AGREEMENT FOR CROSS-BORDER ATTENDANCE BETWEEN THE STATE OF NORTH DAKOTA AND THE STATE OF SOUTH DAKOTA

This agreement is entered into between the State of North Dakota, acting through its Superintendent of Public Instruction ("North Dakota") 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 North Dakota school district contiguous to the South Dakota border may attend school in South Dakota, and a student who resides in a South Dakota school district contiguous to the North Dakota border may attend school in North Dakota.

2) Authority

The authority to enter into this agreement is provided by H.B. 1194, 2005 N.D. Leg, and H.B. 1149, 2005 S.D. Leg.

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 North Dakota 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 North Dakota border may file an application in order for the student to attend school in the receiving district.

b) The student must be under 21 years of age as of July 1st for enrollment the following school year. The student's parent or guardian shall submit an application to the resident district. The application shall be on a form provided by the states.

c) Once enrolled in a receiving district, the student may remain enrolled in the receiving district and is not required to submit annual or periodic applications.

4) The Manner and Notification of Acceptance

a) The school board of the student's district of residence shall transmit the application to the receiving district 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 board president 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 so long as the student meets all state and local requirements for receipt of a diploma.

5) Causes for Denial of an Application

The board of the receiving district may deny an application only if the application will result in overcrowding of the class, grade level, or school building attended by the student involved. 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.

6) Calculation of North Dakota State Aid

a) The North Dakota superintendent of public instruction (Superintendent) may count any South Dakota student participating in cross-border attendance under this agreement for the purposes of determining the amount of North Dakota state aid to which a North Dakota school district is entitled.

b) The superintendent may not count a North Dakota student participating in cross-border attendance in accordance with this contract for purposes of determining the amount of state aid to which a North Dakota school district is entitled.

c) If there are more students from North Dakota than South Dakota participating in cross-border attendance under this agreement, the superintendent 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 superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract.

d) If there are more students from South Dakota than North Dakota participating in cross-border attendance under this section, the secretary shall forward to the superintendent, on behalf of each excess student, an amount annually agreed to by the superintendent and the secretary as reflecting the average cost of education per student in the school districts participating in cross-border attendance in accordance with the contract.

7) Special Education

A student who requires special education or special education and related services may participate in cross-border attendance under this section. For each student in need of special education or special education and related services, the resident school district will be invited to take part in an Individual Education Plan (IEP) meeting. If it is determined 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.

Notwithstanding any other provision of this agreement, a request to transfer a student in need of special education or special education and related services may be granted only if the receiving district:

a) Upon receipt of an open enrollment application, obtains copies of all relevant student education records on the student applying to transfer from the resident district;
b) Completes a review of those relevant student education records; and
c) Directly communicates with the student's parent or guardian and representatives of the resident district regarding the student's special education or special education and related services needs.

If the receiving district confirms, based upon the records review and communications with the student's parent or guardian and representatives of the receiving district, that it can provide an appropriate instructional program and facilities, including transportation, if necessary, to meet the needs of the student, it may proceed to approve the application for a cross-border transfer. If the receiving district determines that it is not able to make that confirmation, the receiving district shall initiate an individual education program team meeting consisting of representatives from both the resident and receiving districts to

determine whether the receiving district can provide an appropriate instructional program, facilities, and transportation, if necessary.

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 or if an individual education program team consisting of representatives from the resident and receiving districts determines that the receiving district cannot provide an appropriate instructional program and facilities, including transportation, to meet the student's needs. If the request to 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, except as otherwise set out in this paragraph (7). The IEP team consisting of representatives from the resident and receiving districts shall also 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 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) Each school district may provide transportation to students participating in cross-border attendance under this section.

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

9) Miscellaneous Provisions

a) Application of other Laws. North Dakota Century Code Sections 15.1-29-01 through 15.1-29-13, regarding receiving tuition and reciprocity do not apply to students participating in cross-border attendance under this Agreement.

b) 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.

c) 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.

d) 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.

e) Indemnity. North Dakota 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.

f) Alternative Dispute Resolution – Jury Trial. Neither South Dakota nor North Dakota 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 North Dakota waives any right to a jury trial that either State may have under applicable law.

g) Confidentiality. The parties agree not to use or disclose any information either of them receives from the other under this agreement that the opposing party has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by the opposing party. The duty of each party to maintain confidentiality of information under this section continues beyond the term of this Agreement, or any extensions or renewals of it.

h) Compliance with Public Records Act. South Dakota understands that, except for those disclosures prohibited in this Agreement, North Dakota must disclose to the public upon request any records it receives from South Dakota under this agreement. South Dakota further understands that any records that are obtained or generated by South Dakota under this agreement, may be open to the public upon request under the North Dakota open records law. See N.D.C.C ch. 44-04. South Dakota agrees to contact North Dakota immediately upon receiving a request for information under the open records law and to comply with North Dakota's instructions on how to respond to the request, except that North Dakota will comply, in good faith, with North Dakota law after consultation with South Dakota.

i) Compliance with Public Records Act. North Dakota understands that, except for those disclosures prohibited in this Agreement, South Dakota must disclose to the public upon request any records it receives from North Dakota under this agreement. North Dakota further understands that any records that are obtained or generated by North Dakota under this agreement, may be open to the public upon request under the South Dakota open records law. See SDCL ch. 1-27. North Dakota agrees to contact South Dakota immediately upon receiving a request for information under the open records law and to comply with South Dakota's instructions on how to respond to the request, except that South Dakota will comply, in good faith, with South Dakota law after consultation with North Dakota. .

j) Contract Term. The term of this agreement is one (1) year, beginning July 1, 2005 and ending July 1, 2006. 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 North Dakota Superintendent of Public Instruction, 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.

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

Signature

Rick Melmer
Typed Name

Cabinet Secretary of Department of Education
Title

7/6/05
Date

STATE OF NORTH DAKOTA

Signature

Wayne G. Sanstead
Typed Name

State Superintendent
Title

June 22, 2005
Date