

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

In re: Certification Application of)
NICOLE TWISS)
) **DSE 2021-15**
) **ORDER DENYING**
) **EDUCATOR CERTIFICATE**

In accordance with and pursuant to the authority granted to the Secretary by SDCL § 13-42-4, 13-42-7, and ARSD article 24:18, and after review of the record herein, the Secretary issues the following Order:

1. The Secretary affirms and adopts the proposed Findings of Fact # 1-26 and 28-35 and Conclusions of Law #1-9, 13-15, and 17-19.
2. Finding of Fact #27 is revised to read: Due to her ongoing criminal behavior subsequent to the 2016 hearing and February 2017 Order, Twiss has committed acts which would constitute moral turpitude.
3. Conclusion of law #10 is revised to read: The record reflects that Twiss continued to engage in acts that resulted in several criminal convictions, that she committed acts which constituted moral turpitude, and that she engaged in a course of conduct which shows similar behavior to that which led to the denial of her application in 2016/17.
4. Conclusion of law #11 is revised to read: Twiss committed acts that constitute acts of moral turpitude.
5. Conclusion of law #12 is revised to read: Twiss violated SDCL 13-42-9(5).
6. Conclusion of law #16 is revised to read: The South Dakota Department of Education has the power and authority to revoke, suspend, or refuse to issue an Educator’s Certificate based upon character and fitness which includes among other things the commission of criminal offenses. In

considering whether to do so, the Department should and does consider the nature and frequency of criminal offenses including arrests and convictions, their frequency and repetitive nature if any, and the time period during which they were committed. Criminal convictions – and in particular those arising from an addiction or disease – do not necessarily permanently render an applicant unfit to hold a South Dakota Educator’s Certificate. In this case the application of Twiss must be denied first because of her failure to comply with conditions related to her continuing education, and qualification based on credits and contract hours. Furthermore, the product of the character and fitness review of Twiss based on her application supports the Department’s decision to deny her application as well. This includes her use and abuse of alcohol, her conduct the same or similar to that which led to the denial of her 2016 application, and her commission of acts which constitute moral turpitude. However, that pattern of behavior did not begin until well into Twiss’ career as a teacher and continued through October 2020. These problems are based primarily, if not exclusively, on the use and abuse of alcohol by Twiss. In the last year or more, however, Twiss has shown an indication that she is willing to confront her behavior and her addiction to alcohol and do her best to deal with it.

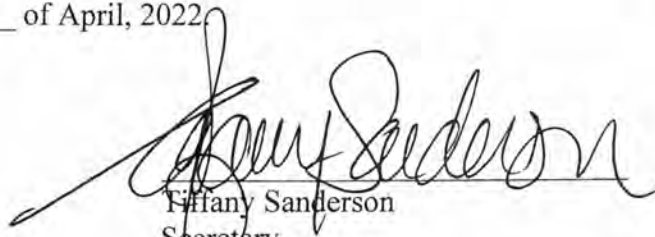
7. The application of Nicole Twiss for certification is DENIED.
8. Nicole Twiss is prohibited from reapplication for an educator certificate in the State of South Dakota until December 15, 2025, or until she can satisfy the credit requirement for continuing education, whichever comes later. Thereafter, she may apply for such certificate, and the Department of Education may not rely solely on the specific factors set forth in its Notice of Intent to Deny dated October 6, 2021. However, if her future behavior reflects a continuance of past criminal and/or alcohol problems, these factors may be relied on to show a continuing course of conduct.

9. The Order and Findings of Fact and Conclusions of Law are a public record pursuant to SDCL § 13-42-17.1 and ARSD 24:18:04:05.

10. Notification of this denial is to be placed on the NASDTEC registry and be 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 the 20th of April, 2022.

A handwritten signature in black ink, appearing to read 'Tiffany Sanderson', written over a horizontal line.

Tiffany Sanderson
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
NICOLE TWISS

DSE 2021-15

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Nicole Twiss (Twiss) made a timely request for hearing in regard to a written “Notice of Intent to Deny Educator Certificate” which notice was dated October 7, 2021.

A hearing on Twiss’ timely request was held before Robert B. Anderson, duly appointed independent hearing examiner, on December 15, 2021, at 1:00 o’clock p.m. CST in the Commons Room of the MacKay Building, First Floor, 800 Governor’s Drive, in Pierre, South Dakota. The hearing was a private hearing pursuant to the request of Twiss. The hearing was held pursuant to written Notice of Hearing.

The South Dakota Department of Education appeared through Carla Leingang, Director for the Division of Accreditation and Certification of the South Dakota Department of Education, and Amanda LaCroix, Senior Staff Attorney for the South Dakota Department of Education. Twiss appeared personally and through her legal counsel, Catherine Seeley of the law firm of Gunderson, Palmer, Nelson and Ashmore. 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 15, 2021 hearing, as independent hearing examiner I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Twiss was 45 years of age on the date of the hearing on December 15, 2021.
2. Twiss’ most recent South Dakota Educator Certificate was issued on August 13, 2007 and expired in 2016.
3. Twiss applied for a renewal of her Educator’s Certificate on or about February 5, 2016.
4. The Department of Education (Department) issued a “Notice of Intent to Deny” the renewal application filed by Twiss in February 2016, mainly due to her criminal history, use

and abuse of alcohol, and what the Department found to false or incomplete information furnished by Twiss on her renewal application.

5. A hearing was held on Twiss' request for hearing on December 5, 2016 in regard to the Department's "Notice of Intent to Deny".

6. By Order of the Secretary of the Department dated February 15, 2017, the Department's denial of the renewal application made by Twiss in February 2016 was upheld. The Order further provided that Twiss could reapply for an Educator's Certificate as of August 1, 2018 under terms and conditions specified in the Order then entered. *See Exhibit 2, Sub-Exhibit B.*

7. The last South Dakota Educator Certificate held by Twiss expired on July 1, 2016.

8. Although eligible to reapply on August 1, 2018, Twiss chose not to apply until August 26, 2021.

9. Twiss personally determined that she was not ready or in a condition to reapply prior to August 26, 2021. Based on the facts, that was a good decision on the part of Twiss and shows an increased self-awareness on her part as well.

10. The renewal application filed by Twiss on August 26, 2021, disclosed that she had been convicted of a number of criminal offenses subsequent to the December 5, 2016 hearing on her prior application. Convictions included multiple convictions for driving under the influence.

11. On her renewal application of August 26, 2021, Twiss also failed to disclose a number of arrests which did not lead to convictions.

12. Most of the convictions and arrests which occurred subsequent to the December 5, 2016 hearing and the Order entered by the Secretary of the Department of Education on February 15, 2017, focused on general criminal activity and were either directly or indirectly related to alcohol use by Twiss.

13. Based on a character and fitness review of her August, 2021 application, the Department issued a written notice of intent to deny that application based primarily on the Department's finding that Twiss had engaged in a continuing pattern of unacceptable and criminal behavior mostly alcohol related and that she had also been less than honest and lacked candor in her responses.

14. Twiss did not identify any arrests other than those which led to convictions on her 2021 application. However, she did list case numbers which permitted the identification of charges what had been filed against her but later dismissed.

15. Questions 1 and 2 on the application form (*Hearing Exhibit 1*) which Twiss completed in August, 2021, were plain on their face and clear. Question 1 asked for arrests, and Question 2 asked for convictions. A person expecting to fulfill the obligations of a teacher should have been able to read the questions and make the proper distinction between the two.

16. The fact that Twiss did list case numbers – not required and making other offenses easily identifiable – does somewhat mitigate her lack of responsiveness and candor to Question 1 of the application. Although applicants are required to provide documentation of court records relating to arrests and convictions listed on the application, Twiss failed to do so.

17. When the hearing on her then pending 2016 application was complete, Twiss admitted that she knew that continued criminal behavior and continued use and abuse of alcohol or drugs could lead to a permanent denial of her ability to obtain a South Dakota Educator's Certificate. Nevertheless, she continued to engage in the use and abuse of alcohol.

18. Twiss had two (2) convictions for 3rd Offense DUI in calendar year 2017, one conviction of 3rd offense DUI in 2018, and a conviction in 2021 for DUI 6th arising from an incident and an arrest which occurred on October 14, 2020.

19. Among other things, Twiss was sentenced to serve time in the South Dakota Penitentiary (which she did by serving time at the Women's Penitentiary in Pierre) and would have gone back to the Penitentiary after her last conviction had she not been eligible for and voluntarily enrolled in the DUI court program.

20. Twiss testified at hearing (and there is no evidence to contradict such testimony) that she has been clean and sober since October 15, 2020. At the time of the hearing, that was 426 days.

21. At the time she committed the criminal offenses which led to convictions as identified in finding number 18 above, Twiss was not the holder of a valid Educator's Certificate nor was she working as a certified teacher.

22. The new criminal offenses committed by Twiss since February, 2017, would themselves be sufficient on their own to deny her application for a South Dakota Educator's Certificate for some finite time. Further, it shows that she engaged in a continuing pattern of criminal behavior involving alcohol abuse subsequent to the denial of her 2016 renewal application.

23. Prior to 2017, Twiss had taught for a number of years in a variety of capacities and a variety of schools mainly on or near Indian reservations in the state of South Dakota.

24. After the October 14, 2020 incident which led to an arrest and subsequent conviction for DUI 6th, Twiss has made a serious effort to obtain and maintain sobriety and to

rehabilitate herself. She has established personal and professional goals, has plans for her life, has participated in counseling and DUI court, and has become more self-aware of her alcohol and behavioral problems. It appears that she has successfully complied with the requirements of DUI court.

25. Twiss, her counsel, and representatives of the Department agree that Twiss could not presently be granted an Educator's Certificate because she has not complied and is not in present compliance with certain educational requirements and qualifications including those relating to credits and contact hours necessary to issue such a certificate. Twiss recognized that and made a motion to withdraw her application prior to the hearing which application was denied but is part of the record.

26. Although there is no formal testimony making any diagnosis in the record, it is clear that Twiss has a problem with alcohol and cannot use alcohol without causing personal and professional problems for herself.

27. Due to her ongoing criminal behavior subsequent to the 2016 hearing and February, 2017 Order, Twiss has committed acts which would constitute violations of the South Dakota Teacher's Code of Ethics.

28. Twiss has engaged in ongoing conduct and behavior, including criminal behavior and the use/abuse of alcohol, that shows a pattern of behavior which began prior to the 2016 hearing on her prior application and continued through October, 2020.

29. Evidence in the record indicates that if Twiss could attain and maintain sobriety, she could be a talented teacher and make substantial contributions to her students, particularly Native American students.

30. Throughout the early part of her career Twiss was consistently employed as a teacher mainly at school districts serving primarily if not exclusively Native American children. These included Wounded Knee School District, Wagner Community School, Oglala Lakota County School District, and the Pine Ridge School District.

31. At present and for some time prior to the hearing Twiss had submitted to regular breath and urine tests to verify sobriety. She also regularly attends AA.

32. There may come a time in the future when Twiss will not have the support system she now has for dealing with her alcohol problem and time will tell as to whether she can do so effectively.

33. Twiss correctly admits that in the past her behavior has at times not set a good example for students or demonstrated good moral character.

34. Since her 2016 hearing Twiss has been employed at Culvers, has volunteered to work with four (4) children basically as a tutor or coach and has volunteered at Feeding South Dakota.

35. Twiss has acted more responsibly since October, 2020 than she did subsequent to the denial of her application in February, 2017.

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 Twiss' application for a Educator's Certificate made in the calendar year 2021.

2. The Department of Education has jurisdiction over the parties and the subject matter of this proceeding.

3. A South Dakota Educator Certificate may be revoked, suspended, or not issued for violations of the Teacher's Codes of Ethics as set forth by South Dakota Administrative Rule. See *SDCL 13-42-9(2)*. *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.

4. The South Dakota Department of Education has the burden of going forward and the burden of proof on whether Twiss' actions and behavior justified denial of her application by a preponderance of the evidence.

5. Both Twiss and the South Dakota Department of Education agree that Twiss is not in compliance with certain requirements relating to continuing education and qualifications dealing with credits and contact hours to now obtain an Educator's Certificate regardless of the facts and circumstances. Therefore under the current status of the record Twiss's application must be denied on that basis alone.

6. The South Dakota Department of Education has broad powers to promulgate rules and otherwise establish requirements and qualifications for the holder of a South Dakota Educator's Certificate. E.g., see *SDCL 13-42-3*.

7. The South Dakota Department of Education had the burden of proof and the burden of going forward to show by a preponderance of the evidence that it is justified in denying Twiss' application for renewal of a South Dakota Educator's Certificate filed in 2021.

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

9. Pursuant to SDCL 13-42-9 and the lack of the required continuing education credits, good cause existed for the Department of Education's refusal to grant renewal or issuance of a South Dakota Educator's Certificate to Twiss.

10. The record reflects that Twiss continued to engage in acts that resulted in several criminal convictions that she committed acts which are contrary to and in violation of the South Dakota Teacher's Code of Ethics and that she engaged in a course of conduct which shows similar behavior to that which led to the denial of her application in 2016/17.

11. Twiss committed acts that are contrary to and in violation of portions of the South Dakota Teacher's Code of Ethics which require 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."

12. Twiss violated ARSD 24:08:03:02(7) by her actions.

13. The South Dakota Department of Education had good cause in issuing of its Notice of Intent to Deny Twiss renewal application filed in 2021.

14. The good cause referred to in Conclusion of Law 13 above includes but is not limited to the failure of Twiss to comply with requirements regarding continuing education and obtaining the necessary qualified credits and contact hours.

15. The actions of Twiss subsequent to the Department's Order of January, 2017 which denied her 2016 renewal application reflect that she knowingly engaged in continuing similar behavior which led to the denial of that application. The South Dakota Department of Education had good cause in issuing its Notice of Intent to Deny the Application of Twiss submitted in 2021.

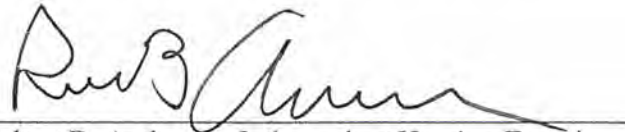
16. The South Dakota Department of Education has the power and authority to revoke, suspend, or refuse to issue an Educator's Certificate based on character and fitness which includes among other things the commission of criminal offenses. In considering whether to do so, the Department should and does consider the nature and frequency of criminal offenses including arrests and convictions, their frequency and repetitive nature if any, and the time period during which they were committed. Criminal convictions – and in particular those arising from an addiction or disease – do not necessarily permanently render an applicant unfit to hold a South Dakota Educator's Certificate. In this case the application of Twiss must be denied first because of her failure to comply with conditions related to her continuing education, and qualification based on credits and contact hours. Furthermore, the product of the character and fitness review of Twiss based on her application supports the Departments decision to deny her application as well. This includes her use and abuse of alcohol, her conduct the same or similar to that which led to the denial of her 2016 application, and her commission of acts which would constitute a violation of the South Dakota Teacher's Code of Ethics. However, that pattern of

behavior did not begin until well into Twiss' career as a teacher and continued through October 2020. These problems are based primarily, if not exclusively, on the use and abuse of alcohol by Twiss. In the last year or more, however, Twiss has shown an indication that she is willing to confront her behavior and her addiction to alcohol and do her best to deal with it.

17. It is both the Finding and Conclusion of this Hearing Officer that the Department's decision to deny Twiss' Application for an Educator's Certificate be upheld, and that Twiss be precluded from applying for such certification again until such time as she can satisfy the credit requirement for continuing education or until December 15, 2025, whichever date is later. When that date arrives, Twiss may reapply for an Educator's Certificate, but all of her prior conduct can and should be reviewed to determine if she has continued to engage in criminal behavior particularly related to the use and abuse of alcohol at any time after October 2020. These findings and the ultimate order entered pursuant to these findings is not intended to indicate that any future application should be denied or granted. The offenses described in these Findings of Fact and Conclusions of Law cannot be relied on by the Department as the sole basis for denial of a future Application for Certification by Twiss; however, they can be relied on to show a continuing pattern of behavior if Twiss continues to engage in activities involving the use and/or abuse of alcohol or the commission of criminal offenses involving alcohol.

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

Dated this 28 day of February, 2022.



Robert B. Anderson, Independent Hearing Examiner