

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

In re: Certification Application of) DSE 2023-03
NIKLAUS TOWNE) ORDER DENYING EDUCATOR
) CERTIFICATE

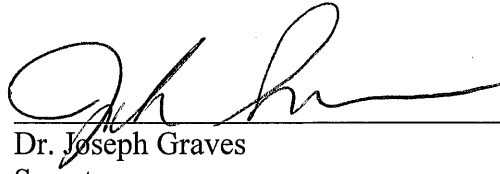
In accordance with and pursuant to the authority granted to the Secretary by SDCL § 13-42-4, 13-42-9, and ARSD article 24:18, and after review of the record herein, the Secretary issues the following Order:

1. The Secretary affirms and adopts the Findings of Fact and Conclusions of Law of the Independent Hearing Examiner, Robert B. Anderson. These Findings and Conclusions, attached as Exhibit A, are hereby incorporated into this Order by this reference as if set forth in full.
2. The application of Niklaus Towne for an initial educator certificate is **DENIED**.
3. Niklaus Towne is prohibited from reapplication for an educator certificate in the State of South Dakota through and including May 1, 2024.
4. Upon any application for certification, Niklaus Towne must submit certain information to the Department of Education, such information shall include but not be limited to:
 - a. Records from all therapists, psychologists, counselors, and medical doctors who Towne has seen in the twelve (12) months prior to his reapplication;
 - b. A list of all medications Towne has taken during the twelve (12) month period of time immediately prior to his reapplication; and
 - c. Such medical records which Towne feels are appropriate to support his reapplication with a condition that Towne furnish all other additional records during the twelve (12) month period immediately prior to his reapplication as the Department should request.

5. 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.
 6. 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.

Date this 21st day of November, 2023.



Dr. Joseph Graves
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:

DSE 2023-03

Certification Application of
NIKLAUS TOWNE

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Niklaus Towne (Towne) made a timely request for hearing in regard to a written “Notice of Intent to Deny Educator Certificate” which notice was dated April 19, 2023.

A hearing on Towne’s timely request was held before Robert B. Anderson, duly appointed independent hearing examiner, on August 14, 2023, at 9:00 o’clock a.m. CDT in the MacKay Building Conference Room Number 1, 800 Governor’s Drive, in Pierre, South Dakota. The hearing was a private hearing pursuant to the request of Towne. The hearing was held pursuant to written Notice of Hearing.

The South Dakota Department of Education (Department) appeared through Kathryn Blaha, Director of the Accreditation and Certification Division of the South Dakota Department of Education, and Amanda LaCroix, Senior Staff Attorney for the South Dakota Department of Education. Towne appeared personally and with his legal counsel Sara Frankenstein, of Gunderson, Palmer, Nelson & Ashmore LLP. 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 by the parties, as well as a written transcript of the August 14, 2023 hearing, as independent hearing examiner, I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Towne initiated his Application for an Educator’s Renewal Certificate with the South Dakota Department of Education in November, 2022.
2. Towne’s academic credentials are not at issue and are not the basis for the Department’s Notice of Intent to Deny his application for an Educator’s Certificate.
3. On his Application, Towne responded “Yes” to two questions in the Character and Fitness section of the Application which indicated that he had either left employment, been discharged, terminated, or resigned to avoid dismissal or disciplinary action and that there was additional history concerning his background that he wanted to bring to attention to the Department in further response to the questions on the application. Towne also provided a written explanation in his Application as requested.



4. Because of his answers to portions of the Character and Fitness section of the Application, the Department conducted a Character and Fitness Review.

5. As part of the Character and Fitness Review, the Department had a team which also conducted a telephonic interview with Towne to discuss his answers and his application in more detail.

6. The Character and Fitness Team of the Department had concerns based on Towne's application relating primarily to what they viewed as multiple breaches of contract and mental stability which could impact student safety. In general but not in specific to the Towne case, the Department is justified in having concerns about multiple breaches of contract by certified educators.

7. Towne had previously been certified as an educator in South Dakota but permitted his certificate to lapse. At the time he applied for the Renewal Certificate, his prior certificate was no longer in force.

8. At the time of the hearing, Towne was still certified to teach in the State of Washington.

9. While teaching in the State of Washington, Towne had what he himself described as a nervous breakdown in front of students. He resigned his teaching position in Washington during mid-year to take a break as a result. He then returned to South Dakota.

10. After returning to South Dakota, Towne was employed by the Rapid City School District as a paraprofessional in Robbinsdale School. He then was employed at a non-profit school called EmpowerEd. His employment with EmpowerEd began on the date of the hearing in this proceeding. Therefore, there is no way to judge Towne's performance at his employment with EmpowerEd.

11. Towne has never been terminated or discharged from employment in the education field.

12. Towne has been permitted to resign during the midst of the school year by one or more employers.

13. On his Application for a Renewal Certificate when asked "Have you ever left employment, been discharged, terminated, or resigned to avoid dismissal or disciplinary action?", Towne answered "Yes" or "Yeah".

14. On his Application for a Renewal Certificate, Towne stated "I am taking a break from the classroom this year and possibly longer, but I do want to renew my certificate so I can maybe go back into teaching next year or a few years from now."

15. After graduating from Black Hills State University, Towne student taught at Lone Man School on the Pine Ridge Reservation. After that, he was employed at North Middle

School in Rapid City for two years, went back to Lone Man School, and resigned during the term, then went to Rapid City Central High School and worked as a substitute. He then taught in Hot Springs from the Fall of 2009 through some time in 2016 when he resigned due to what he describes as discrimination against him. He then went to the Red Shirt School in April 2016 and worked through the end of the year in June, 2017. He then taught at Rapid City High School through 2018 and then Meadowbrook School.

16. Towne and his wife moved to the State of Washington in August, 2019, where he taught until resigning in September in the early part of the 2022/2023 school year.

17. During the approximately six (6) years he worked in the Hot Springs School District, there is no evidence of any discipline or other problems experienced by Towne. His testimony that he was well-liked and highly involved is unrefuted.

18. After approximately six (6) years, Towne began experiencing problems with the management at Hot Springs. He was written up on one occasion, and, with the assistance of the SDEA, he cleared himself of that alleged infraction.

19. He then experienced additional issues with the Hot Springs District and made a determination that he would prefer to work elsewhere.

20. The Hot Springs District and Towne negotiated an agreement allowing Towne to resign during the course of the school year and receive a neutral recommendation, and Towne agreed not to bring any legal action against the District.

21. At his next employment at the Red Shirt School, he received a non-renewal on the same day he received a very positive evaluation from the Red Shirt Principal. The non-renewal and write up was later removed from his file.

22. Towne and the Red Shirt School also reached a mutual agreement allowing Towne to resign and be released from his contract in exchange for not asserting claims against the School District. In addition, certain information was to be removed by the School from Towne's personnel file.

23. There is no evidence in the record that Towne was ever terminated from any employment in the educational area, nor did Towne ever have any disciplinary action taken against him by any regulatory authority.

24. There is evidence that Towne resigned his employment at the conclusion of or during the course of a school year on several occasions for reasons that were not performance related. The resignations were part of a negotiated settlement or by mutual agreement with the institutions that employed him.

25. During the course of his career in education, Towne received a number of positive reviews, awards, and newspaper articles.

26. The Department of Education acknowledges that Towne is a passionate and dedicated educator.

27. Under the circumstance which existed, there is no credible, persuasive evidence that Towne breached any of his teaching contracts.

28. Some of Towne's resignations from employment involved mutual consideration which partially benefited Towne and partially benefited his employer. Not all resignations in midterm constitute breaches of contract, and there is not sufficient evidence in the record to prove that any of Towne's resignations was a breach of contract.

29. Towne took a break from being a classroom teacher after his nervous breakdown occurred because he was primarily concerned about his mental state and his ability to perform the required duties of a classroom teacher.

30. In 2023, Towne received a positive evaluation as a paraprofessional at Robbinsdale School, but, even then, was advised by his employer not to be afraid to take a break if needed.

31. When reapplying for his Educator's Certificate in South Dakota, Towne stated: "I am taking a break from the classroom this year and possibly longer, but I do want to renew my certificate so I can maybe go back into teaching next year or a few years from now."

32. At approximately the time he had a nervous breakdown while teaching in Washington, Towne described the behavior of his seventh-grade students as "the most extreme I have seen". The Hearing Examiner takes judicial notice pursuant to SDCL §§ 19-19-201(b)(1) and (2) that seventh-grade students can be difficult, antagonistic, and where they sense weakness or vulnerability on the part of another can do their best to exploit it.

33. In fact, Towne was seeing a therapist in Washington even prior to the nervous breakdown occurring. He received but ignored his psychiatrist's advice to take twelve (12) weeks of FMLA leave at that time.

34. In late September 2022, Towne returned to South Dakota from Washington and began immediately to look for a therapist to assist him.

35. At the time of the hearing in this proceeding, Towne was still seeing a therapist and still taking medications.

36. Towne describes his life and mental health condition as being improved substantially. No one has advised him that he should take time off or that he should not work. However, there is no evidence that anyone has advised him that he can or should return to classroom teaching.

37. It is legitimate for the Department of Education to have concerns about student safety and the control of classrooms both in regard to discipline and education.

38. It is reasonable for the Department of Education to have concerns about Mr. Towne being granted an unconditional Educator's Certificate given the fact that he had a prior nervous breakdown, and such concerns are supported by the record in its entirety.

~~39. Any finding that Towne committed acts of moral turpitude must be tied to the alleged breaches of contract and, therefore, such allegations fail.~~

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 the Towne Application for a Renewal Educator Certificate with the South Dakota Department of Education. The Hearing Officer's jurisdiction is confined to the authorizing statutes, administrative rules, and the Order from the Secretary of the South Dakota Department of Education which appoints him.

2. ARSD 24:18:02:03 permits the Secretary of Education to assign a hearing examiner to conduct a "hearing" if such a hearing is requested by an applicant in response to the Department's Notice of Denial. *See* ARSD 24:18:02:01-24:18:02:03 inclusive. The final sentence of the Order appointing the Hearing Officer in this proceeding states: "A hearing shall be set within a reasonable time".

3. The Secretary of Education did not refer this proceeding to the hearing officer for the purpose of the hearing officer determining whether good cause existed to allow Towne to withdraw his application.

4. The appointment of the hearing examiner in this case authorized the hearing examiner to hear and determine issues related to the hearing but, either directly or by clear implication, does not permit the hearing examiner to determine whether an applicant such as Mr. Towne should be allowed to withdraw his Application. Therefore, this hearing examiner has no jurisdiction or power to determine that issue.

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

6. SDCL § 13-42-9 provides that the Secretary of the Department of Education has the power and authority to refuse to issue an Educator's Certificate for a variety of reasons including but not limited to violation of the Code of Ethics, failure to fulfill any requirement for certification imposed pursuant to SDCL § 13-42 or § 13-43 or Administrative Rules promulgated thereto, or moral turpitude as defined in SDCL § 22-1-2.

7. Lack of competency is an acknowledged basis for the Secretary to refuse to issue an Educator's Certificate since it is clearly delineated as such in SDCL § 13-42-9(1).

8. The South Dakota Department of Education has the burden of going forward and the burden of proof on whether Towne's actions as described in the Notice of Intent to Deny justify denial of his Application by a preponderance of the evidence.

9. The South Dakota Department of Education has the burden of proof and the burden of going forward to show by a preponderance of the evidence that it is justified in denying Towne's Application for the issuance of an Educator's Renewal Certificate.

10. The South Dakota Department of Education failed to meet its burden of proof as to its decision to deny the issuance of an Educator's Renewal Certificate for Towne based on the contention that Towne is guilty of moral turpitude, or that Towne committed multiple breaches of contract.

11. The South Dakota Department of Education has a legitimate concern relating to Towne's competency as it relates to his prior "nervous breakdown" and his ability to deal with the physical and emotional pressures of being a classroom teacher. This concern is legitimate both in regard to the Department's concern over Towne's welfare, his students' welfare, and the potential concerns of any institution which would employ him as a teacher.

12. Competency or incompetence as used by SDCL § 13-42-9(1) may include several forms including mental competence, physical competence, competence to teach, competence to control a classroom, competence to generally perform the duties necessary to fulfill employment obligations, and generally competence to fulfill duties and responsibilities as a certified teacher.

13. The South Dakota Department of Education met its burden of proof and its burden of going forward as to the Department's denial of the issuance of an Educator's Renewal Certificate applied for by Towne as it relates to the grounds of incompetence.

14. Despite the preceding conclusion of law, Towne should not be found to be permanently incompetent to teach since he has been recognized as a valuable and skilled teacher in the past. He should be prohibited from reapplying for a finite period of time and then permitted to apply on certain conditions.

15. It is both the finding and conclusion of this Hearing Officer that the Department of Education's decision to deny the Application of Towne for a Renewal Educator's Certificate be upheld on the basis of incompetency and that Towne be precluded from applying for such certification in the State of South Dakota for a period of time up through and including May 1, 2024. Thereafter, Towne may apply for any type of Educator's Certificate in the state of South Dakota, through the Department of Education, that may be appropriate. As part of that application, Towne must submit certain information to the Department of Education as a condition of reapplication. This information shall include but not necessarily be limited to:

- 1) Records from all therapists, psychologists, counselors, and medical doctors who Towne has seen in the twelve (12) months prior to his reapplication;

- 2) A list of all medications Towne has taken during the twelve (12) month period of time immediately prior to his reapplication; and
- 3) Such medical records which Towne feels are appropriate to support his reapplication with a condition that Towne furnish all other additional records during the twelve (12) month period immediately prior to his reapplication as the Department of Education should request.

16. All medical, psychological, and counseling information of any type submitted by Towne to the Department is subject to the protection of any and all state and federal laws regarding confidentiality on the part of the Department.

17. Any finding of fact which is actually a conclusion of law shall be denominated as such, and any conclusion of law which is actually a finding of fact shall be denominated as such.

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

Dated this 18th day of October, 2023.



Robert B. Anderson
Independent Hearing Examiner