

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

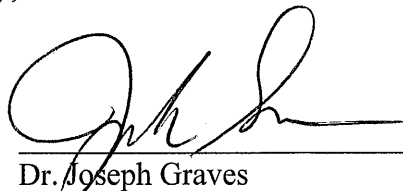
In re: Certification of)
JUSTIN MARSH) DSE 2023-11
) ORDER SUSPENDING
) EDUCATOR CERTIFICATE

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 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 educator certificate of Justin Marsh, Certificate #83174, issued on January 9, 2020, is hereby **immediately suspended** through and including July 1, 2025.
3. 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.
4. 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 8th 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: Certification Application of JUSTIN MARSH	DSE 2023-11 FINDINGS OF FACT AND CONCLUSIONS OF LAW
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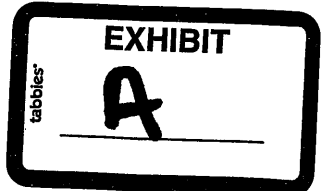
The South Dakota Department of Education issued a written "Notice of Intent to Suspend Educator Certificate" in regard to Justin Marsh (Marsh) which notice was dated August 25, 2023.

A hearing on the Notice of Intent to Suspend Educator Certificate was held on Marsh's timely request before Robert B. Anderson, the duly appointed Independent Hearing Examiner, on October 25, 2023, at 9:00 o'clock a.m. CDT in Conference Room #5 of the MacKay Building, 800 Governors Drive, in Pierre, South Dakota 57501. The hearing was a private 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. Marsh appeared personally and without legal counsel, thereby waiving his right to counsel at the hearing. The hearing was held before the duly appointed Independent Hearing Examiner, a verbatim record was made, and the Hearing Examiner had an opportunity to see all witnesses testify live and make determination as to their credibility. 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 25, 20223 hearing, as Independent Hearing Examiner, I no make and enter the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Marsh originally applied for an initial Educator Certificate on July 31, 2019.
2. Because Marsh failed to adequately and truthfully disclose his criminal history on his application in 2019, the Department entered into a settlement agreement with Marsh on December 4, 2019. This agreement allowed is initial Educator Certificate to be issued pursuant to certain terms and conditions as set forth in the settlement agreement.
3. The settlement agreement was amended at Marsh's request and for reasons which the Department felt were justified. However, other than the amendment, the settlement agreement remained in full force and effect.



4. Among other things, the settlement agreement required that Marsh not be charged with any new violations of state, federal, tribal, county, or municipal law or ordinance. If charged, Marsh was required to report such charges, citations, or arrests to the Department within one week of their occurrence.

5. When Marsh signed the settlement agreement with the Department, he confirmed in ¶ 5(a) that, as of the date of his signature, he had not committed any state, federal, tribal, county, or municipal law violations which had not already been disclosed to the Department.

6. Marsh failed to disclose charges of petty theft in July and August 2022 and a charge of disorderly conduct in July 2022.

7. Marsh also failed to disclose a petty theft charge in February 2023.

8. Based on Marsh's alleged violations of the settlement agreement, the Department requests that Marsh's Educator Certificate be suspended for five (5) years and that he be precluded from reapplying for any Educator Certification during that five (5) year period of time.

9. The additional criminal charges not disclosed by Marsh came to the Department's attention after a report of an alleged or suspected contract violation was made by Harrisburg School District to the Department regarding Marsh. This prompted an additional investigation.

10. Marsh was charged with criminal offenses in 2013 and 2014, prior to his application for his original Educator Certificate. He was later charged with additional criminal offenses in 2022 and 2023 as set forth findings 6 and 7 above.

11. At the time of the hearing in this proceeding, Marsh was employed as a 6th grade resource teacher by the Harrisburg School District. He resides in Sioux Falls.

12. Marsh admits that he made mistakes and that he should have handled compliance with the settlement agreement in a different manner. He admits that he did not comply with the reporting requirements of the settlement agreement in a timely manner.

13. Part of the reason that the Department required the settlement agreement, and the reporting requirements, was based on Marsh's prior failure to disclose his criminal record during the course of his initial application. The requirement and the reason for the requirement was very clear, and Marsh was aware of it.

14. Marsh agrees and admits that the first settlement agreement was the result of the Department giving him a chance to be a teacher. He admits that he understands the importance of complying with the agreement.

15. The criminal charges which occurred and went unreported by Marsh were relatively minor but clearly criminal in nature, and his requirement to report them was clear and unequivocal in the settlement agreement.

16. On at least one of the charges, Marsh consulted with and hired an attorney further confirming his recognition of the serious nature of the charges.

17. Because of his history with his initial application and the requirement that he enter into a settlement agreement in order to obtain an Educator Certificate, Marsh should have clearly realized the importance of strict compliance with the 2019 settlement agreement. If he was uncertain of the requirements of said agreement, he should have made inquiry to the Department.

18. Marsh testified that he is a dedicated teacher who enjoys his profession, and there is no reason not to believe that testimony. It appears that Marsh can be a successful teacher. However, his failure to abide by the straightforward terms of the settlement agreement is a valid reason for the suspension of his Educator Certificate for a finite period of time.

CONCLUSIONS OF LAW

1. Robert B. Anderson was duly designated and appointed as Independent Hearing Examiner pursuant to ARSD 24:18:02:03 by the South Dakota Secretary of Education and is thereby designated to preside over the contested case relating to the Department's Notice of Intent to Suspend Marsh's Educator Certificate. The Hearing Officer's jurisdiction is based on 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 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 Marsh's actions as described in the Notice of Intent to Suspend his Certificate justify such suspension 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 suspending Marsh's Educator Certificate.

6. The South Dakota Department of Education has met its burden of proof as to its decision to suspend Marsh's Educator Certificate based on the contention that Marsh failed to comply with the terms and conditions of the 2019 settlement agreement and, further, that he failed to disclose his criminal record to the Department in a timely manner.

7. The South Dakota Department of Education has a legitimate concern relating to Marsh'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 Marsh's failure to initially disclose his criminal record and his failure to comply with the 2019 settlement agreement.

8. Marsh's criminal history prior to the settlement agreement of 2019 is not being directly considered in this decision. However, as that history relates to a pattern of behavior, the basis for the requirements set forth in the settlement agreement, and the importance of compliance with those requirements, it is relevant to this proceeding.

9. Because the offenses which Marsh failed to report as required by the settlement agreement were recognized by him at the time as criminal offenses, there is no excuse for his failure to comply with the settlement agreement.

10. The settlement agreement entered into between the Department and Marsh represents an effort by the Department to enable Marsh to continue to teach and to prove his reliability. The Department depended on Marsh to promptly comply with the provisions of the settlement agreement. His failure to do so breaches the settlement agreement and represents several different bases for the Department to suspend his Educator Certificate.

11. It is both the finding and conclusion of this Hearing Officer that the Department of Education's decision to suspend Marsh's Educator Certificate should be upheld for the reasons set forth in these findings and conclusions. However, Marsh shall be precluded from reapplying for such certification in the State of South Dakota only for a time up through and including July 1, 2025. Thereafter, Marsh shall be permitted to reapply for certification after this suspension period expired. At that time, he must comply with the requirements that apply to any application process, including thorough and accurate responses to the character and fitness portion of the application.

12. 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 21st day of January, 2024.



Robert B. Anderson
Independent Hearing Examiner