COOPERATIVE INTERAGENCY AGREEMENT BETWEEN THE SOUTH DAKOTA DEPARTMENT OF EDUCATION, SPECIAL EDUCATION PROGRAMS AND THE DEPARTMENT OF CORRECTIONS

March 1, 2009 - March 31, 2012

Purpose

The Department of Education, Special Education Programs and the Department of Corrections recognize the responsibility to develop and implement programs to meet the educational needs of eligible students in the custody of the South Dakota Department of Corrections. Therefore, the purpose of this agreement is to ensure collaboration in the development and implementation of special education or special education and related services to ensure that eligible students in adult and juvenile correctional facilities receive a free appropriate public education pursuant to applicable federal and state regulations.

Authority

The responsibilities delineated in this agreement are derived from the following federal and state regulations:

1. Individuals With Disabilities Education Improvement Act, Part B of 2004 (IDEIA-B) provides the basis for the obligations related to and methods of ensuring services to students with disabilities. The law sets forth responsibility for all educational programs.

   20 U.S.C. 1412 State Eligibility (12) Obligations Related to and Methods of Ensuring Services:

   (A) Establishing Responsibility for Services- The Chief Executive Officer of a State or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B) (i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

   (i) Agency Financial Responsibility- An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B) (i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each

public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

(ii) Conditions and Terms of Reimbursement- The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

(iii) Interagency Disputes- Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(iv) Coordination of Services Procedures- Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B) (i).

2. SDCL 13-37-1.2 Division as agency responsible for special education-Regulatory and Coordinating Authority.

   The Department of Education, Special Education Programs is hereby designated as the state agency with responsibility for the education of children in need of special education or special education and related services. In accordance with SDCL13-37-1.1 Rules governing special education the division has regulatory and coordinating authority over any program within the Department of Education, the Department of Social Services, or any other state agency insofar as such programs pertain to the special education of children in need of special education or special education and related services.

3. Administrative Rules of South Dakota, Title 24, Article 24:05 Special Education (ARSD 24:05).

Definitions

1. ARSD 24:05:13:01(32)"Special education"- instruction specially designed to meet the unique needs of a student with disabilities at no cost to parents or guardians, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, and other settings.

2. ARSD 24:05:13:01(27) "Related services"- services that support the provision of special education, including transportation and those developmental, corrective, and other supportive services determined by an IEP team to be required for an eligible student to benefit from special education.

3. ARSD 24:05:13:01(15) "Eligible student"- a person through the age of 21 years who is a resident of the state of South Dakota and who requires special education or special education and related services because of the person's educational needs.

4. ARSD 24:05:22:04.01 Services to children age three to twenty-one, inclusive- A child's eligibility for special education or special education and related services shall continue from age 3 through completion of an approved public or nonpublic school secondary program or until age 21, as designated in that child's individual education program as set out in SDCL 13-37-1.

5. ARSD 24:05:22:05 Services to children age twenty-one- A student who is enrolled in school and becomes 21 years of age during the fiscal year shall have free school privileges during the school year.

6. Regular education- the provision of Adult Basic Education, general education development programs, and vocational programs is considered regular education in a correctional facility.

   If a student is close to completion of a high school diploma, the Department of Corrections will coordinate with the student's resident school district to facilitate completion of graduation requirements.

7. ARSD 24:05:13:04."Parent" - For the purposes of this article, the term, parent, means:

   (1) A biological or adoptive parent of a child;

   (2) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

   (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;

   (4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the

child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with § 24:05:30:15.

Except as provided below, the biological or adoptive parent, if attempting to act as the parent under this article and if more than one party is qualified under this section to act as a parent, is presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

If a judicial decree or order identifies a specific person or persons under subdivisions 1 to 4, inclusive, of this section to act as the parent of a child or to make educational decisions on behalf of a child, then the person or persons are deemed to be the parent for purposes of this section.

8. DOE- The Department of Education

9. DOC - The Department of Corrections

10. Correction facility - A Department of Corrections operated correctional institution for adjudicated inmates, specifically the State Penitentiary for adult males, the State Women's Prison for adult females and the programs located in Custer for juveniles, both male and female.

11. LEA - Local Educational Agency

12. SDCL - South Dakota Codified Law

13. SEA - State Educational Agency

Agency Financial Responsibility

The provisions of the Individuals with Disabilities Education Improvement Act of 2004 apply to all political subdivisions of the State that are involved in the education of students with disabilities, including State and local juvenile and adult correctional facilities. DOE, in coordination with DOC, will assure the provision of special education or special education and related services to eligible students at correctional facilities. DOC will ensure that all eligible students with disabilities assigned to the care and custody of DOC are provided with special education services.

Conditions and Terms of Responsibility

DOC has direct responsibility for provision of special education services. DOC may make annual application for federal flow through funds to DOE. DOC may request that the resident district of student's parents provide them reimbursement for transportation to IEP meetings at DOC facilities. LEAs will be responsible for reimbursement at the state-designated rate according to SDCL 3-9-1 Mileage rate for automobile allowances. If neither parent can participate in a meeting in which a decision is to be made relating to the special education program or placement of their child, the LEAs shall use other methods to ensure parent participation, including individual or conference telephone calls, or video conferencing.

Interagency Disputes

During the pendency of the dispute resolution procedures described herein, DOC and DOE will ensure that services required to provide free appropriate public education (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 through the described resolution process.

1. All attempts will be made to resolve disputes at the lowest possible level.

2. When disputes cannot be resolved by designated department representatives, a written explanation of the dispute will be sent to the Director of Special Education Programs and the DOC Educational Services Coordinator. 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. If they are unable to reach resolution, they will refer the issue to the Secretary of the Department of Education and the Secretary of the Department of Corrections.

3. If a resolution is not obtained by the Director of Special Education Programs and DOC Educational Services Coordinator, the Secretary of the Department of Education and the Secretary of the Department of Corrections will jointly make a final determination with 30 calendar days.

Coordination of Services Procedures

DOE and DOC agree to implement the following:

1. Student Identification

Assigned staff from DOC will conduct ongoing screening of students at correctional facilities to determine a population of students potentially in need of special education or special education and related services. Screening will include students 21 years and younger who have not completed a program leading to a high school diploma. To the extent appropriate, screening will be in conjunction with correctional facility intake procedures.

DOC staff implement a referral procedure for students who may be in need of special education. Referral procedures shall comply with the requirements of ARSD Chapter 24:05:24 Referral Procedures.

2. Individual Evaluation

Assigned staff from the DOC, as applicable, shall conduct individual evaluations of students consistent with the provisions of ARSD Chapter 24:05:25 Evaluation and Placement Procedures. These provisions include: initial evaluation, evaluation procedures, determination of needed evaluation data, determination of eligibility, procedures for determining eligibility and placement, reevaluation, additional team members, criteria for determining the existence of a specific learning disability, observation and written report.

Persons conducting evaluations shall meet the requirements of ARSD Chapter 24:05:23 Requirements for Child Evaluators.

3. Placement Committee/Individual Education Program

Assigned staff from the DOC, as applicable, will initiate and conduct placement committee meetings to determine a student's eligibility for special education or special education and related services, and to develop an individual education program. Placement committee and IEP procedures shall comply with requirements described in ARSD Chapter 24:05:25 Evaluation and Placement Procedures and ARSD Chapter 24:05:27 Individual Education Program. These provisions include: responsibility of SEA and other public agencies for IEPs; when IEPs must be in effect; IEP meetings; IEP team; parent participation; development; review and revision of IEP; content of IEP; agency responsibilities for transition services; and IEP accountability.

To the extent appropriate, the provisions of ARSD Chapter 24:05:28 Least Restrictive Environment also apply.

Exceptions to the above requirements are found under ARSD 24:05:27:26 Incarcerated students in adult prisons and ARSD 24:05:27:27 Modifications to IEPs for students in adult prisons.

The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:

1. The requirements related to participation of children with disabilities in statewide assessments.

2. The requirements relating to transition planning and transition services with respect to the students whose eligibility under Part B of IDEIA will end because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

The IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated as referenced in ARSD 24:05:27:27 Modifications to IEPs for students in adult prisons.

4. Direct Instruction

All assigned staff providing special education or related services instruction shall hold current certification pursuant to ARSD Article 24:15 Certification, teacher certification, and applicable licensure requirements.

5. Procedural Safeguards/Surrogate Parent

Procedural safeguards relative to written prior notice, consent for evaluation and initial placement, impartial hearing, and surrogate parents apply to eligible students at correction facilities, pursuant to ARSD Chapter 24:05:30 Procedural Safeguards.

Prior to preplacement evaluation and initial placement, written consent will be obtained from the student if 18 years old or older, natural parent, guardian, or surrogate parent, as the situation warrants.

For students under 18 years of age, DOE and DOC will cooperate to appoint a surrogate parent for special education purposes if: 1) no parent can be identified, 2) after reasonable efforts, the whereabouts of a parent cannot be discovered, or 3) the student is a ward of the state.

In the case of a student who is a ward of the state, a surrogate parent may alternatively be appointed by the judge overseeing the student's care, provided that the surrogate meets the requirements of Section 615(b)(2). [615(b)(2)(A)(i)]

In the case of an unaccompanied homeless youth as defined in Section 725(6) of the *McKinney-Vento Homeless Assistance Act* [42 U.S.C. 11434a(6)], the local educational agency (LEA) shall appoint a surrogate in accordance with Section 615(b)(2). [615(b)(2)(A)(ii)]

The state shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the student needs a surrogate. [615(b)(2)(B)]

6. Transfer of Parental Rights

All rights accorded to parents under Part B of the Act transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution upon reaching the age of majority.

7. Records

The requirements outlined in the Family Educational Rights and Privacy Act of 1974, as amended, and ARSD Chapter 24:05:29 Confidentiality of Information apply.

Operational Considerations

1. Emergencies

DOE and DOC agree that in the event of an emergency, temporary interruption of services may occur. If services are withdrawn for more than 10 cumulative days in a school year, DOC agrees to give prompt notification of such to DOE and the parents of the student and to reinstate such services as soon as practicable.

2. Staff Training/Staff Supervision

The DOC agrees to provide facilities, utilities, and security for educational staff. DOE and DOC will each identify staff members as liaisons in order to facilitate consistent communication, evaluate programs effectiveness, and identify a resolve any issues in implementation of the terms of this agreement.

The DOC agrees to make reasonable efforts to encourage student participation in special education programs, and avoid unnecessary conflicts with other programs and activities.

3. Data Sharing/Program Evaluation

DOE and DOC agree to share non-personally identifiable data on students to evaluate the implementation of the program.

4. Monitoring

DOE, Special Education Programs will monitor the provision of special education or special education and related services to students at correctional facilities pursuant to the provisions of ARSD 24:05:14:01 Interagency agreements, ARSD 24:05:14:01.01 Coordination of services, and ARSD 24:05:14:01.02 Obligation of noneducational public agencies. The DOC agrees to cooperate in monitoring activities, and work with DOE in resolution of any compliance issues.

This cooperative interagency agreement shall be effective immediately upon written signatures of the parties below. At anytime during the next three years, an agency may request a meeting to address language or program changes or concerns.

Tom Oster
Secretary,
Department of Education

2-11-09
Date

Ann Larsen
Director,
Special Education Programs
Department of Education

2-11-09
Date

Secretary,
Department of Corrections

2-10-09
Date

Education Services Coordinator,
Department of Corrections

2-10-09
Date