

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

In re: Certification Application of) **DSE 2020-03**
)
DOYLE JOHNSON) **FINAL ORDER REGARDING**
) **SOUTH DAKOTA**
) **TEACHING CERTIFICATE**

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 in the above-styled matter. 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.

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 a careful review of the record herein, the Secretary issues the following ORDER:

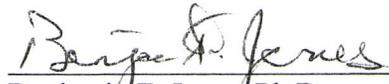
1. The Secretary affirms and adopts the final proposed Findings of Fact #1-69 and Conclusions of Law #1-6, 10, 12-20.
2. The Secretary rejects proposed Conclusion of Law #7-9 for reasons as outlined in prior DOE counsel legal arguments.
3. Conclusion of Law #11 is hereby revised to read: The Department has met its burden of proof and shown by a preponderance of the evidence that Johnson committed acts of “moral turpitude”, and therefore, the Department’s decision to deny his certificate pursuant to SDCL 13-42-9(5) as set forth in the amended Notice of Intent to Deny has been met.
4. Doyle Johnson’s application for a certificate is DENIED, and he cannot reapply before July 1, 2021.

5. This Order and attached exhibit are a public record pursuant to SDCL § 13-42-17.1 and ARSD 24:18:04:05.

6. Notification of this denial is to be placed on the NASDTEC registry and placed in applicant's permanent certification file within the South Dakota Department of Education.

This constitutes final agency action and may be appealed to circuit court pursuant to ARSD 24:18:02:06.

Dated this 1st day of December, 2020.



Benjamin F. Jones, Ph.D.
Secretary
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
DOYLE JOHNSON

DSE 2020-03

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Doyle Johnson (Johnson) made a timely request for hearing in regard to a written "Notice of Intent to Deny Teaching Certificate" which notice was originally dated March 21, 2020 and amended on May 28, 2020.

A hearing on Johnson's timely request was held before Robert B. Anderson, duly appointed independent hearing examiner, on July 10, 2020, at 9:00 o'clock a.m. CDT in Conference Room 1, MacKay Building, First Floor, 800 Governor's Drive, in Pierre, South Dakota. The hearing was a private hearing and was held pursuant to written Notice of Hearing.

The South Dakota Department of Education appeared through Amanda LaCroix, Assistant General Counsel for the South Dakota Department of Education, and Carla Leingang, Administrator for the Office of Educator Certification of the Department of Education, State of South Dakota. Doyle Johnson appeared personally and with his attorney, Anne Plooster, of the South Dakota Education Association. 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 July 10, 2020 hearing, and having entered a separate ruling on motions made by Johnson prior to the hearing, I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Johnson was born on December 12, 1973.
2. At the time of the hearing, Johnson was not actively teaching. He had most recently been teaching at Andes Central.
3. Johnson taught two (2) years at Andes Central and was given a teaching contract for the 2020/2021 school year.
4. Johnson had resigned his position at Andes Central after notification by the Department of Education that caused him to be concerned about his recertification efforts.
5. Prior to teaching at Andes Central, Johnson had taught at Marion, South Dakota.

6. After leaving Marion, Johnson worked on his master's degree and worked as a TSA officer at Joe Foss Airport in Sioux Falls, South Dakota.

7. Johnson graduated from South Dakota State University in May 1999 and immediately taught at Pinon Unified School District in Arizona until 2001 when he moved back to South Dakota.

8. Johnson then taught at the South Dakota State Penitentiary.

9. Johnson also taught at the President's Academy in Sioux Falls, South Dakota.

10. After leaving the President's Academy in Sioux Falls, South Dakota, Johnson ultimately obtained a teaching job at Marion, South Dakota.

11. Johnson ended employment with Marion in October 2015 and began teaching at Andes Central in 2018.

12. Johnson resigned from his job in Marion during the school year.

13. Johnson was first elected to the Hartford City Council in 2014.

14. Johnson stated that he was "given my options at Marion" because he was having problems with classroom management, students walking out on him, and similar behaviors.

15. Johnson resigned from the Hartford City Council in 2016. The reason he gave at the hearing was to protect himself and his family from additional conflict.

16. Conflict existed in Hartford which resulted in a movement by certain citizens to remove the mayor.

17. Johnson cast a tie-breaking vote in the City Council denying the petition for the recall or removal of the mayor.

18. Johnson received what he felt was retaliation by certain citizens for his vote and was getting lots of messages and emails and becoming very stressed.

19. In January 2016, to deal with these issues, Johnson admits that he read the contents of a non-existent email at a Hartford City Council meeting.

20. When a request for the actual email was made, he formulated the email to cover his fabrication and make it appear that it came from someone else.

21. Johnson was investigated by the Minnehaha County Sheriff's Department and was told his options were to resign from the Council, and no charges against him would be filed.

22. A detailed account of the investigation conducted by the Minnehaha County Sheriff's Department is contained in hearing exhibits 2 and 3. Johnson was not honest and forthright to the investigating officers in all respects.

23. Johnson did not tell anyone at Marion High School about the Hartford incident.

24. After Johnson applied for recertification with the Department, he had a telephonic interview with several employees of the Department and told those involved in the interview that he resigned from Hartford to avoid prosecution.

25. When Johnson resigned from the Marion teaching job, his options were that he resign with pay or be suspended indefinitely with pay.

26. Johnson's renewal application was activated on February 10, 2020.

27. On the application for renewal of his certificate, there were questions included which the Department refers to as "conduct and fitness questions".

28. The Department reviewed Johnson's renewal application because they had put a hold on his application earlier due to events that happened in 2015/2016 at the City of Hartford and Marion. The Department had learned of these events shortly after their occurrence.

29. As a result of his application, several employees of the Department conducted a telephonic interview with Johnson on March 12, 2020.

30. Question number 7 on the renewal application completed by Johnson asked:

"Have you ever left employment, been discharged, terminated, or resigned to avoid dismissal or disciplinary action?"

31. Johnson responded "No" to that question.

32. The Department was aware of the Marion and Hartford incidents and believe that there should have been a yes answer to question number 7 because things happened that were very concerning and should have been reported by Johnson on his application.

33. Question number 9 on the renewal application completed by Johnson asked:

"Is there any information not disclosed by your answers concerning your background, history, experience, education, or activities which may have some bearing on your character, moral fitness or eligibility to teach or hold an administrative position in South Dakota and which should be placed at the disposal or brought to the attention of the South Dakota Department of Education?"

34. Johnson's answer to question number 9 was "No".

35. Carla Leingang participated in the telephonic interview with Johnson. During that interview, Johnson was asked questions about resigning from Marion, and Johnson said that he resigned from the Hartford City Commission to protect himself and his family from conflict.

36. Earlier in the interview, Johnson said he did not really know why he was let go at Marion.

37. Those on the telephonic interview then advised Johnson that they knew about the police report from the Hartford incident in 2015/16, and Johnson changed his answer and said there was an email read by him in a meeting that was a fabrication, and he took the blame for its authorship and resigned.

38. Those on the telephonic interview thought that Johnson was not taking ownership of what they believed to be a serious situation and had not been forthcoming with them about the Hartford City Council incident or his resignation from the Marion School District.

39. In fact, Johnson was not forthcoming and honest with those who participated in the telephone interview concerning either the Hartford incident or his resignation from the Marion School District.

40. Johnson's personal knowledge of the Hartford incident and his resignation from Marion should have prompted him or any other reasonable person to answer 'yes' to questions 7 and 9 in the application for renewal. In making his answer to those questions, Johnson was not honest.

41. The "hold" placed on Johnson by the Department moves them into a specific queue so that on the next application date, it is reviewed carefully.

42. The Professional Teachers Standards Practices Commission closed Johnson's file on December 2, 2019, because it was "timed out". They could have filed a complaint prior to that time but did not do so. In particular but not in limitation, the Commission never made any finding that Johnson had violated the Teachers' Code of Ethics.

43. Johnson was a probationary teacher and could have been terminated at any time when at Marion. Regardless of that status, it is clear that his leaving employment at Marion had to do with an ultimatum or choice given to him by his employer.

44. During the telephonic interview, Johnson told the DOE personnel that he was not sure why he was asked to resign or be placed on suspension. He said he just did not know.

45. Johnson would still answer 'no' to question number 7 if he were asked to do so again.

46. Johnson's answer of "no" to question number 7 combined with his "no" response to question number 9 indicates that Johnson was being deceptive and disingenuous concerning his status and deceptive with his responses. Johnson's response during the telephonic interview and questions numbers 7 and 9 was not honest.

47. Johnson testified that he did not believe any disciplinary action was involved or contemplated in regard to the request that he resign or be suspended at Marion. This testimony is not credible.

48. Johnson testified that he did not think his response to question number 7 on the renewal application applied to the Marion situation.

49. When Johnson applied at Andes Central, he told them of the Marion situation but did not tell them of the Hartford incident.

50. Johnson also testified that his answer to question number 9 at the time of the hearing would still be "no" just as it was when he completed the renewal application.

51. Johnson's explanation for his failure to be forthcoming during the telephone interview was that he was panicking and that he was not thinking straight.

52. At Andes Central, Johnson was viewed to be in the teaching profession for the right reason – building relationships and working hard for students.

53. Although he had a contract for the 2020/2021 school year, Johnson was forthright in telling his Andes Central supervisors the problems with his licensure, and he resigned rather than put the school in a bind or cause problems.

54. To Johnson's credit, he advanced his education and had the self-awareness to realize the importance of improving his teaching skills and abilities in certain areas, all prior to accepting his job at Andes Central.

55. Although Cliff Johnson at Andes Central was not familiar with the City of Hartford incident, he became aware when students at Lake Andes referred to it after googling Johnson.

56. Johnson was an elected public official of the City of Hartford. He was not an employee but was paid some per diem for his services.

57. Johnson admits that he was not forthcoming with the Department personnel who conducted the telephone interview. His explanation is that he was panicking and not thinking straight.

58. The Professional Teachers Standards Practices Commission never made any finding that Johnson had violated the Teachers' Code of Ethics.

59. Johnson admitted that he gave the Department personnel several versions of the City of Hartford incident during the phone interview and justified doing so by saying he tried to put himself in a positive light and in a better spotlight than what was coming across on the police reports and the paper.

60. Johnson initially denied that he fabricated the email during the Sheriff's office investigation, but he ultimately did and does now admit to the fact that he fabricated it.

61. Johnson does not believe that his answers to the Department personnel concerning the Hartford incident constituted fraud, deceit, or false and misleading statements. He believes so because he says he was "hurting, and I was not in a good place". His intentions were to communicate to people that he was hurting.

62. It is clear that Johnson was not honest to the Department personnel during the telephonic interview in a variety of ways.

63. Johnson's responses to questions 7 and 9 on the renewal application should have triggered a reasonable and honest person to give different answers than he gave.

64. Johnson admits that when he read from an alleged email in the City Council meeting, no such email existed and that, later, he compounded his mistake by fabricating and forging the email account, forwarding it to himself and then forwarding it to the City.

65. Johnson was not honest and forthright to other public officials in the City of Hartford.

66. Johnson admits that he was not honest in the City of Hartford incident. Although Johnson admits that he was questioned by a police captain conducting an investigation in regard to the City of Hartford incident, he denies that it was a "criminal investigation".

67. Johnson admits that the investigation conducted by the Minnehaha County Sheriff's office involved the computer owned by the Marion School District and that it was Marion School District property.

68. In general, Johnson recognizes that he made mistakes, believes he has learned from them, and thinks he is a new person.

69. At the conclusion of the Department's case, Carla Leingang requested that this matter be resolved by affirming the denial of Johnson's renewal application and prohibiting Johnson from reapplying for a teacher's certificate for a period of one year.

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 Johnson's application to renew his South Dakota teacher's certificate which application was activated on February 10, 2020.

2. The Department of Education and, in particular, the Secretary 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 and an application for renewal may be denied for those reasons specified in SDCL 13-42-9. The two grounds for denying renewal relied on by the Department in this proceeding are: (2) violation of the Code of Ethics, established pursuant to § 13-43-25 or 13-43-45, as determined by the Professional Teachers Practices and Standards Commission or the Professional Administrators Practices and Standards Commission; ... (5) moral turpitude

4. SDCL 13-43-25 generally provides that the Professional Teachers Practices and Standards Commission (PTPSC) shall promulgate rules pursuant to Ch. 1-26 to carry out the provisions of certain statutes regarding teacher discipline and standards.

5. SDCL 13-43-25 gives the PTPSC a directive to adopt a code of professional ethics for the teaching profession in South Dakota. Pursuant to that directive, the Commission has adopted a code of ethics.

6. SDCL 13-43-45 grants power to the Professional Administrators Practices and Standards Commission to adopt rules to carry out certain provisions of that chapter.

7. A plain reading of SDCL 13-42-9(2) states that Secretary's actions to refuse to issue or renew or revoke or suspend any teaching certificate may be based on a violation of the Code of Ethics "... as determined by the Professional Teachers Practices and Standards Commission or the Professional Administrators Practices and Standards Commission".

8. The wording of SDCL 13-42-9(2) is not a model of clarity, but the most reasonable interpretation of the statute would require that one of the two commissions mentioned first determine that a violation of the Code of Ethics has been committed prior to the Secretary refusing to issue or renew, revoke, or suspend any certificate.

9. In this case, the record does not support the Department's reliance on provisions of SDCL 13-42-9(2) for its action in refusing to renew Johnson's certificate.

10. The South Dakota Department of Education had the burden of going forward and had the burden of proof on whether Johnson committed acts or omissions which justified the refusal to renew his application for a South Dakota teaching certificate.

11. Although the South Dakota Department of Education has failed to meet its burden of proof that the action in denying Johnson's renewal application may be justified by SDCL 13-42-9(2), the Department has met its burden of proof and shown by a preponderance of the evidence that Johnson committed acts of "moral turpitude", and therefore, the Department's decision to deny his certificate pursuant to SDCL 13-42-9(5) as set forth in the amended Notice of Intent to Deny has been met.

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

13. The South Dakota Department of Education has met its burden of proof that Johnson engaged in acts that constituted moral turpitude.

14. The South Dakota Department of Education had good cause in issuing its amended Notice of Intent to Deny Johnson's application for renewal of his teacher's certificate.

15. Johnson's acts which justify the Department's denial of his renewal application do not rise to the level of justifying a permanent denial. In fact, the Department of Education recognized this at the hearing, through its recommendation.

16. Johnson has shown a sincere effort in improving himself and increasing his self-awareness concerning those actions which led to the Department's denial of his renewal application.

17. It is both the finding and conclusion of this hearing officer that the Department of Education's decision to deny Johnson's renewal application be upheld but that Johnson be permitted in the future to reapply for either renewal of or a new South Dakota teacher's certificate at any time on or after July 1, 2021. If and when that application occurs, Johnson's behavior and other appropriate circumstances occurring on and after the date of hearing in this proceeding should and shall be considered in the decision to grant such an application. However, no events, acts, or behavior on the part of Johnson occurring prior to the July 10, 2020 hearing shall be considered.

18. Having heard all 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 through their counsel, and based on a review of the record in its entirety, including a determination as to the credibility and sincerity of the witnesses who testified live, I conclude as the duly appointed hearing examiner that Johnson should be prohibited from holding or applying for a South Dakota teacher's certificate through midnight, June 30, 2021. After that date, Johnson shall have the right to reapply for the issuance of a South Dakota teaching certificate or a renewal of his prior certificate if the law permits, and the factors relied on by the Department of Education may not themselves be relied on as a basis for denial of such application.

19. The hearing examiner's Memorandum Opinion dated October 8, 2020, is incorporated herein fully by reference.

20. An order should be entered consistent with these Findings of Fact and Conclusions of Law and the Memorandum Opinion.

Dated this 2nd day of November 2020.



ROBERT B. ANDERSON
Independent Hearing Examiner

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

In re: Certification Application of) **DSE 2020-03**
)
DOYLE JOHNSON) **NOTICE OF ENTRY OF ORDER**
REGARDING SOUTH)
DAKOTA TEACHING)
CERTIFICATE)

TO:

Anne Plooster, Esquire
SD Education Association
411 E Capitol Avenue
Pierre, SD 57501
Anne.plooster@sdea.org

Counsel for Respondent

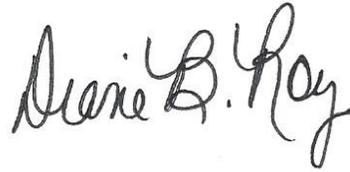
You are hereby notified that on the 2nd day of December, 2020, Dr. Benjamin F. Jones, Secretary for the South Dakota Department of Education, entered an **Order Suspending South Dakota Teaching Certificate** with attached Findings of Fact and Conclusions of Law in the about-referenced case. Copies of these documents are being served upon you with this Notice.

Copies will also be served upon the Notification of this suspension will be placed on the NASDTEC registry and be placed in Fargo’s permanent certification file within the South Dakota Department of Education.

The Order and incorporated Findings of Fact and Conclusions of Law are a public record pursuant to SDCL 13-42-17.1.

This constitutes final agency action.

Dated this the 2nd day of December, 2020.

A handwritten signature in black ink that reads "Diane B. Roy". The signature is written in a cursive style with a large, stylized "D" and "R".

DIANE B. ROY
General Counsel
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501

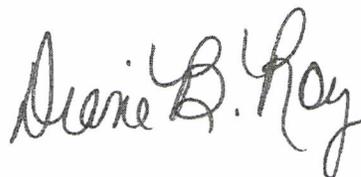
STATE OF SOUTH DAKOTA)
)
COUNTY OF HUGHES) SOUTH DAKOTA DEPT. OF EDUCATION

In re: Certification Application of) DSE 2020-03
)
DOYLE JOHNSON) CERTIFICATE OF SERVICE
REGARDING SOUTH)
DAKOTA TEACHING)
CERTIFICATE)

I have this day served by USPS Certified Mail, and by electronic mail, a copy of the **NOTICE OF ENTRY OF ORDER SUSPENDING TEACHING CERTIFICATE** in the above named and styled matter to the following as attorney of record for the respondent:

Anne Plooster, Esquire
SD Education Association
411 E Capitol Avenue
Pierre, SD 57501
Anne.plooster@sdea.org

Dated this the 2nd day of December, 2020.



DIANE B. ROY
General Counsel
South Dakota Department of Education
800 Governors Drive
Pierre, SD 57501