

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs

AGENDA ITEM: 6 – C
DATE: December 9-10, 2020

SUBJECT

Board of Technical Education Data Sharing Agreement

CONTROLLING STATUTE, RULE, OR POLICY

[SDCL § 13-28-37.1](#)

[SDCL § 13-28-50](#)

[BOR Policy 5:3](#) – Agreements and Contracts

BACKGROUND / DISCUSSION

The Board of Regents is currently in a Data Sharing Agreement with the state’s four technical colleges, which was executed in December of 2015 and pertains to student directory information that school districts provide to the Board of Regents Executive Director and to each of the technical colleges per SDCL § 13-28-50. The process, which necessitated the current agreement, was that the Department of Education submitted the data to BOR, who then distributed the directory information to Mitchell Technical College. MTC then redistributed the data to the other technical colleges.

In addition, during the 2020 legislative session, the legislature passed [SB 142](#), which made certain revisions to the state-sponsored High School Dual Credit Program (HSDC) set forth in SDCL § 13-28-37.1. The legislation includes provisions which bar students from further participation in the HSDC program if they fail or withdrawn from a HSDC course, absent a showing of good cause. The HSDC program is a Department of Education program, but is facilitated by both BOR & BOTE institutions. As such, students may take dual credit courses from any of the institutions involved in the program. Students are able to take courses from different institutions each semester, or may take courses from multiple institutions at the same time.

After the passage of SB 142, it quickly became apparent that enhanced collaboration between BOR & BOTE would need to share the requisite information regarding students receiving W & F grades. The sharing of this student data is necessary to ensure ineligible students are flagged and unable to continue in the program at any participating institution,

(Continued)

RECOMMENDED ACTION:

Approve the Data Sharing Agreement between the Board of Regents and the Board of Technical Education, in substantially similar form to that set forth in Attachment I.

as required by state law. In addition, BOR & BOTE will also share student information concerning those who show good cause and earn exemptions to continue in the HSDC program.

BOR Policy 5:3 (“Contracts Requiring Board Action...D. Joint powers agreements”), requires Board approval of Joint Powers Agreements (JPA). As such, Board approval of the JPA set forth in Attachment I is necessary.

IMPACT AND RECOMMENDATIONS

BOR staff and BOTE staff have worked to update the previous data sharing agreement to include provisions regarding the HSDC program. The new agreement will be signed by the Executive Directors of both the Board of Regents and the Board of Technical Education, as well as the presidents of the four technical colleges, as they are still their own legal entities for the purpose of entering into agreements.

Staff recommends approval.

ATTACHMENTS

Attachment I – Data Sharing Agreement

DATA SHARING AGREEMENT

Between the South Dakota Board of Regents, the South Dakota Board of Technical Education and the Technical Colleges

This DATA SHARING AGREEMENT (“Agreement”) is entered into between the South Dakota Board of Regents (“BOR”), the South Dakota Board of Technical Education (“BOTE”), and South Dakota’s “Technical Colleges,” namely Mitchell Technical College (“MTC”), Lake Area Technical College (“LATC”), Southeast Technical College (“STC”) and Western Dakota Technical College (“WDTC”) (collectively and individually referred to as the “Parties”).

WHEREAS, pursuant to SDCL § 13-28-50, each school district has an obligation to provide the BOR and each separate Technical College "a list of students by name in grades seven to twelve, inclusive, together with their mailing addresses," excluding information about "any student whose parent has directed that the school district not release directory information about the student;" and

WHEREAS, SDCL § 13-28-37.1 was amended during the 2020 Legislative Session to place certain conditions on participation in the high school dual credit program, necessitating the sharing of certain information between the Parties; and

WHEREAS, the Parties recognize certain efficiencies can be gained by streamlining the sharing of information necessary to ensure compliance with the aforementioned statutes.

NOW, THEREFORE, the Parties hereby enter into this Agreement to effectuate the necessary data sharing as set forth below.

ARTICLE I

School District Information

Section 1.1 The Parties agree that each will accept submission of the information required by § 13-28-50 (“Required Data”) through the mechanism(s) set forth in this Agreement, as full compliance with the school districts’ obligations under § 13-28-50, alleviating the need for each school district to replicate the distribution of the Required Data to each of the Parties individually. While no school district is required to submit the Required Data in accordance with this Agreement, each school district may submit the Required Data to the BOR for its use as provided under § 13-28-50 and for redistribution to MTC and/or the BOTE. Upon receipt of the Required Data from the BOR, MTC, and/or the BOTE will provide for the redistribution of the required data to the other pertinent Parties.

Section 1.2 The BOR will be responsible for ensuring each school district in the state is aware of this Agreement and the school districts’ ability to comply with SDCL § 13-28-50 by means of a single submission to the BOR for redistribution.

ARTICLE II
Dual Credit Information

Section 2.1 To effectively carry out the high school dual credit program and ensure compliance with SDCL 13-28-37.1, the Parties must collect and share certain information, which includes but isn't limited to, student name, date of birth, grade level, school district and high school, course name, grade, grade point average, waiver information, if applicable, and institution through which dual credit was offered ("Dual Credit Data").

Section 2.2. The Dual Credit Data will be collected and disseminated as necessary and appropriate to effectively comply with the SDCL 13-28-37.1 and to otherwise carry out the dual credit program, which is anticipated to require the collection and sharing of dual credit data at least six times a year. The BOR will be responsible for collecting, receiving and disseminating Dual Credit Data on behalf of the public university system and the BOTE will be responsible for collecting, receiving and disseminating Dual Credit Data on behalf of the public technical colleges.

ARTICLE III
General Provisions

Section 3.1 The Parties intend this Agreement to provide for a joint exercise of governmental power as provided under SDCL ch 1-24 with respect to the process of collecting and distributing the Required Data per SDCL § 13-28-50 and complying with provisions of §13-28-37.1.

Section 3.2 This Agreement will take effect upon approval by the respective governing boards for the Parties, and it will remain in effect until terminated by the Parties. Any Party may withdraw from the agreement at any time. A Party that withdraws from the agreement surrenders the right to received data through it.

Section 3.3. The Parties acknowledge the confidential nature of the data shared pursuant to this Agreement, which includes education records that are subject to the privacy requirements established under the Family Education Rights and Privacy Act of 1974, 20 USC §1232g, 34 CFR Part 99 ("FERPA"). With respect to the data shared hereunder, the Parties constitute "school officials" with a "legitimate educational interest" under FEPRPA in their respective roles, ensuring compliance with the aforementioned statutory requirements and/or implementation of the high school dual credit program. The Parties will adhere to any and all confidentiality requirements pertaining to any and all data shared or accessed pursuant to this Agreement, exercising at least the same level of diligence used to protect and safeguard its records of a like nature.

Section 3.4 The BOR or BOTE may withdraw from the agreement, by notifying the Parties of its withdrawal no later than June 30, in order to afford sufficient time to determine whether or how to make alternative arrangements to collect and share data. If the BOR or BOTE provides notice after June 30, the effective date of its withdrawal will be December 31 of the year in which notice is given, conditioned upon its collection and distribution of the information for that year. The BOR or BOTE agrees that it will transfer to a successor party or entity such manuals, forms or work routines as it may have created and will share with such successor party or entity such know-how as it may have acquired in order to administer the data collection process. Withdrawal by one or more Parties will not terminate this Agreement so long as at least two of the Parties continue to operate under its terms.

Section 3.5 The Parties do not intend to create an administrative or governing entity or to acquire or to hold property for purposes of performing this Agreement. So long as it remains a member, the Parties will collect, organize and/or redistribute the data, as applicable, at no charge, in secure electronic form accessible to the Parties.

Section 3.6 Upon approval by all parties, a copy of this Agreement will be filed with the Attorney General and the Legislative Research Council as provided in SDCL §1-24-6.1.

SD BOARD OF REGENTS

_____/_____
 Brian Maher (date)
 Executive Director/CEO
 South Dakota Board of Regents

SD BOARD OF TECHNICAL EDUCATION

_____/_____
 Nick Wendell (date)
 Executive Director
 South Dakota Board of Technical Education

LAKE AREA TECHNICAL COLLEGE

_____/_____
 Michael Cartney (date)
 President
 Lake Area Technical College

SOUTHEAST TECHNICAL COLLEGE

_____/_____
 Robert Griggs (date)
 President
 Southeast Technical College

WESTERN DAKOTA TECHNICAL COLLEGE

_____/_____
 Ann Bolman (date)
 President
 Western Dakota Technical College

MITCHELL TECHNICAL COLLEGE

_____/_____
 Mark Wilson (date)
 President
 Mitchell Technical College