

Interagency Agreement

Between

The Department of Education, Special Education Programs

And

The Department of Social Services

Effective Date: November 1, 2024

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Article One: Parties to Agreement

The South Dakota Department of Social Services (DSS) and the South Dakota Department of Education (DOE), enter into this interagency agreement. All of these parties to the agreement are hereafter collectively referred to as “the parties.”

Article Two: Purpose

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 eligible under programming across agencies. This Agreement in particular 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) for students who are IDEA eligible.

The parties recognize the responsibility to develop and implement programs to meet the educational needs of eligible students.

This agreement addresses:

1. Local education agencies’ (LEAs) process of seeking reimbursement for Medicaid eligible children receiving a medically necessary covered service and to outline the coordination between the parties;
2. Coordination of efforts in the approval process for placement in residential treatment centers or intensive residential treatment centers by the state review team; and
3. Data sharing necessary for funding, program approval and state and federal reporting requirements.

Article Three: Roles and Responsibilities

The parties are committed to the provision of appropriate educational services for all students eligible for Medicaid, including students with disabilities as identified by the IDEA and Section 504 of the Rehabilitation Act of 1973, Family Educational Rights and Privacy Act (FERPA), South Dakota Codified Law (SDCL) chapter 13-37 (Special Assistance and Related Services), the Administrative Rules of South Dakota (ARSD) Article 24:05 (Special Education), and the Medicaid Program, Titles XIX and XXI of the Social Security Act, and in conformity with regulations promulgated by the U.S. Department of Education (USED) and Health and Human Services (HHS).

Each agency will identify personnel at the state level responsible for liaison with the other agency. Designated personnel will recommend operational procedures and priorities defining services, and scope. Liaison staff will resolve problems or issues in accordance with the dispute resolution process outlined in this agreement. The liaison staff will recommend necessary policy clarification and procedures to carry out the terms of this agreement.

A. Department of Education, Office of Special Education: Roles and Responsibilities

1. DOE will ensure compliance of all public agencies serving students with disabilities with the requirements of IDEA.
2. Although no 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 with disabilities placed in residential treatment center or intensive residential treatment centers and receiving services billed through Medicaid by the LEA. 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. The DOE is responsible for overseeing the IDEA dispute resolution options available under IDEA. The IDEA requires 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. The DOE will assume the responsibility for notifying LEAs of the content of this agreement, as well as assist and provide consultation to LEAs in developing needed procedures or mechanisms to carry out the terms of this agreement.
6. The DOE will provide technical assistance and training related to the provisions of IDEA and applicable state law and rules.
7. The DOE will assist DSS in contacting LEAs and scheduling training sessions related to Medicaid billing.
8. The DOE will provide data to DSS necessary to determine eligibility for Medicaid paid services.
9. The DOE shall pay tuition to a LEA providing education for children in a residential treatment center or an intensive residential treatment center providing an educational program through a LEA, except in the case where the placement was made by the IEP

team for students eligible for special education and related services in accordance with SDCL § 13-28-11.

10. The DOE will coordinate with DSS to determine and contact the LEA that would be the resident district for students in state custody, in foster care, or in other cases where residency is unclear.

B. Local Education Agencies: Roles and Responsibilities

1. For residential treatment centers or intensive residential treatment centers that provide an educational program through a LEA, the LEA in which the residential treatment center or intensive residential treatment center is located 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 DSS places a student in a residential treatment center or intensive residential treatment center, the LEA where the facility is located will serve as the LEA of record for students with disabilities in accordance with SDCL § 13-28-10.
3. If a referral for special education is made by the residential treatment center or intensive residential treatment center, 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) pursuant to 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.
6. The LEA shall be responsible for providing and paying for special education and related services, as determined by the IEP team, for students who are IDEA eligible.

C. Department of Social Services: Roles and Responsibilities

1. DSS will share information on students who are in state custody and placed in a residential treatment center or intensive residential treatment center with the LEA to timely receive records and implement services as outlined in the IEP.
2. When a child who is in DSS custody will be returned to the community, DSS whenever possible shall facilitate the child's transition to the LEA in the following manner:
 - a. DSS shall notify the LEA that it intends to enroll the child in the LEA. DSS and the LEA will coordinate the return to the LEA or placement within the LEA's residential boundaries.
 - b. For students on IEPs, a DSS employee may attend an IEP Team meeting to assist the LEA in determining the most appropriate educational placement. However, a DSS employee or DSS provider employee shall not sign the IEP as Parent.
 - c. The LEA shall be responsible for providing and paying for special education and related services for the eligible child as determined by the IEP team.
 - d. The absence of a DSS employee at the IEP Team meeting does not relieve the LEA from any responsibilities imposed by this section.
3. Although there may be specific considerations for students in DSS custody, when the IEP team develops the IEP, all federal and state rules and regulations regarding the development and provision of special education services and supports shall apply.
4. Procedural safeguards relative to written prior notice, consent for evaluation and initial placement, impartial hearing, and surrogate parents apply to eligible students in the custody of the state. 34 CFR 300.300; ARSD 24:05:27:04.01.
5. DSS will submit to DOE an annual December 1 child count for students who are in DSS custody and eligible and receiving special education and related services being paid through auxiliary placement pursuant to ARSD Ch. 67:22:01.
6. DSS will provide student information to DOE necessary to determine student residency.
7. DSS agrees to assist LEAs and DOE in enrolling as South Dakota Medicaid providers.
8. DSS will continue to provide instructions and technical assistance through scheduled provider training sessions on an as needed basis.
9. DSS will be responsible for determining recipient eligibility for Medicaid.
10. The requirements outlined in the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended, apply.

Article Four: Financial Responsibility

1. DOE will be responsible for the state or local funds required to match the federal Medicaid funds.
2. LEAs may use the Medicaid benefits to provide for or pay for services required to ensure a free appropriate public education (FAPE). LEAs cannot require parents to sign up for or enroll in Medicaid in order for their child to receive FAPE under Part B of the IDEA. Claims submitted to and paid for by Medicaid will be subject to all Medicaid third-party liability laws, rules, and policies of the federal government and DSS. When private health insurance is in place and a claim is submitted by the LEA to Medicaid for payment, the claim will be paid and private health insurance reimbursement will be sought by DSS.
3. LEAs cannot require parents to incur an out-of-pocket expense for private health insurance, or public benefits or insurance such as the payment of a deductible or co-pay amount incurred in filing a claim for services. LEAs cannot use a child's benefits if that use will decrease available lifetime coverage or any other insured benefit. A child's benefits cannot be used if it will result in the family paying for services that would otherwise be covered by the public insurance program and that are required outside of the time the child is in school. It cannot be used if it will increase the premiums or lead to the discontinuation of benefits or insurance; or risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
4. LEAs, prior to accessing a child's or parent's public benefits or insurance for the first time must provide written notification to the child's parents and then obtain written parental consent. Parental consent must meet the requirements for disclosure of information under FERPA and Part B of IDEA, 34 CFR 99.30 & 34 CFR 300.622, that specifies the personally identifiable information (PII) that may be disclosed (e.g. records or information about the services that may be provided to a particular child), the purpose of the disclosure (e.g., billing for services under IDEA), and that the disclosure will be made to Medicaid; and the parent understands and agrees that the LEA may access the parent's or child's public benefits or insurance to pay for services under IDEA. The annual written notification provided to the child's parent must be in understandable language and include the following:
 - a. A statement of the parental consent provisions;
 - b. A statement of the no-cost provisions;

- c. A statement that the parents have the right under FERPA and IDEA to withdraw their consent to disclosure of their child's PII to Medicaid at any time; and
 - d. A statement that the withdrawal of consent or refusal to provide consent under FERPA and IDEA to disclose PII to Medicaid does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.
5. In addition to the annual written notification, the LEA must obtain parental consent under 34 CFR 300.9 each time that access to private health insurance is sought. It will be assumed that claims submitted to Medicaid have appropriate consent. It is the responsibility of DOE to monitor parental consent to bill public benefits or private health insurance. The LEA must notify parents that their refusal to allow access to their private health insurance does not relieve the LEA of its responsibility to ensure that all required services are provided at no cost to the parents.
6. Payment for services provided by the LEA shall be limited to the federal financial participation portion of the established rate for the service provided.
7. The submission of a claim by the LEA shall act as certification that the required expenditure of local matching funds has occurred.
8. DSS will submit an annual December 1 child count and may receive IDEA funds from the DOE for students in DSS custody who are eligible and receiving state paid special education and related services under Auxiliary Placement.
9. The LEA serving as the resident district for students in the custody of DSS may receive IDEA funds from the DOE to serve as the LEA of record.

Article Five: Interagency Dispute Resolution Procedures

If 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 procedures, the parties will ensure that services, including disputed services, required to provide free appropriate public education (FAPE) will continue.

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

If 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 DSS Director of Medical Services. 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 Social Services.

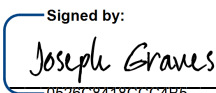
If a resolution is not obtained by the DOE Director of Special Education and Early Learning and the DSS Director of Medical Services, the Secretary of the Department of Education and the Secretary of the Department of Social Services will jointly make a final determination with thirty (30) calendar days.

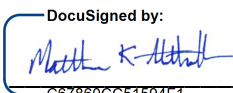
Article Six: Terms of Agreement

The terms of this agreement shall begin on the 1st day of November, 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 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.

DSS has the full authority to enter into and secure performance of this agreement, on behalf of the South Dakota Department of Social Services 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.

Signed by:

_____, Secretary, South Dakota Department of Education
0526C8418CCC4B5...
Dr. Joseph Graves
Signed this 13th day of November, 2024.

DocuSigned by:

_____, Secretary, South Dakota Department of Social Services
C67860CC51594F1...
Matt Althoff
Signed this 14 day of November, 2024.

Appendix:
A: 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 Social Services

| Area | Contact | Contact Information |
|--|----------------|---|
| Financial Responsibility Medicaid Billing | | https://dss.sd.gov/docs/medicaid/providers/billingmanuals/Professional/School_Districts.pdf |
| Financial Responsibility Students in State Custody | Megan Newling | Megan.newling@state.sd.us |
| Interagency Dispute Resolution | Katie Larson | Katie.larson@state.sd.us |

B: Forms

1. PRTF Process
2. PRTF Flowchart
3. Notification of Intent to Access Medicaid
4. Medicaid Consent

INTENT TO APPLY FOR A PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY

The purpose of this form is for Parents to provide notice to the public school district where the student is enrolled when the process for psychiatric residential treatment placement is initiated. This will ensure the school district is aware of the student status and can take steps to ensure the student receives an appropriate education while in process and awaiting placement, and participate in the transition process to and returning from the treatment facility to facilitate smooth transitions.

| | | |
|------------------------------|-------------|----------------|
| STUDENT NAME: | | |
| PARENT/GUARDIAN NAME: | | |
| SCHOOL DISTRICT: | | SCHOOL: |
| DOB: | AGE: | GRADE: |

Check all that apply:

My child is currently enrolled in the school district. I am seeking parental placement for a psychiatric residential treatment facility.

My child receives special education services and I am requesting an IEP team meeting to consider placement for a psychiatric residential treatment facility.

Parent/Guardian Signature: _____ Date: _____

Process for Parental Placement into Psychiatric Residential Treatment Facilities

For District Use:

Date received by the district: _____ Received by: _____

This is the general process that parents /guardians making referrals to a Psychiatric Residential Treatment Facility (PRTF) follow. This is for informational purposes and there may be exceptions to this process.

Family is usually facing a crisis situation and working with a mental health professional. The mental health professional or parent(s) make a referral to the Department of Social Services (DSS) State Review Team Facilitator to start the review process to determine if the child meets criteria for placement in a PRTF.



DSS provides the referring party with referral forms and a form to notify the school district of intent to apply for a PRTF.



Review process is initiated. The case is presented to the State Review Team and if approved to the Certification Team to determine if the child meets the placement and Medicaid funding criteria.

See PRFT Process 7.1.24 for remainder of process and fiscal responsibilities.

Process for Parental Placement into Psychiatric Residential Treatment Facilities

Effective August 1, 2024

This is the general process for making referrals to a Psychiatric Residential Treatment Facility (PRTF). This is for informational purposes and there may be exceptions to this process.

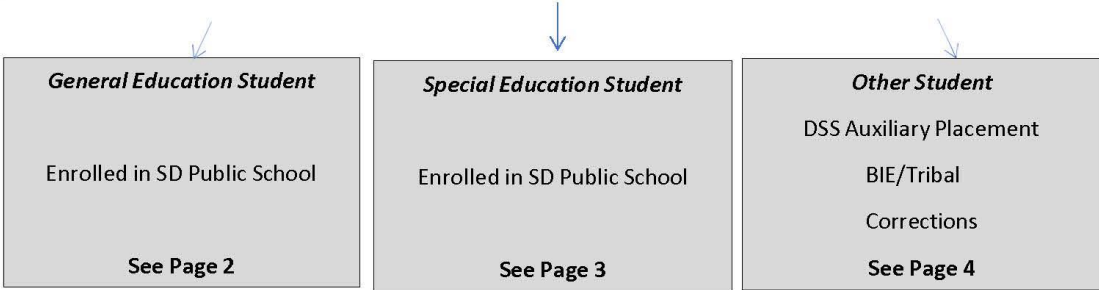
If a parent or other referring party (school, acute mental health, etc.) feels a child is facing a mental health crisis and may need a PRTF placement, they will contact Kassy Dunn with the Department of Social Services (DSS).



Kassy Dunn will work with the referring party on appropriate recommendations and provide the referring party with a PRTF referral packet if appropriate. The referral packet includes a form to notify the school district of intent to apply for a PRTF, if the child is on an Individual Education Plan (IEP) the school should schedule a meeting to consider the need for out of district placement.



Once the referring documentation is submitted to DSS the review process is initiated. Each case is reviewed by the State Review Team and then passed onto the Foundation for Medical Care (PRO) for a review by a team of child psychiatrists who will make a SD Medicaid determination for funding at a PRTF.

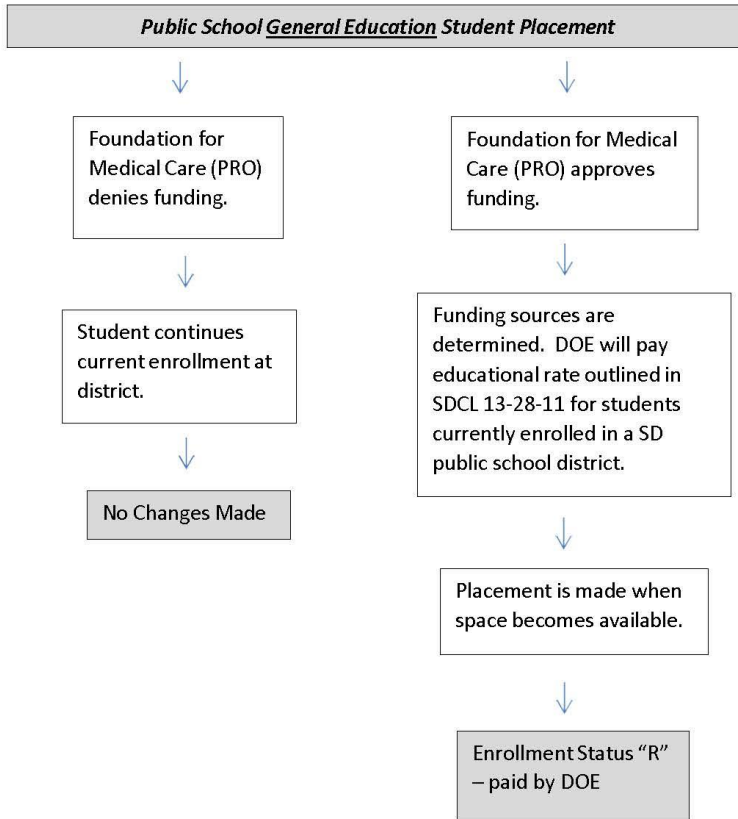


| Enrollment Status | |
|-------------------|-------------------------------------|
| E → | Paid by Auxiliary Placement Program |
| P → | Paid by Public School District |
| R → | Paid by Dept. of Education |
| B → | Paid by Tribal/BIE |

For more information please contact:
 PRTF process: DSSstaterewiewteam@state.sd.us - 605-367-5236
 General Ed: Bobbi.Leiferman@state.sd.us - 605-773-5407
 Special Ed: Linda.Turner@state.sd.us - 605-773-3327

Process for Parental Placement into Psychiatric Residential Treatment Facilities

Effective August 1, 2024

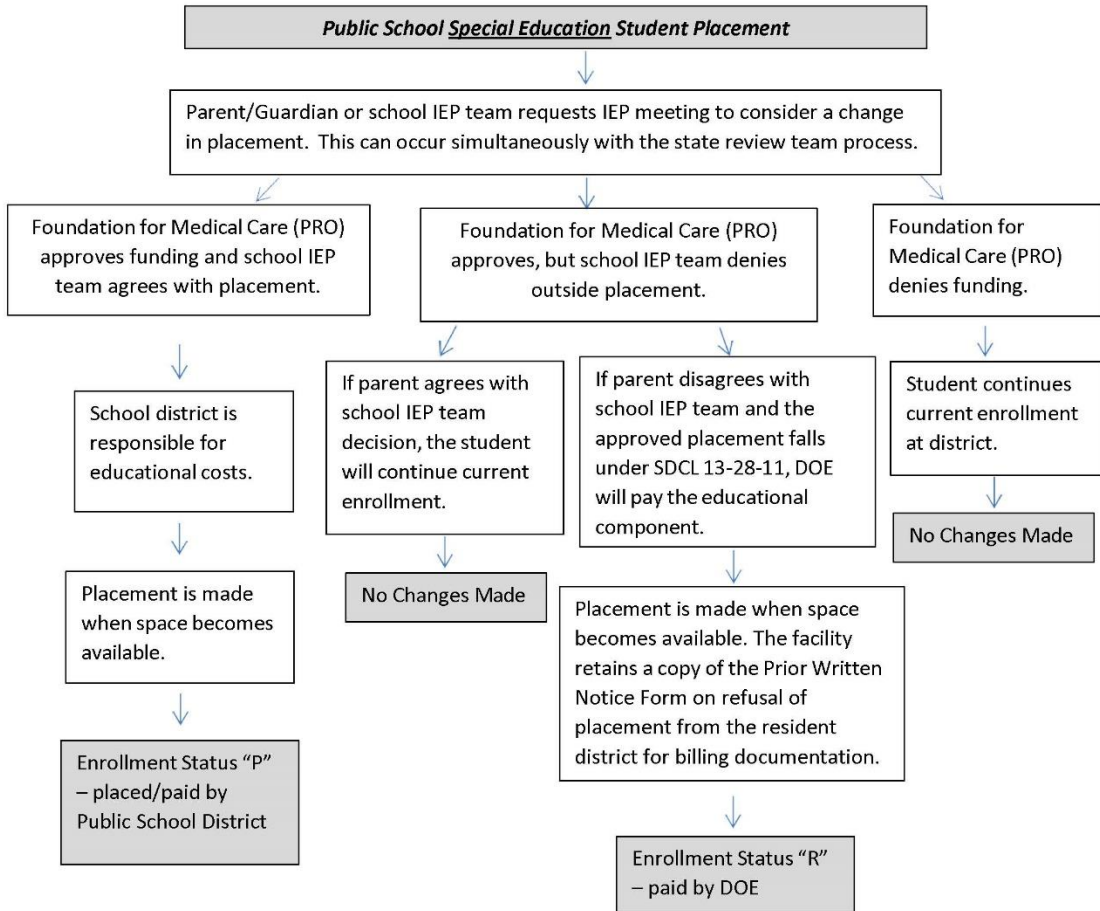


| Enrollment Status | |
|-------------------|-------------------------------------|
| E → | Paid by Auxiliary Placement Program |
| P → | Paid by Public School District |
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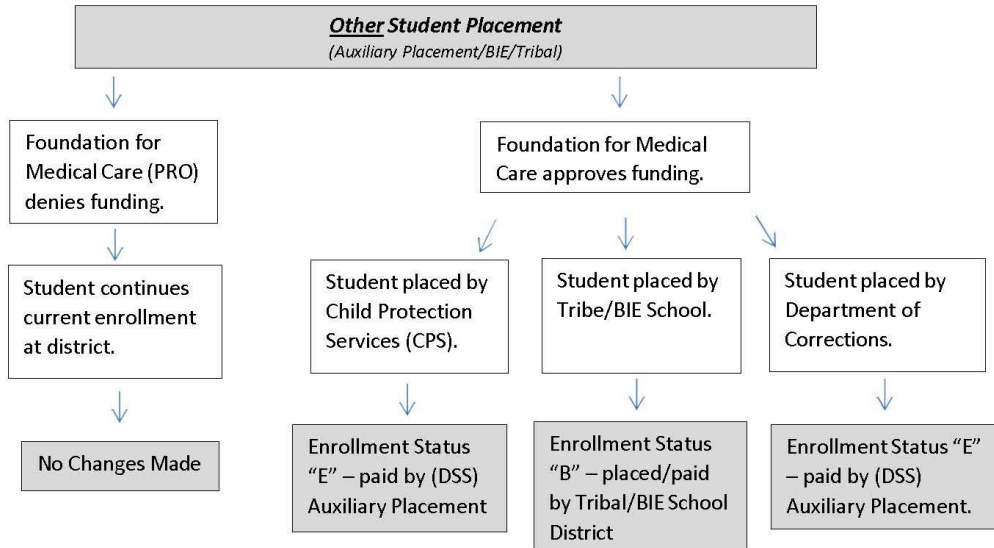


| Enrollment Status | |
|-------------------|-------------------------------------|
| E → | Paid by Auxiliary Placement Program |
| P → | Paid by Public School District |
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Process for Parental Placement into Psychiatric Residential Treatment Facilities

Effective August 1, 2024



If student is paid by sources other than outlined in the document, the enrollment status is "T." Tuition paid by other.

| Enrollment Status | |
|-------------------|-------------------------------------|
| E → | Paid by Auxiliary Placement Program |
| P → | Paid by Public School District |
| R → | Paid by Dept. of Education |
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For more information please contact:
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**NOTIFICATION TO ACCESS PUBLIC BENEFITS OR INSURANCE
(MEDICAID)**

ARSD 24:05:14:01.02, 24:05:14:01.03, 24:05:14:01.04 & 24:05:14:01.06

| | | |
|------------------------------|-------------|--------------------|
| STUDENT NAME: | | SIMS: |
| PARENT/GUARDIAN NAME: | | PHONE: |
| ADDRESS: | | WORK PHONE: |
| SCHOOL DISTRICT: | | SCHOOL: |
| DOB: | AGE: | GRADE: |

ARSD 24:05:14:01.03. Children with disabilities covered by public benefits or insurance. A public agency may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this article as permitted under the public benefits or insurance program, except as provided in this section. With regard to services required to provide FAPE to an eligible student under this article the public agency:

I understand that:

- (1) The district may not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;
- (2) The district may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this article, but pursuant to § 24:05:14:01.06, may pay the cost that the parent otherwise would be required to pay;
- (3) The district may not use a student's benefits under a public benefits or insurance program if that use would:
 - (a) Decrease available lifetime coverage or any other insured benefit
 - (b) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
 - (c) Increase premiums or lead to the discontinuation of benefits or insurance; or
 - (d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;
- (4) The district must provide written notification to the student's parents pursuant to § 24:05:14:01.04 annually; and
- (5) Must obtain written parental consent consistent with § 24:05:29:13 and 24:05:13:01(8) prior to accessing a student's or parent's public benefits or insurance for the first time specifying the:
 - (a) Personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student)
 - (b) Purpose of the disclosure (e.g., billing for services under this article);
 - (c) Disclosure will be made to the state Medicaid agency; and
 - (d) Parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under this article.

ARSD 24:05:14:01.04. Use of public benefits or insurance--Annual notification. A public agency, prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification consistent with § 24:05:30:06, to the student's parents that includes a statement:

- (1) Of the parental consent and no cost requirements in § 24:05:14:01.03;
- (2) That parents have the right under FERPA and Part B of the IDEA to withdraw their consent to disclosure of their student's personally identifiable information to the state Medicaid agency at any time; and
- (3) That the withdrawal of consent or refusal to provide consent under FERPA and Part B of the IDEA to disclose



**MEDICAID CONSENT FORM
FOR PART B SERVICE**

ARSD 24:05:14:01.02, 24:05:14:01.03, 24:05:14:01.04, 24:05:14:01.05 & 24:05:14:01.06

| | | |
|------------------------------|----------------|------------------|
| STUDENT NAME: | | SIMS: |
| PARENT/GUARDIAN NAME: | | PHONE: |
| ADDRESS: | | WK PHONE: |
| SCHOOL DISTRICT: | SCHOOL: | |
| DOB: | AGE: | GRADE: |

| | |
|-------------------------|---------------|
| MEDICAID NUMBER: | |
| PHYSICIANS NAME: | PHONE: |
| ADDRESS: | |

The district must obtain written parental consent consistent with § 24:05:29:13 prior to accessing a student's or parent's public benefits or insurance for the first time.

I understand the following:

1. Personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student);
2. Purpose of the disclosure (e.g., billing for services under state special education rules);
3. Disclosure will be made to the state Medicaid agency; and
4. As parents, I understand and agree that the public agency may access the parent's or student's public benefits or insurance to pay for services under state special education rules.

I CONSENT¹ for _____ District to submit claims to Medicaid for covered services. I authorize Medicaid to make these payments to the _____ District. I authorize the release of any information from the _____ District to Medicaid as necessary to request payment of benefits. I understand that if I have private health insurance, Medicaid has the right to recoup the costs from my private health insurance. I understand that these costs may count against the lifetime cap of my private health insurance. I further understand that I will not incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services. However, the district may pay the cost that I otherwise would be required to pay in order to access either my private or public benefits or insurance. I understand that if I do not permit the district to access my public benefits or insurance, the district is still required to provide my child with all the services necessary to ensure FAPE at no cost to me.

I understand that I may revoke this permission at any time by notifying the _____ District in writing.

I DO NOT CONSENT¹ for the _____ district to submit claims to Medicaid for covered services.

Parent/ Guardian Signature: _____ Date: _____

| |
|--|
| For District Use: Date consent was received by the district: _____ |
|--|

¹ Consent definition can be found in Administrative Rules of South Dakota (ARSD) 24:05:29:13 and (ARSD) 24:05:13:01(8)