

STATE OF SOUTH DAKOTA)	DIVISION OF THE SECRETARY
)	
COUNTY OF HUGHES)	SOUTH DAKOTA DEP. OF ED.
)	
In re: Revocation of the)	DSE 2023-06
Educator Certificate of)	ORDER REVOKING
ADAM M. ZABIH)	EDUCATOR CERTIFICATE

Pursuant to the authority granted to the Secretary of the South Dakota Department of Education by SDCL §§ 13-43-28.1, 13-42-9, and 13-42-15, following the receipt of a Complaint seeking suspension of a certificate for a period of five years from the South Dakota Professional Teachers Practices and Standards Commission, and after review of the entire file herein, the Secretary enters the following ORDER:

1. The Secretary affirms and adopts the Findings of Fact and Conclusions of Law of the Professional Administrators Practices and Standards Commission (“Commission”). 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 Commission found clear and convincing evidence Zabih violated the following provisions of the South Dakota Code of Professional Ethics for Teachers—ARSD 24:08:03:01 (4) and 24:08:03:02 (8). The Commission did not find clear and convincing evidence for the other violations alleged in the complaint—ARSD 24:08:03:01 (7), (9), (10), and 24:08:03:03 (13). The Commission requests Zabih’s South Dakota Educator Certificate be suspended for a period of five years.
3. Although the Commission recommended Zabih’s license be suspended for five years, the Secretary finds the conduct disclosed in the Commission’s Findings of Fact and Conclusions of Law particularly egregious and immediate revocation is necessary:
 - a. Zabih failed to acknowledge that his communications with Student D was improper. *See* Findings of Fact #49, 52, 53, and 56-61. This Secretary finds Zabih is not eligible for rehabilitation as he fails to accept responsibility for his actions and the negative impact it has on students.
 - b. Zabih initiated email communication with students that were unprofessional and unrelated to education. *See* Findings of Fact # 53 and 55. Zabih failed to set boundaries and maintain professional relationships with his students. *See* Findings of Fact # 57 and 58. Zabih testified that students would seek his classes out; however, Exhibit C depicts Zabih encouraging Student D to “bribe [her] counselor” to be placed in his class. The Commission found Zabih to not be a credible witness. *See* Findings of Fact # 51. This Secretary finds clear and convincing evidence Zabih violated ARSD 24:08:03:01 (7) (“Maintain professional relationships with students without exploitation of a student for personal gain or advantage”).

- c. Zabih violated the school district's Acceptable Use Agreement. *See* Findings of Fact #30. This Secretary finds clear and convincing evidence Zabih violated ARSD 24:08:03:02 (9) ("Not misuse or abuse school equipment or property").
4. Based upon the foregoing Findings of Fact and Conclusions of Law, the educator certificate of Adam Zabih, Certificate #82325, issued on June 22, 2020, is hereby **immediately and permanently revoked**.
5. Notification of this revocation will be placed on the NASDTEC registry and be placed in Zabih's permanent certification file within the South Dakota Department of Education.
6. The Order and incorporated Findings of Fact and Conclusions of Law are public record pursuant to SDCL 13-42-17.1.

This constitutes final agency action and may be appealed to circuit court pursuant to SDCL § 13-42-16.

Dated this 16th of August, 2023.



Dr. Joseph Graves
Secretary
Department of Education
800 Governors Drive
Pierre, SD 57501



STATE OF SOUTH DAKOTA)
 SS
COUNTY OF HUGHES)

SOUTH DAKOTA PROFESSIONAL
TEACHERS PRACTICES AND
STANDARDS COMMISSION

JAROD M. LARSON, Superintendent, Brandon Valley School District #49-2, Complainant, v. ADAM M. ZABIH, Respondent.	PTPSC 2022-10 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER
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This matter came on for hearing pursuant to the provisions of SDCL § 13-43-28 before the South Dakota Professional Teachers Practices and Standards Commission. A private hearing was held on June 6, 2023, in the Library Commons, MacKay Building, 800 Governors Drive, Pierre, South Dakota.

The following members of the South Dakota Professional Teachers Practices and Standards Commission (Commission) were present at the hearing: Chairperson Joy Robbins, Alesha Limbo, Jean Gunderson, and Crystal McMachen. Paul Bachand, counsel for the Commission, and Ferne Haddock, executive secretary of the Commission, were also present. The Complainant was personally present along with attorney Rodney Freeman. The Respondent was personally present along with attorney Emily Maurice.

Based upon the evidence presented at the hearing and documents contained in the official file, the Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent Adam M. Zabih ("Zabih") is the holder of a valid South Dakota Teacher's Certificate No. 82325 issued on June 22, 2020, and expires on July 1, 2025.
2. On or about December 20, 2022, Jaron M. Larson, Superintendent of the Brandon Valley School District #49-02 ("District"), filed a complaint against Zabih with the Commission.
3. The Complaint was specific and alleged that Zabih violated the following section(s) of the Code of Professional Ethics for teachers:
 - a. ARSD 24:08:03:01(4) which provides that in fulfilling their obligation to students, educators shall act as follows: (4) make a reasonable effort to maintain

discipline and order in the classroom and the school system to protect the students from conditions harmful to learning, physical and emotional well-being, health, and safety.

- b. ARSD 24:08:03:01(7) which provides that in fulfilling their obligation to students, educators shall act as follows: (7) maintain professional relationships with students without exploitation of a student for personal gain or advantage.
 - c. ARSD 24:08:03:01(9) which provides that in fulfilling their obligation to students, educators shall act as follows (9) maintain professional relationships with students in a manner which is free of vindictiveness, recrimination, and harassment.
 - d. ARSD 24:08:03:01(10) which provides that in fulfilling their obligations to students, educators shall act as follows: (10) not engage in or be a party to any sexual activity with students including sexual intercourse, sexual contact, sexual photography, or illicit sexual communication.
 - e. ARSD 24:08:03:02(8) which provides that in fulfilling their obligation to the public, educators shall act as follows: (8) exemplify high moral standards by not engaging in or becoming a party to such activities as fraud, embezzlement, theft, deceit, moral turpitude, gross immorality, sexual contact with students, illegal drugs, or use of misleading or false statements.
 - f. ARSD 24:08:03:03(13) which provides that in fulfilling their obligation to the profession, educators shall act as follows: (13) perform duties in accordance with local, state, and federal rules and laws.
4. The complaint was served on Zabih on December 27, 2022.
 5. Zabih filed a response with the Commission on or about January 30, 2023.
 6. A due and proper Notice of Hearing was served on the parties setting this hearing for June 6, 2023.
 7. A private hearing on this matter was held on June 6, 2023.
 8. Zabih requested that his wife be present for the second half of the hearing. There was no objection by Complainant, and she therefore was able to observe the hearing. However, the hearing remained private.
 9. Zabih attended and graduated from Brandon Valley High School in 2010.
 10. Zabih graduated from the University of Nebraska Lincoln with a bachelor's degree in Biochemistry. He was a teaching assistant while attending the University of Nebraska Lincoln.

11. Zabih has Masters Degrees from Purdue and the University of Sioux Falls.
12. Zabih started working for the District in 2020.
13. Zabih's evaluations from his time with the District reflected positively on his teaching skills. The evaluations indicated that student behavior in the class was entirely appropriate and that the report he built with students was evident.
14. In January of 2021, the evaluator included as an area of growth "Be careful about side conversations with students during their work time if it is the same student all the time."
15. In March of 2022, the evaluator recognized Zabih's ability to build relationships with students as an area of strength stating, "they clearly feel comfortable in your room and this is a great strength." However, in areas for growth went on to say, "get the feeling the atmosphere is too relaxed – need to have the balance of relationships/content/student management."
16. Zabih primarily taught Physical Science and Chemistry.
17. Zabih is also a head coach at 605 Ninja where Zabih works with the almost 600 youth students who attend 605 Ninja.
18. Zabih's employer considers him a valuable employee and indicated to the Commission that Zabih's actions around youth students were appropriate and of no concern to him.
19. On or about November 22, 2022, Zabih submitted his resignation as a teacher with the District.
20. About one week prior to his resignation, Zabih was placed on paid administrative leave.
21. Zabih was placed on paid administrative leave after the District conducted an investigation following reports they received regarding Zabih's communications with students.
22. On November 15, 2022, a male student reported to the District that two other students saw Instagram messages from Zabih to dance girls and that Zabih hits on his girlfriend in class.
23. After receiving this complaint, the District conducted an investigation into Zabih's actions which included interviewing students and examining email communications.
24. The District interviewed a total of seven students.
25. The District had the technical department pull one student's email communications with Zabih and reviewed the same.

26. The District contacted Zabih on November 15, 2022, and notified him he was placed on Administrative Leave with Pay, that his K-12 email was being shut down, that he was not to come to any Brandon Valley School District Facility and was not to contact any Brandon Valley High School Students.
27. Superintendent Larson sent a memo to all staff on August 23, 2022, to provide guidance to them regarding the professional use of technology and social media. The memo directed staff to the district's Acceptable Use Agreement, the Code of Professional Ethics for Teachers, and Board Policies relating to staff conduct and ethics.
28. The August 23, 2022, memo stated in part: "Staff should not include in electronic communication between staff, students, and/or parents/guardians, comments or content that would not be acceptable in a face-to-face communication."
29. The Acceptable Use Agreement regarding email communications provides as follows:
- a. "The state offers email services to all students. These accounts are for education related activities only. Propagation of chain letters, joke lists and other forms of mass mailings will not be allowed. Use of vulgar or abusive language is unacceptable and may be illegal under current federal law. E-mail accounts are considered property of the state and hence may be monitored."
30. Zabih violated the school district's Acceptable Use Agreement Concerning Information Technology.
31. Zabih sent and exchanged numerous emails with a female student, Student D, on Zabih's school email account.
32. In emails dated February 2, 2022, between 4:26 PM and 7:08 PM the following exchange occurred:
- Student: Your mind is as clean as mud
- Zabih: You laughed
- Student: I did and that's the bad thing. But I don't regret laughing. #favoritejokes
- Zabih: Exactly. Only slightly isn't bad
- Student: But it's not good haha
- Zabih: "It fiiiine. Side note. Saw the skinniest kid driving a huge loud truck. Ya like he's not compensating for anything
- Student: Hahahahaha you just read my mind

Zabih: I saw the kid driving and was like wooooooow definitely over compensating

Student: That's what I think when I see big trucks like that

Zabih: It's so true tho of guys driving big cars

Student: Like why do they think they need their car 10 thousand feet off of the ground and excessively loud for Italy to hear

Zabih: Because. They are over compensating and want to feel large and in charge

Student: But they are tiny and have tiny squeaky voices. Self confidence I guess but smh

Zabih: Well. Not just tiny in voice hahaha

Student: Bahahaha Zabih, I think that was implied

Zabih: I didn't know!!!! haha

33. In emails dated February 3, 2022, between 9:39 PM and 9:44 PM the following exchange occurred:

Zabih: That's not fair. And it's just me being me

Student: There is nothing for you to be sorry for. You didn't do anything wrong. In fact you've done more than enough and should never be told otherwise. I can tell that you try to help everyone to the best of your ability and if anyone says otherwise.. they are..not smart.. let's just say that. Don't say you're sorry because you didn't do anything wrong.

Zabih: That was....thanks. really. Really *emoji*

Student: It's the truth and don't let anyone tell you otherwise

34. In emails dated February 16, 2022, between 9:24 PM and 9:32 PM the following exchange occurred:

Zabih: I really don't care. I feel like you have no one to be open about it and not judging about it. Which is why I'm ok with it and care

Student: Yeah honestly you're right. I've really thought about it you're like the only person that actually listens to me and doesn't make fun of me for that stuff

Zabih: Cause I care. I wouldn't do that to you *emoji*

35. In emails dated February 20, 2022, between 9:59 AM and 10:54 AM

Student: Hello

Zabih: Well there she is

Student: I was going to bed when you emailed me last night so I couldn't answer
haha

Zabih: But still. You've been talking to this boy a lot lol

Student: I'll let you know how it goes

Zabih: Really

Student: Obviously, I tell you everything

36. In emails dated June 4, 2022, between 7:33 PM and 11:27 PM the following exchange occurred:

Zabih: You slept in the same room !?!? *emojis*

Student: Yeah but nothing happened lol

Zabih: Hmmmm.....you sure? *emoji*

Student: I wish something did haha

Student: He was hogging all the covers, I'll show you.

Zabih: *emoji* that's cute lol

Zabih: Wait hold up. You wish something did happen!?!? *emoji*

Student: Not like that Zabih. But also kinda...

Zabih: Wait whhhaaaaaa. Like what??? Kinda?!

Student: Nothing too crazy.

Zabih: That's what they all say at first *emoji*

Student: Well you never know. I'm going mini golfing on Monday lol

Zabih: That's true. You never do until it happens *emoji* Where mini golfing?

Student: Thunder Road I think

Zabih: Ok ok ok. He gonna show you how to putt correctly? Lolz

Student: Yeah probably since he's a golfer haha

Zabih: Buuuut you get where im going with it lol

Student: Yes Zabih. I do haha

Zabih: Hahaha. Hey. Not like you'd complain would you lol

Student: Nope I wouldn't haha

Zabih: Man I know you too well *emoji*

Student: Yeah, I know and that's kinda saddening

Zabih: Why saddening?????

Student: You know me way to well haha

Zabih: Yes. Yew I do *emoji* not like you complain

Student: I have a very boy filled life and they might be a bad thing but idrc

Zabih: Hey I care!!! I'm the one lookin out for you with the boyd

Student: Yeah ik

Zabih: Exactly. How are you tho? Really

37. In emails dated July 2, 2022, between 8:33 PM and 8:37 PM the following exchange occurred:

Student: I'm always working and also I went out with will last night and I'm now his first kiss so that's exciting

Zabih: You Kisses!?! *Emojis*

38. The following exchange occurred over email between July 2, 2022, at 11:51 PM and July 3, 2022, at 1:11 AM

Zabih: I knooooow. How is it between you two

Student: Really good. Trying to hang out as much as possible before he has to go to school in Minnesota

Zabih: Waot what

Student: He just graduated from OG

Zabih: That's crazy. You'd be his first 1

Student: Yup... for everything...

Zabih: Really???? Was this kid like shy or something?

Student: Yeah and he has really strict parents

Zabih: Ohhhhh. Ok ok. Wait.... Does that... *emoji*

Student: What?!?

Zabih: Nevermind lol *emoji*

Student: No, what were you saying?!

Student: Obviously !

Zabih: Well... you were like you'd be his first for everything...so does that mean...

Student: I mean.. never know *emoji*

Zabih: Whaaaaa *emoji* denial is truth fyi lol.

Student: What makes you think I'd do such a thing *emoji*

Zabih: Idk tbh lol. *emoji* does that mean no? Plus my high school time was... yaaaaa

Student: Yeah.. we've talked about your high school life and my summer has been filled with new experiences so you never know

Zabih: Oh ya, *students name* lol. Wait what?????? You what now

Student: Best summer everrrr so far

Zabih: Dang girl that good? *emoji*

Zabih: Maybe I'll hear about sometime lol

Student: You'll probably hear about it at some point next year

Zabih: Next year!? I gotta wait that long??

Student: Yup

Zabih: Well that's not fair... *emoji* I'd tell if you'd ask lol.

Student: Well it's probably not smart to say over email

Zabih: Good point. This is why you're the smart one ha.

Zabih: And fyi I do enjoy our talks

Zabih: Speaking of its July@

39. In emails dated August 12, 2022, between 10:37 PM and 11:02 PM the following exchange occurred:

Zabih: Bad news. School starts. Good news i.see you soon!

Student: I'll have lots of things to tell you when I'm back

Zabih: *emoji* whats your schedule look like agaon? again?!

Zabih: Dude if you ever get done in poppe you should dip out to my room lol

Student: She doesn't seem to like me too much but I can try

Zabih: She still doesnt? But either way first day after school catch me up

40. The following exchange occurred over email between September 20, 2022, at 6:57 PM and September 21, 2022, at 1:30 PM:

Zabih: Hi. Just checking up on you. Please let me know how you are doing. You know I care about your well-being *student name*

Student: I'm doing better now. Thank you

Zabih: You sure? I can bring you a celsius flavor you like tomorrow lol

Zabih: Was hoping to talk to ya about my day too...

Zabih: Am I a good person...

Student: Why do you say that ?!?! Of course you're a good person

Zabih: Because yesterday sucked. Today is meh. Also good luck today!

Student: Also, what happened yesterday?

41. The following exchange occurred over email between October 3, 2022, at 10:48 PM and October 4, 2022, at 7:31 AM:

Zabih: Hey, how are you? We actually haven't talked in a bit...

Student: I've been very good actually. It's just been very very busy.

42. This student was interviewed by the District and admitted to receiving emails from Zabih during the school year. She denied receiving emails during the summer. She stated that they were all school related and "nothing bad."

43. On November 15, 2022, Student D sent an email to Mark Schlekeway with the District.

44. In this email, Student D attempted to take the blame for the email communications between Zabih and Student D. The email stated:

"I wanted to apologize for being short earlier. I was just really nervous and scared. I've never been called to the office before and have never been in much trouble. I took a brief look at the emails between Mr. Zabih and me and the specific email in July. I only read the email slightly and realized I was the one to make a mistake. I shouldn't have brought those personal events of mine into the professional setting... I saw him as a friend instead of a teacher at the time, which is extremely unprofessional. I saw this because I know that you, as the administrators, are just trying to make sure everyone is safe and nothing is happening between a student and a teacher. I can assure you, though, that absolutely nothing is happening between Mr. Zabih and me... Again, I wanted to apologize for starting this and I realize now that I crossed a line. I should never have said the things that I did and I greatly regret ever emailing Mr. Zabih."

45. Zabih communicated with students via social media.

46. Zabih testified before the commission.

47. Zabih denied that his communication with Student D was of a sexual nature.

48. Zabih indicated that the email communication with Student D was taken out of context.

49. Zabih failed to acknowledge that his communication with Student D was improper.
50. No proof was provided to the Commission that Zabih had any physical contact with Student D and the Commission specifically finds that Zabih never hugged the student or engaged in any physical contact with Student D.
51. The Commission had the opportunity to evaluate Zabih during his testimony and finds that Zabih was not a credible witness when describing the nature of his communications with Student D.
52. Zabih's statements that the email communications were not of a sexual nature were not credible.
53. Zabih initiated email communications with students that were unprofessional.
54. Zabih communicated with students outside of school hours, late at night, and in the summertime.
55. Zabih communicated with students in topics unrelated to their education.
56. The conversations between Zabih and his students were improper and included sexual undertones.
57. Zabih failed to set boundaries with his students.
58. Zabih failed to maintain a professional relationship with his students.
59. Zabih does not feel regret for these unprofessional conversations with his students and indicated he would have these type of conversations again if employed with a different school district.
60. Zabih failed to take responsibility for his actions.
61. Zabih participated in conduct that was harmful to student's learning, physical and emotional well-being, health and safety.
62. The evidence presented to the Commission and all reasonable inferences therefrom demonstrates that Zabih violated ARSD 24:08:03:01(4) and ARSD 24:08:03:02(8).
63. Any finding of fact improperly denoted as a conclusion of law is hereby incorporated as a finding of fact.

Based upon the foregoing Findings of Fact, the Commission hereby issues the following Conclusions of Law:

CONCLUSIONS OF LAW

64. The Commission has jurisdiction over this matter pursuant to SDCL § 13-43-28 and 13-43-28.1, SDCL Ch. 1-26, and the Administrative Rules of South Dakota, Chapters 24:08:03 and 24:08:04:01.
65. The burden of proof in this matter as a contested case hearing is clear and convincing. In Re: Setliff, 2002 SD 58, 245 N.W.2d 601, 605.
66. The South Dakota Code of Professional Ethics for Teachers provides at ARSD 24:08:03:01 that in fulfilling their obligation to students, educators shall act as follows:
- (4) Make a reasonable effort to maintain discipline and order in the classroom and the school system to protect the students from conditions harmful to learning, physical and emotional well-being, health, and safety.
67. Clear and convincing evidence exists that Zabih violated ARSD 24:08:03:01(4).
68. The South Dakota Code of Professional Ethics for Teachers provides at ARSD 24:08:03:02 that in fulling their obligation to the public, educators shall act as follows:
- (8) Exemplify high moral standards by not engaging in or becoming a party to such activities as fraud, embezzlement, theft, deceit, moral turpitude, gross immorality, sexual contact with students, illegal drugs, or use of misleading or false statements.
69. Clear and convincing evidence exists that Zabih violated ARSD 24:08:03:02(8).
70. Clear and convincing evidence does not exist that Zabih violated ARSD 24:08:03:01(7), (9), and (10), and ARSD 24:08:03:03(13).
71. Any conclusion of law improperly denoted as a finding of fact is hereby incorporated as a conclusion of law.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission hereby issues the following Order:

ORDER

ORDERED that this matter be referred to the Secretary of the South Dakota Department of Education for proceedings to suspend the teaching certificate of Zabih for five years as provided for in SDCL § 13-43-28.1. It is further

ORDERED that within one year from the date of this Order, Respondent complete a course of continuing education that covers ethical considerations regarding communications with students. Respondent shall provide proof he completed this course to the Executive Secretary.

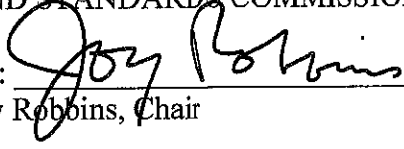
ORDERED that a copy of the Findings of Fact, Conclusions of Law, and Order be provided to the Secretary of the South Dakota Department of Education for placement on the National Association of the State Directors of Teacher Education and Certification (NASDTEC) clearinghouse and that it remains with the Department's permanent certification file. It is further

ORDERED that a copy of the Findings of Fact, Conclusions of Law, and Order be sent to the parties herein. It is further

ORDERED that the Department may release the Findings of Fact, Conclusions of Law, and Order to the certificate office of any state in which the respondent holds or applies for a certificate.

Dated this 7 day of July 2023.

PROFESSIONAL TEACHERS PRACTICES
AND STANDARDS COMMISSION

By: 
Joy Robbins, Chair