit A.
- c. She will commit no new violation of any state, federal, tribal, county, or municipal law or ordinance.
- d. She 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. She will, upon request of the Department, obtain an independent alcohol evaluation within 60 days of the request to obtain the evaluation and provide a copy of the results to the Department. Tufty shall be responsible for the cost of the alcohol evaluation. Tufty shall comply with all the recommendations of any alcohol evaluation obtained pursuant to this paragraph and provide written and signed documentation to the Department of completion of all recommendations of the evaluation.
- f. She will meet all other requirements for certification. Nothing in this paragraph is intended to abrogate or avoid any other applicable requirements for certification.
- i. She will regularly attend Alcoholics Anonymous meetings or another suitable support program for treatment and/or recovery from alcohol or substance abuse.
- j. She will not consume any beverage containing alcohol.
- k. She shall submit reports to the Department every four months describing her 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(j) of this Agreement shall remain in effect for the entire duration of any certificate (including renewals) issued to Tufty by the Department.

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

8. If Tufty 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 Tufty 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. Tufty agrees that by entering into this Agreement, she 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. Tufty 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 29<sup>th</sup> day of September, 2017.

Jana L. Tufty  
Jana L. Tufty

State of South Dakota  
County of Clay

On this 29<sup>th</sup> day of September, 2017, before me, the undersigned officer, personally appeared Jana L. Tufty, 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:  
4-24-2023  
(Seal)

Cindy Knudson  
Notary Public-South Dakota

Dated this 18 day of October 2017.

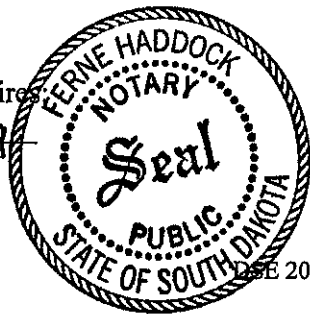
Melody Schopp  
Dr. Melody Schopp  
Secretary  
South Dakota Department of Education

State of South Dakota  
County of Hughes

On this 18<sup>th</sup> day of October, 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)



Fernie Haddock  
Notary Public-South Dakota

## **EXHIBIT A—STIPULATED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Tufty was charged and convicted with Operating While Intoxicated in Woodbury County, Iowa in 1995. The exact date and month is unknown, as Woodbury County officials stated to Tufty the records were no longer retained.

2. On or about November 28, 1996, in Woodbury County, Iowa, Tufty was charged with Operating While Intoxicated (Iowa Criminal Code 321.J.2, serious misdemeanor). On or about April 29, 1997, Tufty pled guilty to Operating While Intoxicated. Tufty received a deferred sentence and completed probation, including completion of 60 hours of community service. On or about June 7, 1998, the Court permitted the guilty plea to be withdrawn and a not guilty plea to be entered, and dismissed the case.

3. On or about June 8, 2001, in Clay County, South Dakota, Tufty was charged with Driving Under the Influence I (SDCL 32-23-2; Class 1 misdemeanor). On or about August 14, 2001, Tufty pled guilty to Driving Under the Influence I. Tufty was sentenced to fines and costs and revocation of her driver's license for 30 days.

4. Tufty was charged and convicted with Driving Under the Influence in Tempe County, Arizona in 2002. The exact date and month is unknown, as Tempe County officials stated to Tufty the records were no longer retained.

5. On or about January 1, 2015, in Union County, South Dakota, Tufty was charged with Driving Under the Influence I (SDCL 32-23-2; Class 1 misdemeanor). On or about February 12, 2015, Tufty pled guilty to Driving Under the Influence I. Tufty was sentenced to fines and costs, five days in jail with five days suspended, revocation of her driver's license for 30 days, and completion of an alcohol evaluation and compliance with the recommendations of said evaluation with written proof of compliance furnished to the Court.

6. On or about February 23, 2017, in Woodbury County, Iowa, Tufty was charged with Operating While Under the Influence-2<sup>nd</sup> offense (Iowa Criminal Code 321.J.2(2)(B); aggravated misdemeanor). On or about April 21, 2017, Tufty pled guilty to Operating While Under the Influence-2<sup>nd</sup>. Tufty was sentenced to 365 days in jail with 358 days suspended, completion of drinker-driver school, fines and restitution costs, probation for one year, completion of and compliance with a substance abuse evaluation, and completion of the R.E.A.P. program.

7. On or about May 29, 2017, Tufty applied for an initial education specialist certificate from the South Dakota Department of Education. As part of this application, Tufty completed the Applicant Conduct Review Statement and answered yes to Question One, which asks:

“Have you ever 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.”

8. In her answer to Question One, Tufty stated:

“OWI – Iowa 2017 plead guilty in April 2017 attended treatment in Feb 2017-March 2017  
DUI – SD Jan 2015 – plead guilty – all court issues handled and fines paid

I did have previous DUI convictions in 1996, 1997, and 2002. I am not sure if you need treatment and or documents from those. After those occurred I had 10 years in recovery until the 2015 DUI. Since then I have completed treatment and am currently in recovery and working a 12 step program.”

9. Tufty also answered yes to Question Two, which asks:

“Have you ever 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. . .”

10. In her answer to Question Two, Tufty stated:

"All information is listed above. Will send court documents for the most current OWI and probation officer. Will be released from in person probation in July will just need to report via phone until the April of next year.

Probation officers name is Kelly Gregg phone number 605-677-9505.

11. Tufty failed to disclose the 2001 DUI referenced in paragraph 3 on her 2017 application for an education specialist certificate.

12. 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).

13. 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).

14. 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 . . . misleading and false statements. ARSD 24:08:03:02(8).

15. Tufty's criminal conduct and convictions referenced herein violate ARSD 24:08:03:02(7) and (8).

16. Tufty's failure to fully disclose the criminal conduct and convictions referenced herein violates ARSD 24:08:03:02(8).