

# **Interagency Agreement 2018**

Among

**The Department of Education, Special  
Education Programs  
and  
The South Dakota Board of Regents (on  
Behalf of Itself and the South Dakota School  
for the Deaf and  
South Dakota School for the Blind and  
Visually Impaired)**

# **Introduction**

The South Dakota Board of Regents (BOR), on behalf of itself and the South Dakota School for the Deaf (SDSD) and the South Dakota School for the Blind and Visually Impaired (SDSBVI), and the South Dakota Department of Education (DOE) and the Special Education Programs (SPED), enter into this Interagency Agreement. All of these parties to the Agreement are hereafter collectively referred to as "the parties." The SDSD and SDSBVI are hereafter collectively referred to as the "special schools." The special schools are approved programs by the DOE.

The parties have a consistent mission to serve students with disabilities in the state of South Dakota. The parties understand that limited resources can restrict the ability of each to provide high quality, comprehensive services for children. The parties understand that each can best serve children through full collaboration and cooperation in planning and sharing of resources in program implementation.

The parties are committed to the assurance of appropriate educational services for children with disabilities as identified by the Individuals with Disabilities Education Improvement Act (IDEA) and Section 504 of the Rehabilitation Act of 1973, South Dakota Codified Law (SDCL) chapter 13-37 (Special Assistance and Related Services), and the Administrative Rules of South Dakota (ARSD) Article 24:05 (Special Education). To this end, the SDSD and the SDSBVI will provide alternative placement educational programming to assist school districts to make free appropriate public education (FAPE) available to children whose hearing or visual impairments preclude satisfactory educational achievement in regular classes with the use of supplementary aids and services; outreach services directly and through consultation with school districts across South Dakota; lending library and related materials access for students and their families and school districts across the state; in-service training; coordinated services for students served in dual enrollment in the special school and LEA; evaluation; related technical assistance; extended school year, and transition. The DOE will ensure through compliance monitoring and the provision of ongoing technical assistance that the SDSD and the SDSBVI are provided with the assistance to accomplish their mission of education to students with deafness and/or visual impairments.

# **Philosophical Foundations**

The parties agree that there are five philosophical foundations in serving students with disabilities. They are: student-centered decisions, equal access, right to service, respect for human dignity, and least restrictive environment.

## **Student Centered Decisions**

This principle is the central focus of special education. It reflects the essential premise that all decisions related to a student with a disability are made by a team which works cooperatively to determine, implement, and evaluate services based on the needs of the individual student.

## **Equal Access**

The parties are committed to the principle of equal access for all students. Students with disabilities are guaranteed equal access to programs and services for the general student population and a free appropriate public education (FAPE) through specially-designed instruction by qualified personnel.

## **Right to Service**

This principle guarantees the right of a student with a disability, age birth through twenty-one, to receive the services which promote and increase independence and competence. The ultimate goal for all persons is to live to the greatest degree possible as full contributing members of society. Services for students with disabilities shall be directed toward this goal.

## **Respect for Human Dignity**

The principle of human dignity is closely related to a person's ability to make choices, select and maintain possessions, be treated with respect, participate in programs which foster individuality and cultural integrity, allow privacy and confidentiality in decisions that affect their lives, and receive an individualized educational program or individualized family services program tailored to their own unique needs. As such, it is the intent of the parties that students with disabilities be provided the same degree of dignity and respect that is afforded to all students.

## **Least Restrictive Environment**

This principle establishes that, to the maximum extent appropriate, each student with a disability is educated with children who are not disabled. The principle further affirms that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature and severity of the disability are such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

## **Long Range Planning Goals**

The goal of this agreement is to improve and update special education services for children with hearing and/or visual disabilities including child find, assessment and evaluation, educational program implementation, transition, extended school year services, assistive technology, and least restrictive environment and to provide a dispute resolution process.

Using the results from strategic planning, agency needs assessment, public input and advisory panel recommendations, the parties will continue to address the issues affecting services for children with hearing or vision loss on an annual basis.

## **Areas of Intent to Cooperate**

### **CHILD FIND ACTIVITIES TO ASSURE MAXIMUM SERVICE ACCESS**

The parties agree that it is the intent of ARSD chapters 24:05:22 (Child Identification), 24:05:23 (Requirements for Child Evaluators), 24:05:24 (Referral Procedures), 24:05:24.01 (Eligibility Criteria), and 24:05:25 (Evaluation and Placement Procedures) to assure children with hearing and/or visual disabilities are appropriately identified and evaluated as early as possible.

The BOR, the SDSD and the SDSBVI understand that they have the responsibility to work in collaboration with school districts in the early identification and intervention of children through concentrated public information and awareness activities designed to seek those children with hearing and/or visual disabilities and bring them into the service system. ARSD §§ 24:05:22:01 (District required to identify children in need of special education or special education and related services), 24:05:22:02 (Minimum procedures), and 24:05:22:04 (Services for children less than

three years of age). In addition, the two special schools will make a mutual effort to identify and build resources and information for parents to help them make informed decisions for their children.

The DOE understands its responsibility to gather data regarding the incidence and individual needs of children with hearing and/or visual disabilities, both as primary and as secondary disabling conditions, and the DOE recognizes the critical need to provide hearing or visually impaired infants and their families with early access to the expertise and information uniquely available through the BOR, the SDSD and the SDSBVI.

For purposes of facilitating family access to critical educational resources, the DOE will, to the extent permitted by law, notify the special schools, as participating agencies pursuant to ARSD § 24:14:15:02, that an infant or child has been identified as having a hearing or visual impairment. The DOE agrees to make its best efforts to obtain such legally authorized identifying information. The DOE will attempt to notify the special schools of this information prior to an infant reaching six months of age. The parties will cooperate in trying to work with other government agencies to facilitate the involvement of educational agencies in early intervention programs designed to assure the provision, coordination and management of state services directed towards meeting the language, cognitive, emotional and social development needs of children with vision or hearing loss. The special schools will actively encourage parents of children birth to three years, served in outreach efforts, to access local interagency coordinating networks across the state to assure full coordination of needed services for children. The parties shall protect the confidentiality of all information referenced in this paragraph and designate an official within each entity responsibility for ensuring the confidentiality of this information.

## **FINANCIAL OBLIGATIONS OF NONEDUCATIONAL PUBLIC AGENCIES**

The financial responsibility of each noneducational public agency including Department of Social Services (DSS), Department of Human Services (DHS), Department of Corrections (DOC), Department of Health (DOH) and Department of Labor (DOL), including the state Medicaid agency and other public insurers of children with disabilities, precedes the financial responsibility of local educational agencies or the state agency responsible for developing the child's individualized education program.

The DOE shall develop and implement interagency agreements with DSS, DOH, DHS and DOC to outline the role that each of these agencies plays in providing or paying for special education or related services for children with disabilities. These interagency agreements shall define the financial

responsibility of each agency for providing children with disabilities with free appropriate public education (FAPE), establish procedures for resolving interagency disputes among agencies that are parties to the agreement, and establish conditions, terms, and procedures under which local educational agencies may initiate proceedings in order to secure reimbursement from agencies that are parties to the agreement or otherwise implement the provisions of the agreement.

This does not allow an agency to reduce medical and other assistance available to children with disabilities to receive services that are also part of a FAPE or to alter the requirements and eligibility of a child with disabilities under Title V, maternal and child health; Title XIX, Medicaid; or Title XXI of the Social Security Act; or under any other public benefits or insurance program including those required by federal statute.

If a public agency other than an educational agency fails to provide or pay for the special education and related services described in this section, the school district or state agency responsible for developing the student's IEP shall provide or pay for these services to the student in a timely manner. The school district or state agency may then claim reimbursement for the services from the public agency that failed to provide or pay for these services and that agency shall reimburse the school district or state agency in accordance to the terms of the interagency agreements described in ARSD § 24:05:14:01.

## TRANSITION OF STUDENTS FROM SCHOOL TO ADULTHOOD

Transition services are an important part of the continuum of services for students with hearing and /or visual disabilities who are identified as in need of special education. The Individuals with Disabilities Education Improvement Act (IDEA) 2004 and the Rehabilitation Act (as amended by the Workforce Innovation and Opportunity Act of July 22, 2014) mandate education and vocational rehabilitation services work together to assure appropriate transition services for students. The agencies agree to collaborate in all activities in the area of transition to promote students to live independently and work in competitive integrated employment.

The agencies agree to coordinate the use of resources to assure that training in the area of transition is appropriately given the unique characteristics for students with hearing and visual disabilities. The inclusion of the special schools in statewide initiatives in transition will be promoted at all levels.

The agencies agree to arrange or provide Pre-Employment Transition Services (Pre-ETS) (Section 113 of Rehabilitation Act) for students with hearing and visual disabilities prior to graduation. Pre-ETS consist of:

- Job Exploration Counseling;
- Work-based Learning Experiences;
- Counseling on Opportunities for Enrollment in Comprehensive Transition or Postsecondary Education Programs;
- Workplace Readiness Training; and
- Instruction in self-advocacy

The special schools agree to comply with Section 511 (a)(2) of the Rehabilitation Act where they will not contract or arrange for a student to work at an employer (employer who holds 14(c) certificate of the Fair Labor Standards Act) for subminimum wage. The special schools agree to provide information to public schools and parents describing unique features of transition services for children with hearing or vision loss and programs/services available to assist the student with transition services.

### **ASSURANCE OF BEST PRACTICES IN EVALUATION FOR CHILDREN WITH VISUAL AND HEARING DISABILITIES**

The parties agree that it is the intent of ARSD chapter 24:05:25 (Evaluation and Placement Procedures) to assure that children with suspected hearing and/or visual disabilities receive a comprehensive, multidisciplinary evaluation. ARSD §§ 24:05:25:04 (Evaluation procedures) and 24:05:25:15 (First-time evaluations).

The term "comprehensive multidisciplinary" is identified to mean that students are evaluated by individuals who have both certification and experience in understanding the specific needs of the suspected disability and its relationship to educational planning for each child.

For a child with a hearing and/or vision disability, experienced professional(s) will be actively involved in the IEP team process. These professionals will be skilled in interpretation of medical evaluations and will have direct experience in planning for the educational needs of children with these disabilities. The direct, active involvement of these professionals in the IEP team process will assure full consideration of all placement options when working with the team to plan for an appropriate educational program for each student with a hearing and/or vision disability. SDCL 13-33B-1 (Program for deaf/hard of hearing).

### **LEAST RESTRICTIVE ENVIRONMENT**

The parties agree that it is the intent of ARSD chapter 24:05:28 (Least Restrictive Environment) to assure that children in need of special education or special education and related services shall be provided special programs

and services to meet individual needs which are coordinated with the regular program whenever appropriate. When the nature or the severity of the child's needs cannot be met in the regular classroom with the use of supplementary aids and services, alternative placement options must be made available. The parties agree that the special schools may be the appropriate placement for a child based upon individual needs.

The parties agree that special emphasis must be given to the following planning criteria for children with hearing and/or vision disabilities as required by ARSD § 24:05:28:03 (Factors in determining placements). They are as follows:

1. Each child's educational placement must be individually determined at least annually and must be based on the child's individual education program.
2. Provisions are made for appropriate classroom or alternate settings necessary to implement a child's individual education program.
3. Except where a child's individual education plan requires some other arrangement, the child shall be educated in the school in which that child would normally attend if not disabled. Other placement shall be as close as possible to the child's home.
4. Placement in the least restrictive environment will not produce a harmful effect on the child or reduce the quality of services which that child needs.

The DOE agrees to assist the special schools to inform school districts about the range of services available through the special schools, including alternative placement opportunities. The special schools agree to assist public schools to develop appropriate plans for students who elect to transfer from a special school to a public school setting.

## **SPECIAL PROVISIONS RELATING TO OUTREACH SERVICES**

In recognition that successful school district-based educational programming for children with vision or hearing loss requires close coordination among a variety of educational specialists, those having expertise in academic subject matter, those with expertise in special education, those with expertise in educating students with vision or hearing loss, the BOR and special schools have established outreach programs to facilitate school district and family access to persons who have such expertise.

The parties agree that the operation of outreach programs will benefit from close cooperation and collaboration between both agencies of state government. The constitution obligates the BOR to maintain primary control over the provision of the SDDS outreach services, and South Dakota special education statutes vest the DOE with primary responsibility to oversee school district special education programs. In order to assure that children with vision or hearing loss have access to necessary education programs, the BOR and the DOE agree that effective oversight of outreach programs requires a formal, informed assessment of program services. To these ends, the parties agree to cooperate and collaborate in development of methods, protocols, and instruments to collect opinions and information from school district staff and parents for use in monitoring engagement with outreach programs, satisfaction with services and appropriateness of program resources.

## **INDIVIDUALIZED EDUCATIONAL PLANS**

The school district will retain responsibility for providing a free appropriate public education to each child it has placed at the special school. The parties agree that when the special schools accept a student, they will assume responsibility for delivery of services outlined in the student's existing IEP and shall continue to provide them until such time as a new IEP has been developed.

The school district will co-chair IEP teams convened at the special schools, and the school district will provide special educational or related services identified by the IEP team as necessary for a child's free appropriate public education but not otherwise available at the special school.

### **• APPROPRIATE EDUCATIONAL PROGRAMMING**

The parties agree that there are specific considerations for students with hearing and/or visual disabilities in the development of each child's IEP.

In the case of a child who is blind or visually impaired, the IEP must provide for instruction in Braille and the use of Braille unless the IEP team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

The IEP must also consider the communication needs of the child. In the

case of a child who is deaf or hard of hearing, the team must consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

- **EXTENDED SCHOOL YEAR PROGRAMMING**

The parties agree that it is the intent of ARSD article 24:05 (Special Education) to assure that children with hearing and/or visual disabilities receive an appropriate education. For some children, this might require an extended school year. ARSD § 24:05:25:26 (Extended school year authorized).

The parties agree to work cooperatively to ensure the provision of service options for children identified as in need of extended school year services.

- **ASSURING RELATED SERVICES**

The parties agree that it is the intent of ARSD §§ 24:05:27:04 (Determination of related services) and 24:05:27:16 (Related services provided at no cost) is to assure that children with hearing and/or visual disabilities receive related services in a timely manner to meet all identified needs of the child. Identification of related services needed and funding for those services addressed on the IEP, as part of the IEP team process, will be reviewed by the DOE via the monitoring process.

The parties agree to work together to provide assistance to school districts to ensure that children with hearing and/or visual disabilities have access to assistive technology and are able to appropriately use the technology.

## **FAMILY SUPPORT AND INFORMATION SERVICES**

The parties agree to collaborate in the provision of services and resources for families seeking information and access to training and support services.

## **ASSURING FULL COORDINATION FOR STAFF DEVELOPMENT**

The parties agree to work cooperatively and collaboratively to assure availability of qualified staff to meet the needs of children with hearing and/or visual disabilities across the state.

The parties agree to work collaboratively to ensure that highly qualified professional and paraprofessional staff are working with children with hearing or vision loss.

DOE will focus on personnel training relative to the needs of children with visual and/or hearing disabilities. Staff training, public information, and parent training will be highlighted. The parties agree to work together to develop strategies to implement curricula for LEAs.

## **USE OF TECHNOLOGY**

The parties agree to explore and utilize the available technologies to improve educational opportunities for children with hearing or visual loss.

## **PROCEDURAL SAFEGUARDS AND DUE PROCESS COMPLAINTS**

The parties agree that DOE has the responsibility under IDEA to monitor the special schools in order to ensure compliance with IDEA. As such, the DOE has the responsibility to oversee corrective actions as a result of compliance monitoring.

The parties agree that state and federal special education laws require that parents have access to due process procedures to resolve concerns about IEP plans or with the implementation of those plans. The parties agree that cooperation between the special schools and school districts will be essential to assure parents' recourse to effective decision-makers who have the financial resources to provide services found to be necessary.

Each placement agreement should specify that the applicable special school and the school district will encourage parents to address concerns about IEP plans or the implementation of those plans to the special school superintendent for informal resolution. Such procedures shall not preclude the parents from requesting mediation or initiating due process complaints as permitted under administrative rule (cite). Due process complaints should be directed to the school district as they have the primary responsibility to provide a free appropriate public education.

In the event that a parent initiates a due process complaint, the applicable special school shall cooperate fully with the school district in resolution sessions, or any meetings with parents to attempt to resolve the concern, in mediation sessions, if any, and in preparing for and participating in any formal hearings.

## **RESOLUTION OF DISPUTES BETWEEN SPECIAL SCHOOLS AND SCHOOL DISTRICTS**

From time to time disputes may arise between a special school and a school district concerning the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. When such disputes cannot be resolved through other procedures, such as those established pursuant to ARSD chapter 24:05:15 (Appeals) or 24:05:30 (Procedural Safeguards), the process described herein will be available to the special schools and to school districts where IEP meetings, additional evaluations and other procedures have failed to resolve the disputes between them. As with interagency disputes, during the pendency of this dispute resolution process, the parties will ensure that services required to provide FAPE will continue. Disputed service(s) currently being provided will continue until the outcome of the dispute resolution process. The implementation of disputed service(s) not previously provided will be pursuant to a decision reached through the following resolution process.

1. All attempts must be made to resolve disputes at the lowest possible level. Resolution attempts could include but are not limited to: conferencing with the appropriate individuals involved or performing other fact finding activities.
2. Mediation between the special school and the school district will be conducted at a mutually agreed-upon time and location. The cost of the mediator will be covered by the DOE. Cost of attending the mediation and representation by legal assistance is the responsibility of the affected institution or school district.
3. When disputes cannot be resolved by mediation, a written explanation of the dispute will be sent to the Director of DOE the superintendent of the special school and the superintendent of the school district. These individuals, in consultation with each other, shall review the issues and make a determination as to how the dispute should be resolved. The decision will be shared in writing with each level involved within twenty (20) calendar days of receipt of request for the determination and will include reasons for the decision.
4. If a resolution is not obtained the matter will be referred to the Secretary of the South Dakota DOE and the Executive Director of the BOR. These individuals will jointly make a final determination with 30 calendar days.

## **INTERAGENCY DISPUTE RESOLUTION**

When disputes arise between the parties that cannot be resolved through other means, the resolution process described herein will be available. During the pendency of the dispute resolution process, the parties will ensure that services, including disputed services, required to provide FAPE will continue.

1. All attempts will be made to resolve disputes at the lowest possible level.
2. When disputes cannot be resolved by the designated department representatives, a written explanation of the dispute will be sent to the Director of DOE the superintendent of the respective special school. These individuals, in consultation with each other, shall review the issues and make a determination as to how the dispute should be resolved. The decision will be shared in writing with each level involved within twenty (20) calendar days of receipt of request for the determination and will include reasons for the decision.
3. If a resolution is not obtained through this process, then the matter will be referred to the Secretary of the South Dakota Department of Education and the Executive Director of the BOR. These individuals will jointly make a final determination with 30 calendar days.

## ENACTMENT OF AGREEMENT AND GENERAL PROVISIONS

The terms of this agreement shall begin on this \_\_\_\_\_ day of \_\_\_\_\_, 2014 and shall remain in effect until terminated or amended by mutual agreement of the parties. Any termination or amendment must be in writing and signed by authorized representatives of all parties.

This MOU shall be reviewed by all parties at least every three years and evaluated regarding the need for amendments. This Agreement is intended to govern only the rights and interest of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

BOR has the full authority to enter into and secure performance of this Agreement on behalf of itself and the special schools, and DOE has full authority to enter into and secure performance of this Agreement on behalf of the South Dakota Department of Education. Each individual signing this Agreement has been properly authorized to enter into this Agreement.

  
\_\_\_\_\_, Secretary, South Dakota Department of Education  
Don Kirkegaard

Signed this 10<sup>th</sup> day of May, 2018.

  
\_\_\_\_\_, Executive Director, South Dakota Board of Regents  
Michael G. Rush

Signed this 10<sup>th</sup> day of May, 2018.