

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

In re: Certification of)
BRIAN SIEH) DSE 2023-07
) 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 Brian Sieh for a renewal educator certificate is **DENIED**.
3. Although the Independent Hearing Examiner recommended Sieh's application be denied and he be precluded from reapplying for certification through and including January 1, 2025, the Secretary finds the conduct disclosed in the Findings of Fact and Conclusions of Law particularly egregious and a longer period of suspension is warranted:
 - a. Sieh's criminal history and lack of complete candor and honesty when dealing with the Department for the past ten years, as noted in his previous files: DSE 2013-07, DSE 2015-13, DSE 2018-04.
 - b. Sieh's failure to comply with clear and unequivocal conditions provided in the settlement agreement entered into in 2018 with the Department.
 - c. Sieh's pattern of behavior is a legitimate concern regarding Sieh's welfare and ability to deal with his professional obligations and his students and the potential concerns of any

institution which may employ him.

4. Brian Sieh is prohibited from reapplication for an educator certificate in the State of South Dakota through and including January 1, 2027.
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.

Dated this the 25th of January, 2024.



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 2023-07
Certification Application of BRIAN SIEH	FINDINGS OF FACT AND CONCLUSIONS OF LAW

Brian Sieh (Sieh) made a timely request for hearing in regard to a written “Notice of Intent to Deny Educator Certificate” which notice was dated July 17, 2023.

A hearing on Sieh’s timely request was held before Robert B. Anderson, duly appointed independent hearing examiner, on October 11, 2023, at 9:00 o’clock a.m. CDT in the Library Commons of the MacKay Building, First Floor, 800 Governors Drive, in Pierre, South Dakota. The hearing was a public hearing. 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. Sieh 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 October 11, 2023 hearing, as independent hearing examiner, I now make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Sieh filed an Educator Renewal Application on or about April 3, 2023. Sieh’s original South Dakota Educator’s Certificate was issued and then suspended in 2013.
2. Sieh had previously been denied certification on May 2, 2014, and, as part of that denial, was prohibited from reapplying until August 4, 2015.
3. Sieh did reapply when permitted, and his application was denied again on March 23, 2016. and he was prohibited from reapplying until December 31, 2017.
4. Sieh’s denials in 2014 and 2016 were based on criminal convictions and code of ethics violations.
5. When he was no longer barred from reapplying, Sieh did apply for certification again on or about January 3, 2018. He was issued a conditional certificate based on a settlement agreement with the Department on May 29, 2018.



6. The 2018 settlement agreement conditioned Sieh's certification on him not being charged with any violations of state, federal, tribal, county, or municipal law or ordinances and provided that, if he received any such new citations or was arrested for such violations, he was required to report such citations or arrest to the Department within five (5) days of when they occurred. The requirements of the 2018 settlement agreement were clear and unequivocal.

7. The renewal application filed by Sieh in April, 2023, did not reference any disclosures for arrests or convictions since his last application.

8. In addition to the absence of disclosures in his renewal application of April, 2023, Sieh never notified the Department of any citations or arrests for any offenses of any type and, in particular, those described in the settlement agreement.

9. Because of Sieh's history, his criminal record was researched after he filed his renewal application of April, 2023.

10. Sieh's criminal history, which was found as a result of the search, included a speeding ticket where he was convicted on June 1, 2018, a charge of driving with a revoked driver's license on July 10, 2018, and a speeding conviction on September 21, 2020.

11. Sieh failed to disclose or report the charges and/or convictions in finding 10 above within five (5) days as required by the settlement agreement of May 29, 2018.

12. Sieh failed to disclose the charges and/or convictions listed in finding 10 above in his April, 2023, renewal application as required by the terms of such application.

13. The charges and/or convictions referenced in finding 10 above are minor in nature when compared to those offenses which led to earlier suspension and revocation of Sieh's teaching certificate and did not involve alcohol.

14. Although the charges and/or convictions are relatively minor in nature, Sieh clearly failed to comply with the settlement agreement of 2018.

15. The Department had reasonable expectation that Sieh would understand and comply with the 2018 settlement agreement.

16. The evidence, as a whole, reflects that Sieh has been a dedicated educator and had a positive effect on many students and children including members of his own family since the settlement agreement of 2018. However, those issues are not directly relevant to whether the Department met its burden of proof in this proceeding.

17. Because of his lengthy history with certification issues with the Department, Sieh should have clearly realized the importance of strict compliance with the 2018 settlement agreement. If he was unsure of the requirements of said agreement, he should have made inquiry about them to the Department.

18. There is no evidence or contention that Sieh has continued to use or abuse alcohol or that any alcohol or drug use has contributed to his failure to comply with terms of the settlement agreement.

19. Sieh has previously received a number of “second chances” from the Department in regard to his certification status, and the evidence produced at the hearing reflects that he did not take the requirements of the 2018 settlement agreement as seriously as he should have.

20. The Department seeks a lifetime ban prohibiting Sieh from certification or recertification as an educator in the State of South Dakota.

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

3. 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.

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

5. The South Dakota Department of Education has the burden of going forward and the burden of proof to show, by a preponderance of the evidence, that it is justified in denying Sieh’s application for the issuance of an Educator’s Renewal Certificate.

6. The South Dakota Department of Education has met its burden of proof as to its decision to deny the issuance of an Educator’s Certificate for Sieh based on the contention that Sieh failed to truthfully disclose his criminal record on his application and that he further failed to comply with a clear and unequivocal conditions of the settlement agreement entered into in 2018 between Sieh and the Department.

7. The South Dakota Department of Education has a legitimate concern relating to Sieh’s criminal history and his lack of complete candor and honesty when dealing with the

Department. This concern is legitimate both when you examine it in regard to Sieh's welfare and ability to deal with his professional obligations and his students and the potential concerns of any institution which would employ him.

8. Sieh's criminal history prior to the settlement agreement of 2018 is not being directly considered in this decision. However, as that history relates to a pattern of behavior, and the basis for the requirements set forth in the settlement agreement, it is relevant to this proceeding.

9. Because the offenses which Sieh failed to report on his most recent application and which he failed to communicate to the Department in response to his duties under the settlement agreement are relatively minor in nature and are infractions fairly common among the South Dakota populace, Sieh should not receive a lifetime ban on certification as requested by the Department.

10. It is clear that the Department has invested significant time and expense in regard to Sieh as it relates to the monitoring of his behavior and that the Department depended on Sieh to promptly comply with the provisions of the settlement agreement and truthfully respond to questions in his most recent application. His failure to do so is one of the primary considerations in regard to this decision.

11. It is both the finding and conclusion of this Hearing Officer that the Department of Education's decision to deny Sieh's application be upheld for the reasons set forth in these findings and conclusions. However, Sieh shall be precluded from reapplying for such certification in the State of South Dakota for a time up through and including January 1, 2025. Thereafter, Sieh 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 a condition of the application being granted, the Department shall be precluded from relying on Sieh's past criminal behavior but shall have the right to require periodic reporting on Sieh's part to the same or similar extent as that which was required in the September 2018 settlement agreement.

12. The offenses for which Sieh was arrested and charged, which form part of the basis for the Department's position in this case, were acts or omissions which were prohibited by South Dakota statute and for which penalties were prescribed. *See* SDCL § 22-1-8.

13. 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 11th day of December, 2023.



Robert B. Anderson
Independent Hearing Examiner