

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)	DSE 2018-08
CHEYENNE P. ZIEGLER)	
)	ORDER DENYING RENEWAL
)	APPLICATION FOR TEACHING
)	CERTIFICATE
)	


The Secretary of the South Dakota Department of Education ("Secretary") has jurisdiction over this proceeding pursuant to the authority granted to the Secretary by SDCL 13-42-7 and 13-42-9. Following Application for Renewal of Certificate (application received April 9, 2018) from Cheyenne P. Ziegler ("Ziegler"), South Dakota Department of Education ("Department") staff reviewed the Application and record and conducted an investigation. The Department then issued a Notice of Intent to Deny Teaching Certificate, dated September 21, 2018. The appointed hearing examiner held a hearing on December 4, 2018, and issued proposed findings of fact and conclusions of law, and a proposed order on February 26, 2019. The hearing officer further gave the parties until March 15, 2019 to propose their own findings or conclusions, and to object to the findings and conclusions proposed by the hearing examiner. No objections or additional proposals were received. Based on a thorough reading and study of the entire record herein, the Secretary orders the following:

1. The Secretary affirms and adopts Findings of Fact 1-47 and Conclusions of Law 2-5 and 7-16 in full. These Findings of Fact and Conclusions of Law, attached as Exhibit A, are hereby incorporated into this Order by this reference as if fully set forth herein.
2. The Secretary amends Conclusion of Law 1 to read:
"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 Ziegler's renewal application for teacher's certificate dated April 9, 2018."
3. The Secretary amends Conclusion of Law 6 to read:
"The South Dakota Department of Education had the burden of proof and has shown by a preponderance of the evidence that it is justified in denying Ziegler's renewal application for teacher's certificate dated April 9, 2018."
4. 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.
5. A preponderance of the evidence shows that Ziegler violated the South Dakota Teacher's Code of Ethics and pursuant to SDCL 13-42-9, good cause exists to refuse to renew his teaching certificate based on his character and fitness.
6. Based upon the foregoing Findings of Fact and Conclusions of Law, the Secretary hereby refuses to renew the teaching certificate of Ziegler (Cert no. 76723), and his application for certificate renewal is hereby DENIED.

7. Ziegler may not hold or reapply for a South Dakota Teaching Certificate until midnight, June 30, 2021. Thereafter, he may reapply under the terms and conditions set out in the Hearing Examiner's findings, conclusions, and order, attached hereto and incorporated as Exhibit A.
8. Notification of this refusal to renew and denial of application for renewal certificate will be placed on the NASDTEC registry and be placed in Ziegler's permanent certification file within the South Dakota Department of Education.
9. This Order and incorporated findings, conclusion, and order of the hearing examiner will be provided to Ziegler and the certification staff of the Department personally and through its legal counsel.
10. This Order and incorporated findings, conclusion, and order of the hearing examiner are a public record pursuant to SDCL 13-42-17.1.

This Order constitutes final agency action. Cheyenne P. Ziegler has a right to appeal pursuant to SDCL 13-42-16 and ARSD 24:18:02:16 unless appeal has been waived.

Dated this 9th day of April, 2019.


Dr. Benjamin F. Jones
Interim Secretary
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF HUGHES)

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

In re: Certification Application of
CHEYENNE P. ZIEGLER

DSE 2018-08

**ORDER DENYING RENEWAL OF
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

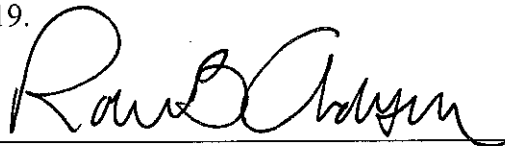
ORDERED, that the Secretary of the South Dakota Department of Education has a factual and legal basis to refuse to issue a renewal teaching certificate to Cheyenne P. Ziegler, pursuant to his renewal application for certification dated April 9, 2018; it is further

ORDERED, that the renewal application of Cheyenne P. Ziegler for certification dated April 9, 2018, 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 on September 21, 2018, is affirmed; it is further

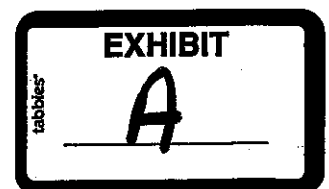
ORDERED, that Cheyenne P. Ziegler may not hold or reapply for a South Dakota teaching certificate until midnight, June 30, 2021. Thereafter, he may reapply for such a certificate and the Department of Education may not rely on the specific factors set forth in its Notice of Intent to Deny dated September 21, 2018. However, if Cheyenne P. Ziegler's future behavior reflects a continuance of past criminal and/or alcohol or 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 Cheyenne P. Ziegler by the Department of Education, pursuant to statute.

Dated this 26th day of February, 2019.



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 CHEYENNE P. ZIEGLER	DSE 2018-08 FINDINGS OF FACT AND CONCLUSIONS OF LAW
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Cheyenne P. Ziegler (Ziegler) made a timely request for hearing in regard to a written “Notice of Intent to Deny Teaching Certificate” which notice was dated September 21, 2018.

A hearing on Ziegler’s timely request was held before Robert B. Anderson, duly appointed independent hearing examiner, on December 14, 2018, at 9:00 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, pursuant to the request of Ziegler. The hearing was held pursuant to written Notice of Hearing.

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. Ziegler appeared personally and 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 having reviewed the exhibits and other evidence offered and received into evidence, as well as a written transcript of the December 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. Ziegler was born July 12, 1981.
2. Ziegler first applied for a South Dakota Teaching Certificate on August 20, 2012.
3. As part of his initial application process Ziegler completed a required “Applicable Conduct Review Statement” which he himself completed, signed and dated February 26, 2013. Exhibit 1.
4. Disclosures made by Ziegler on Exhibit 1 resulted in the Department of Education conducting on the investigation into his criminal history. At the conclusion of the investigation the Department of Education agreed to issue a certificate to Ziegler in April 2014 provided that he complied with certain conditions.

5. The agreement to issue the certificate to Ziegler was memorialized in writing and signed by Ziegler and the secretary of the South Dakota Department of Education in April, 2014. See Hearing Exhibit 2.

6. Paragraph 5 of Hearing Exhibit 2 specified that “in order to be eligible to renew his teaching certificate, Ziegler must comply with all of the following conditions;”.

7. In general, Ziegler was required to comply with requirements that he commit no violation of any state, federal, tribal, county or municipal law or ordinance and that he not commit any new violations of such laws.

8. Hearing Exhibit 2 also required that Ziegler immediately provide notice of any new citation or arrest to the South Dakota Department of Education.

9. Hearing Exhibit 2 provided that if Ziegler violated any of the terms or conditions of the agreement the Department of Education or the Professional Practices and Standards Commission could consider Ziegler’s criminal history prior to the execution of exhibit 2 and all of the relevant facts and determine to whether to revoke, suspend or non-renew, or deny the certificate.

10. In response to the agreement -- Hearing Exhibit 2, a South Dakota Educator certificate was issued to Ziegler on July 1, 2013. The certificate expired on July 1, 2018.

11. In April 2018 Ziegler applied for a renewal of the certificate. See Hearing Exhibit 4.

12. In applications for renewal of teaching certificates applicants are required to sign the application and to sign another “applicant conduct review statement.”

13. In his application for renewal of the teaching certificate in 2018 Ziegler did not accurately and truthfully disclose his criminal history.

14. In response to Ziegler’s application for renewal of his teachers certificate another investigation was completed by the Department of Education.

15. After completing the investigation and receiving records from the South Dakota Unified Judicial System the Department of Education determined that Ziegler had failed to disclose his criminal history and describe criminal conduct and had violated the prior settlement agreement.

16. Based on the investigation the Department of Education issued a written notice of intent to deny Ziegler’s application to renew his teachers certificate. See Hearing Exhibit 6.

17. Pursuant to the agreement of April, 2014 entered by Ziegler and the Department of Education Ziegler was obligated to immediately provided any information of any new citation or arrest in regard to any state, federal, tribal, county or municipal law or ordinance as well as a copy of any such charging documents, to the Department of Education. Although Ziegler was arrested and/or charged with such violations subsequent to April, 2014 he did not comply with those arrest/charges to the Department of Education.

18. Pursuant to the agreement of April 2014 Ziegler agreed not to commit any further violations of any state, federal, tribal, county or any city ordinance of laws. The record shows that he committed a number of such violations of the agreement -- see Hearing Exhibit 2.

19. At the hearing Ziegler admitted that he had not been drug free for four years since approximately April 2014.

20. At the hearing Ziegler admitted that the answers made/not made in his 2018 application for renewal of his teachers certificate were not entirely truthful.

21. Ziegler admits that he failed to comply with the terms and conditions on the agreement between he and the South Dakota Department of Education -- Hearing Exhibit 2.

22. Ziegler committed numerous violations of the April 2014 agreement -- Hearing Exhibit 2.

23. It is clear from his testimony at the hearing that Ziegler realized he was given a second chance by the Department of Education when they issued a certificate in response to the April 2014 agreement.

24. Ziegler emphasized that he made "one bad decision" several times in this testimony but the record reflects that Ziegler has made numerous bad decisions.

25. Ziegler attempted to justify his failure to comply with the exhibit 2 by the fact of many of his post April 2014 criminal charges were insignificant.

26. It is true that a number of his post April 2014 criminal charges were insignificant but he was clearly required to report them and his testimony reflects that he was aware of the requirement.

27. There were approximately 25 criminal violations committed by Ziegler after April 2014 which he did not report.

28. When he was stopped in a traffic stop in 2016 Ziegler did notify the School Administrator at his place of employment, but did not notify the Department of Education.

29. Ziegler admitted that he failed to uphold the standards and professionalism required of certified teachers of South Dakota.

30. Ziegler's position at the hearing was generally that he would like one more chance to prove that he can comply with reasonable requirements and be the type of role model required by South Dakota Department of Education.

31. Ziegler's testimony at the hearing was not completely sincere and part of his argument is based on his request that people feel sorry for him and give him one more chance because he made "one bad decision."

32. Absent the self-reporting by Ziegler in regard to any additional criminal arrests or charges, which reporting was required by the terms of Hearing Exhibit 2, the Department of Education had no way of knowing what behavioral or character issues were or could be affecting Ziegler's performance as a certified teacher.

33. A written "Notice to Attempt to Deny Teaching Certificate" was issued advising Ziegler that his 2018 renewal application would be denied. See Hearing Exhibit 6.

34. The written "Notice to Attempt to Deny Teaching Certificate" was detailed and clearly advised Ziegler of the reasons for the Department's denial of the renewal application.

35. The Department's reasons for denial of Ziegler's 2018 renewal application included violations of the Teachers Code of Ethics which require teachers to exemplify high moral standards.

36. Ziegler's criminal history and his failure to comply with the clear terms of the April 2014 Agreement -- Hearing Exhibit 2 -- are legitimate reasons for denial of his application to renew his teacher certificate.

37. Ziegler's testimony and explanation for his behavior was not persuasive in regards to his failure to comply with the April 2014 Agreement -- Hearing Exhibit 2.

38. Grounds for denial or a nonrenewal of a teaching certificate are set forth in SDCL 13-42.

39. The Professional Teachers Practice and Standards Commission 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.

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

41. The Code of Ethics requires teachers “. . . 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).

42. Ziegler did not live up to the terms and conditions of the April, 2014 agreement – Hearing Exhibit 2.

43. Ziegler did not live up to the standards required of those individuals holding a teaching certificate in South Dakota during the time on and after April, 2014.

44. Ziegler’s behavior resulted in a violation of the South Dakota teachers Code of Ethics.

45. Ziegler’s behavior violated the terms of the written agreement between he and the Department of Education which written agreement granted Ziegler a change to redeem himself through continued “good behavior.”

46. Ziegler’s testimony concerning why he did not comply with the April 2014 agreement indicates that he was hopeful that no one would learn of his arrests and the charges brought against him, or his general behavior.

47. In order for future success it will be important for Ziegler to establish a pattern of good behavior, compliance with the law and to maintain 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 Ziegler’s renewal application for teacher’s certificate dated 2018.

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 Ziegler's actions and behavior justified denial of his 2018 application for renewal by a preponderance of the evidence.

6. The South Dakota Department of Education had the burden of proof and has shown by preponderance of the evidence that it is justified in denying Ziegler's application for renewal of the South Dakota teachers certificate filed in July, 2018.

7. Pursuant to SDCL § 13-42-9, good cause existed for the Department of Education for refusal to grant renewal of Ziegler's teaching certificate based on his 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 the Ziegler engaged an act that resulted in a criminal conviction and the he violated the South Dakota teachers code of ethics, and that he failed to comply with the provisions of the April 2014 agreement which lead to the issuance of his initial teachers certificate.

10. Ziegler 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. Ziegler's actions 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 Ziegler's Renewal Application dated September 21, 2018.

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 Ziegler the opportunity to receive or reapply for a teacher's certificate for some finite period, they do not support a decision to permanently prohibit Ziegler from doing so. Ziegler problems were in part caused or at least contributed to by his use of alcohol or the use of illegal drugs.

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

and after December 15, 2018, 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 (Ms. Leingang and Mr. Ziegler both testified live), I conclude as the duly appointed hearing examiner that Ziegler should be prohibited from holding or applying for, or seeking renewal of, a South Dakota teaching certificate through midnight, June 30, 2021. After that date, Ziegler 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 21, 2018, 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 Ziegler's behavior after that date reflects a continuance of his prior criminal, alcohol or drug-related problems.

16. An order should be entered consistent with these Findings of Facts and Conclusions of Law.

Dated this 26th day of February, 2019.



ROBERT B. ANDERSON
Independent Hearing Examiner