

Interagency Agreement

Between

The Department of Education, Special Education Programs

And

The Department of Corrections

Effective Date: July 1, 2024

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Article One: Parties to Agreement

The South Dakota Department of Corrections (DOC), on behalf of itself and the South Dakota Department of Education, Special Education Programs (DOE) enter into this interagency agreement. All of the parties to the agreement are hereafter collectively referred to as “the parties.”

Article Two: Purpose

This Agreement is intended to fulfill the requirements of Part B (Part B) of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. (IDEA). The purpose of this Agreement is to identify and define the financial responsibilities of the Parties to this Agreement and to facilitate the provision and coordination of services for all children, youth and adults who are IDEA eligible.

Article Three: Roles and Responsibilities

The parties recognize the responsibility to develop and implement programs to meet the educational needs of eligible students in the custody of DOC. Therefore, the purpose of this agreement is to ensure collaboration in the development and implementation of individual education programs (IEPs) for the provision of special education or special education and related services to ensure that eligible students in the custody of DOC receive a free appropriate public education (FAPE) pursuant to applicable federal and state regulations.

The parties are committed to the assurance of appropriate educational services for students with disabilities as identified by the 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).

A. Department of Education, Office of Special Education

1. DOE will ensure compliance of all public agencies serving students with disabilities with the requirements of IDEA.
2. Although no local education agencies (LEAs) are parties to this Agreement, DOE is the participating agency with oversight of LEAs. Therefore, whenever an LEA is designated herein to carry out a specific function or is tasked with a specific obligation, it is understood by the parties hereto that DOE shall be responsible for the enforcement of the function or obligation to be performed by the LEA.
3. The DOE Special Education Programs will monitor the provision of special education or special education and related services to students at correctional institutions. DOE will conduct reviews of the educational programs on a cyclical basis to ensure compliance

with applicable federal and state regulations. DOE will identify specific technical assistance or enforcement actions aligned with each review and issue the facility or LEA a corrective action plan to outline steps and timelines for correcting the non-compliance. DOE shall ensure timely correction within a year of all non-compliance.

4. DOE is responsible for overseeing the IDEA dispute resolution options available under IDEA. The federal special education laws require that parents or the adult student have access to due process procedures to resolve concerns about IEPs or with the implementation of those IEPs.
5. DOE will provide technical assistance and training related to the provisions of IDEA and applicable state law and rules.

B. Local Education Agencies

1. If the DOC contracts for services, the LEA serving the student in conjunction with DOC will develop a memorandum of understanding or agreement that at a minimum outlines the roles and responsibilities, data sharing, and coordination of activities for the parties.
2. If the DOC does not contract for services from an LEA, the LEA where the DOC facility is located will serve as the LEA of record for students with disabilities in accordance with SDCL § 13-28-10.
3. The LEA 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 (IEP). ARSD Chapter 24:05:27.
4. For students under 18 years of age, the parties will cooperate to appoint a surrogate parent, as described in 34 CFR 300.519 and ARSD 24:05:30:15, for special education purposes if: 1) no parent can be identified, 2) after reasonable efforts, the parent cannot be located, or 3) the student is a ward of the state.
5. 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. The LEA 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.

C. Department of Corrections

1. The DOC has direct responsibility to ensure the provision of special education and related services for students placed in correctional institutions.

2. The DOC agrees to cooperate in accountability activities, and work with the DOE in resolution of any compliance issues. The parties agree that DOE has the responsibility under IDEA to monitor the educational programs at the DOC institutions in order to ensure compliance with IDEA. As such, the DOE has the responsibility to oversee corrective actions as a result of compliance monitoring.
3. The DOC agrees to provide facilities, utilities, and security for educational staff, unless otherwise agreed upon with the LEA in a memorandum of understanding or agreement.
4. The DOC and the LEA providing services or the LEA where the facility is located, if different, will each identify staff members as liaisons in order to facilitate consistent communication, evaluate programs' effectiveness, and identify and resolve any issues in implementation of the terms of this agreement.
5. DOC will share information on students who are incarcerated with the LEA to timely receive records and implement services as outlined in the IEP.
6. The DOC staff will implement a referral procedure for students who may be in need of special education to include students 21 years and younger who have not graduated with a regular high school diploma 34 CFR 300.111; ARSD 24:05:32:01.01.
7. Although there may be specific considerations for students placed with the DOC in the development of each student's IEP, all federal and state rules and regulations regarding the development and provision of special education services and supports shall apply.
8. The DOC will work cooperatively and collaboratively with the LEA to ensure access and availability of qualified staff to meet the needs of students in need of special education or related services who are placed with the DOC.
9. The DOC agrees to make reasonable efforts to encourage student participation in special education programs and avoid unnecessary conflicts with other programs and activities.
10. The parties 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, the DOC agrees to give prompt notification of such to the LEA and the parents if the student has not reached the age of majority, or the adult student/legal guardian, and to reinstate such services as soon as practicable. If a student does not have access to special education and related services, this would be considered a suspension and all disciplinary procedures would apply.
11. To the maximum extent feasible and appropriate DOC, in cooperation with the LEA and relevant parties, will explore and utilize the available technologies to improve planning

and educational opportunities for students in need of special education or related services who are placed with the DOC.

12. The DOC will submit to DOE an annual December 1 child count for students who are eligible and receiving special education and related services.
13. Procedural safeguards relative to written prior notice, consent for evaluation and initial placement, impartial hearing, and surrogate parents apply to eligible students at correctional institutions. 34 CFR 300.300; ARSD 24:05:27:04.01.
14. In the event that a parent or adult student initiates a due process complaint, the applicable DOC facility shall cooperate fully in resolution sessions, or any meetings with parents or the adult student to attempt to resolve the concern, in mediation sessions, if any, and in preparing for and participating in any formal hearings.
15. The following requirements do not apply, as a result of SDCL 26-11A-4 and ARSD 24:05:27:26, to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons:
 - a. The requirements related to participation of students with disabilities in statewide assessment.
 - b. The requirements relating to transition planning and transition services, with respect to the students whose eligibility under Part B of IDEA, 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.
 - c. 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.
16. All rights accorded to parents, under Part B of IDEA, are transferred to incarcerated students upon the student reaching the age of majority.
17. The requirements outlined in the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended, apply.

Article Four: Financial Responsibility

1. The provisions of the IDEA 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 institutions. DOE, in coordination with DOC, will ensure the

provision of special education or special education and related services to eligible students at correctional institutions. DOC will ensure that all eligible students with disabilities assigned to the care and custody of DOC are provided with special education and related services.

2. The DOC may receive IDEA funds from the DOE for the provision of special education and related services.
3. The LEA where the DOC facility is located may receive IDEA funds from the DOE to serve as the LEA of record if DOC does not have a memorandum of understanding or agreement with an LEA to provide services.

Article Five: Interagency Dispute Resolution Procedures

During the pendency of the dispute resolution procedures described herein, DOC and DOE will ensure that services required to provide a 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.

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

When disputes cannot be resolved by designated department representatives, a written explanation of the dispute will be sent to the DOE Director of Special Education and Early Learning 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.


If a resolution is not obtained by the DOE Director of Special Education and Early Learning 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 within thirty (30) calendar days.

Article Six: Terms of Agreement


The terms of this agreement shall begin on the 1st day of July, 2024 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 within a reasonable time or parties must enter in the dispute resolution process outlined herein.

This agreement 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 interests 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.

The DOC has the full authority to enter into and secure performance of this agreement on behalf of the South Dakota Department of Corrections, and the 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.

DocuSigned by:

0526C8418CC4B5...
_____, Secretary, South Dakota Department of Education
Dr. Joseph Graves

Signed this 10th day of July, 2024.

DocuSigned by:

B7130F9D005C497...
_____, Secretary, South Dakota Department of Corrections
Kellie Wasko

Signed this 10 day of July, 2024.

Attachment: Interagency Agreement Contacts

Department of Education, Special Education Programs

Area	Contact	Contact Information
Financial Responsibility	Linda Turner	Linda.Turner@state.sd.us
Interagency Dispute Resolution	Linda Turner	Linda.Turner@state.sd.us
Roles and Responsibilities of DOE & LEAs	Special Education Programs Region Representative	See region rep contact list at: https://doe.sd.gov/sped/

Department of Corrections

Area	Contact	Contact Information
Financial Responsibility	Britttni Skipper	Britttni.Skipper@state.sd.us
Interagency Dispute Resolution	Kristi Bunkers	Kristi.Bunkers@state.sd.us
Roles and Responsibilities of DOC	Kristi Bunkers	Kristi.Bunkers@state.sd.us