MINNESOTA – SOUTH DAKOTA
TUITION RECIPROCITY AGREEMENT
April 1, 2009

This agreement is entered into between the State of Minnesota, acting through its Commissioner of Education ("Minnesota") and the State of South Dakota acting through its Secretary of the Department of Education ("South Dakota") (collectively "the states') to provide cross-border attendance of kindergarten through 12th grade students.

1. Purpose

A student who resides in a Minnesota school district contiguous to the South Dakota border may attend school in a South Dakota school district contiguous to the Minnesota border ("receiving district"), and a student who resides in a South Dakota school district contiguous to the Minnesota border may attend school in a Minnesota school district contiguous to the South Dakota border. This agreement establishes the procedures that districts and states will follow when students attend school in the other state.

2. Authority

The authority to enter into this agreement is provided by Minnesota Statutes 2008, § 124D.041 (2008) and South Dakota Codified Laws ch. 13-28A.

3. Application Procedure

a. The parent or guardian of a student who is a resident of and is eligible to attend a school in a Minnesota school district that is contiguous to the South Dakota border, or a parent or guardian of a student who is a resident of and is eligible to attend a school in a South Dakota school district that is contiguous to the Minnesota border may file an application with the receiving school district in order for the student to attend school in the receiving district. The receiving district must be a contiguous district of the other state.

b. Applications for the 2009-10 school year must be made by June 1, 2009. Applications for later school years must be made by January 15 for the following fall. However, upon agreement between the school boards of the resident school district and the receiving school district, applications may be accepted after the deadline.

c. A student without an Individual Education Plan ("IEP") must be under 21 years of age as of September 1st to enroll in the program. A student with an IEP must be under 21 years of age as of June 30th for enrollment the following school year. The student's

parent or guardian shall submit an application to the receiving district. The application shall be on a form provided by the states.

d. Once enrolled in a receiving district in either Minnesota or South Dakota, the student is not required to submit annual or periodic applications, and may remain enrolled in the receiving district in either State, unless one of the following reasons for termination are established by the receiving district:
   - A Minnesota district may terminate the enrollment of a South Dakota student at the end of a school year if the student meets the definition of a habitual truant under Minnesota Statutes section, the student has been provided appropriate services under Minnesota Statutes chapter 260A, and the student's case has been referred to juvenile court in South Dakota.
   - A Minnesota district may also terminate the enrollment of a South Dakota resident student over the age of 16 enrolled under this section if the student is absent without lawful excuse pursuant to Minnesota law for one or more class periods on 15 school days and has not lawfully withdrawn from school under Minnesota Statutes section.
   - A South Dakota district may terminate the enrollment of a Minnesota resident student at the end of any school year during which the student or any person in control of the student has been referred to the court system in South Dakota or Minnesota for truancy pursuant to the provisions of SD Codified Laws, Chapter 13-27.
   - The receiving district in either State may terminate the enrollment of any student who is expelled for a period that extends beyond the end of the current school year calendar.

4. **The Manner and Notification of Acceptance**

   a. The school board of the receiving district shall transmit the application to the student's district of residence within 7 days of receipt of the application.

   b. Within 10 days of approval or denial of the application, the receiving district shall notify the resident district and the parent or guardian of the student.

   c. Notice of intent to enroll in the receiving district obligates the student to attend the receiving district during the following school year unless the school boards of the resident and the receiving districts agree in writing to allow the student to transfer back to the resident district or the student's parent or guardian relocates to another district.

d. All notices required to be given by one school district to the other under this Agreement, unless specifically provided otherwise, must be in writing and sent to the school district superintendent at the school district administrative offices.

e. A receiving district shall accept credits toward graduation awarded by the resident district provided the credits meet state and local requirements for graduation from the receiving district. Each of the school districts must award a diploma to a receiving student attending the receiving school provided the student meets all state and local requirements for receipt of a diploma in the receiving district.

Causes for Denial of an Application

The board of the receiving district may deny an application only if one or more of the following applies:

a. the application will result in overcrowding of the class, grade level, or school building attended by the student involved; or

b. the application is to enroll during the term of the expulsion for a student expelled from school for:
   - possessing a dangerous weapon, as defined by United States Code, Title 18, Section 930, Paragraph (g)(2), at a school or school function;
   - possessing or using an illegal drug at a school or school function; selling or soliciting the sale of a controlled substance while at school or a school function; or
   - committing a third-degree assault as described in Minnesota Statutes, Section 609.223, Subdivision 1.

The ability of the receiving district to deny an application of a student in need of special education or special education and related services shall be governed by paragraph 7.

The board of a resident district may not deny an application.

5. Calculation of State Aid and Payments Between States

a. A student from South Dakota enrolled in Minnesota under this agreement shall be included in the receiving school district's average daily membership and pupil units according to Minn. Stat. § 126C.05 as if the student were a resident of another Minnesota school district attending the receiving school district under Minn. Stat. § 124D.03.

b. A student from Minnesota enrolled in South Dakota under this agreement shall be included in the resident school district's average daily membership and pupil units

according to Minn. Stat. § 126C.05 as if the student were a resident of the district attending another Minnesota school district under Minn. Stat. § 124D.03.

c. A student from Minnesota enrolled in South Dakota under this agreement will be counted on South Dakota's state aid fall enrollment for the school district for which they are enrolled as per SDCL 13-28.

d. If there are more students in average daily membership ("ADM") from Minnesota than South Dakota participating in cross-border attendance under this agreement, the Commissioner of the Minnesota Department of Education (Commissioner) will forward to the Secretary of the South Dakota Department of Education (Secretary), on behalf of each excess student, an amount annually agreed to by the Commissioner and the Secretary as reflecting the average general education revenue per ADM from state aids and local property taxes in the South Dakota school districts participating in cross-border attendance in accordance with the contract.

e. If there are more students in ADM from South Dakota than Minnesota participating in cross-border attendance under this agreement, the Secretary will forward to the Commissioner, on behalf of each excess student, an amount annually agreed to by the Commissioner and the Secretary as reflecting the average general education revenue per ADM from state aids and local property taxes in the South Dakota school districts participating in cross-border attendance in accordance with the contract.

f. In addition to the general education payments between the states under paragraph d) or e), payments shall be made between the states for the net excess cost of special education as follows:
   - The payments shall be based on the net difference in "district need" for nonresident students enrolled in the other state under this agreement, as determined using the South Dakota special education funding formula for the current school year. The calculation of district need for students with a Level 1 disability shall be based on the December 1 head count in the current school year of all students participating in cross-border attendance under this agreement. The calculation of district need for students with a Level 2 - 6 disability shall be based on the December 1 special education child count in the current school year.
   - If the "district need" for South Dakota students participating in cross-border attendance under this agreement is greater than the "district need" for Minnesota students participating in cross-border attendance under this agreement, the Secretary will forward to the Commissioner an amount equal to the net difference.
   - If the "district need" for South Dakota students participating in cross-border attendance under this agreement is less than the "district need" for Minnesota students participating in cross-border attendance under this agreement, the Commissioner will forward to the Secretary an amount equal to the net difference.

- The payments between states calculated based on "district need" may be adjusted for the excess cost of serving very high cost students, if an agreement is reached on a case by case basis between the Commissioner and the Secretary.

g. Payments under paragraphs d), e) and f) shall be made according to the schedule in Minn. Stat. § 127A.45, subdivision 16. (For the 2008-09 school year, this schedule was 30% of the estimated amount due for the school year on each of August 30, December 30, and March 30, with a final adjustment payment on October 30 of the following fiscal year).

7. Special Education

A request to transfer a student in need of special education or special education and related services may be denied only if the application will result in overcrowding of the class, grade level or school building in which the student is to enroll. If the transfer is granted the receiving district is responsible for the provision of a free appropriate public education for the student in need of special education or special education and related services.

The IEP team consisting of representatives from the resident and receiving districts shall determine whether the student in need of special education requires transportation as a related service. If so, the resident district shall provide or ensure the provision of transportation within the boundaries of the resident district, and the receiving district shall provide or ensure provision of transportation within the boundaries of the receiving district.

If the IEP team determines that an out-of-district (that is, out-of-receiving-district) placement is needed for the student, the resident school district will be solely responsible for the education, related services and all expenses for that student. This placement is not covered under the provisions of this agreement.

If a parent or guardian of a student in need of special education or special education and related services requests to transfer the student back to the resident district, the provisions of paragraph 4)c) of this agreement shall apply.

8. Transportation

a. The district of residence is not responsible for transportation for any student participating in cross-border attendance under this agreement, except as provided in section (7) of this agreement. The resident district may, at its discretion, provide transportation for such a student.

b. The receiving school district is responsible for transportation within the district for students participating in cross-border attendance under this agreement if it provides transportation for students residing within the district in the area adjacent to the border between the district and the student's district of residence. The receiving district may, at its discretion, provide transportation for such a student outside of the district's boundaries.

c. When transportation is provided, the scheduling of routes, establishment of the location of bus stops, manner and method of transportation, control and discipline of school children, and any other matter relating thereto must be within the sole discretion, control and management of the school board providing transportation.

d. The school districts may jointly enter into a subsequent transportation agreement; however, the transportation agreement must be in writing and approved by the respective school boards.

9. Miscellaneous Provisions

a. Exceptions. This agreement does not apply to:

1) Students in grades 7 – 12 residing in ISD 404, Lake Benton, MN and enrolled in Elkton School District 05-3 under a tuition agreement between the two school districts, and
2) Students residing in the portion of Milbank School District 25-4, SD, previously included in District 25-1, Big Stone City, SD, and enrolled in ISD 62, Ortonville, MN, under a tuition agreement between the two school districts.

b. Application of other Laws. Minnesota Statutes §§ 124D.04 and 124D.05, regarding receiving tuition and reciprocity, do not apply to students participating in cross-border attendance under this Agreement.

c. Merger. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement.

d. Severability. If any term or provision of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms and provisions shall not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term or provision.

e. Spoliation. Each party shall promptly notify the other party of all potential claims that arise from or result from this Agreement. Each party shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the other party the opportunity to review and inspect the evidence, including the scene of an accident.

f. Indemnity. Minnesota and South Dakota each agrees to assume its own liability for any claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

g. Alternative Dispute Resolution – Jury Trial. Neither South Dakota nor Minnesota agrees to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to legal action to enforce available remedies. Neither South Dakota nor Minnesota waives any right to a jury trial that either State may have under applicable law.

h. Data practices and handling of records. Records in the possession of Minnesota, including records received from South Dakota, are Minnesota government data and will be handled by Minnesota in accordance with the Minnesota Government Data Practices Act, Minn. Stat. § 13.03 et seq. Records in the possession of South Dakota, including records received from Minnesota, are South Dakota government data will be handled by South Dakota in accordance with the South Dakota open records law. See SDCL ch. 1-27. The records may also include education records, and all educational agencies are bound by the Federal Family Educational Rights and Privacy Act (FERPA), (20 U.S.C. § 1232g; 34 CFR Part 99 and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et, seq.

i. Contract Term. The term of this agreement is one (1) year, beginning July 1, 2009 and ending July 1, 2010. The agreement shall be automatically renewed for successive term of one (1) year each without action by either party unless one of the parties gives written notice of its intention to terminate the parties' agreement at least sixty (60) days in advance of the renewal date hereof. Such notice of termination must be mailed to either the South Dakota Secretary of Education or the Minnesota Commissioner of Education, as the case may be, by certified mail, return receipt requested, and postmarked at least 60 days prior to the next renewal of this contract. In absence of such notice, the agreement shall be automatically renewed in accordance with this paragraph.

j. Funding Out. This agreement depends upon continued availability of appropriated funds and expenditure authority from the South Dakota Legislature and the

Minnesota Legislature for this purpose. If, for any reason, the legislature of either South Dakota or Minnesota fails to appropriate funds or grant expenditure authority, or funds become unavailable to either State by operation of law or federal funds reductions, this Agreement will be terminated by a State if that State does not have authorized appropriations and expenditure authority to carry out the Agreement. Termination for any of these reasons by a State is not a default by that State, nor does it give rise to any claim against that State, nor against any of that State's agencies, agents, officers, contractors or employees.

k. State Audit. All records, regardless of physical form, and the accounting practices and procedures of either party relevant to this Agreement are subject to examination by the appropriate state auditing agency of either state. Both parties will maintain all such records for at least three years following completion of this Agreement.

l. Effective Date. This Agreement is not effective until fully executed by both parties.

[Signature page to follow]

STATE OF SOUTH DAKOTA

Tom Oster
Cabinet Secretary of Department of Education

Tom Oster 4-13-09

Signature Date

STATE OF MINNESOTA

Alice Seagren
Commissioner of Education

Alice Seagren 4-20-09

Signature Date