

SOUTH DAKOTA BOARD OF REGENTS

Full Board

AGENDA ITEM: J

DATE: October 14-15, 2009

SUBJECT: Interagency Agreement between the Board of Regents and the Department of Education

An interagency agreement among the Board of Regents on behalf of the South Dakota School for the Deaf and South Dakota School for the Blind and Visually Impaired and the Department of Education is provided for your information. (Attachment I) These agreements have typically been handled without specific Board approval, but it is brought forward because of its inherent interest and because the Board reviewed a working draft at its November 18, 2008 joint meeting with the South Dakota Board of Education.

This agreement confirms the distinctive role played by the South Dakota School for the Blind and Visually Impaired and the South Dakota School for the Deaf in providing “alternative placement educational programming to assist school districts to make free appropriate public education available to children whose hearing or visual impairments preclude satisfactory educational achievement in regular classes with the use of supplementary aids and services.”

The most significant aspect of the agreement is the Department of Education undertaking to “attempt to notify SDSD and SDSBVI of [contact] information [about infants with identified visual or hearing impairments] prior to an infant reaching six months of age.” Early intervention is key to empowering parents with information that may assist them to understand how they can help their infants to compensate for visual or hearing impairments and to minimize cognitive delays resulting from disability-related interference with language acquisition or mobility.

Finally, the agreement memorializes the principles that placement agreements between the special school and the school district should include an agreement to encourage “parents to address concerns about IEP plans or with the implementation of those plans to the special school superintendent for informal resolution. Such procedures shall not preclude the parents from filing due process complaints about such matters, as permitted under regulation, but such due process complaints should be directed to the school districts since they have primary responsibility to provide a free appropriate public education.”

RECOMMENDED ACTION OF THE EXECUTIVE DIRECTOR


Information only. No action required.

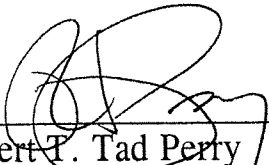
Interagency Agreement 2009

Among

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

Signed this 30 day of June, 2009


_____, Secretary, South Dakota Dept of Education
Tom Oster


_____, Executive Director, South Dakota Board of Regents
Robert T. Tad Perry

Introduction

The South Dakota Board of Regents (BOR), the South Dakota School for the Deaf (SDSD), the South Dakota School for the Blind and Visually Impaired (SDSBVI) and the South Dakota Department of Education, Special Education Programs (DOE) have a consistent mission to serve students with disabilities in the state of South Dakota. These governmental agencies understand that limited resources can restrict the ability of each to provide high quality, comprehensive services for children. The agencies understand that each can best serve children through full collaboration in planning and sharing of resources in program implementation.

The agencies are committed to the assurance of appropriate educational services for children with disabilities as identified by the Individuals with Disabilities Education Improvement Act (IDEIA) and Section 504 of the Rehabilitation Act of 1973, South Dakota Codified Law (SDCL)13-37 Special Assistance and Related Services, and the Administrative Rules of South Dakota Article 24:05 Special Education. To this end, SDSD and the SDSBVI will provide alternative placement educational programming to assist school districts to make free appropriate public education 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 BOR, SDSD, SDSBVI, and the DOE agree that there are five philosophical foundations in serving students with disabilities. They are: equal access, right to service, respect for human dignity, least restrictive environment, and student-centered decisions.

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 BOR, SDSD, SDSBVI, and the DOE 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 tailored to their own unique needs. As such, it is the intent of DOE, the BOR the SDSD, and the SDSBVI 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 BOR, SDSD, the SDSBVI, and the DOE will continue to address the issues affecting services for children with hearing and/or visual disabilities.

Areas of Intent to Cooperate

CHILD FIND ACTIVITIES TO ASSURE MAXIMUM SERVICE ACCESS

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

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) (ARSD 24:05:22:02 Minimum procedures) (ARSD 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 BOR, SDSD and SDSBVI.

For the purpose of compliance monitoring, the BOR, the SDSD and SDSBVI will provide information to the Department of Education, Special Education Programs regarding children who have been referred through their outreach efforts. This transfer of information will be provided annually, specific to public school districts being identified for compliance monitoring during a given year.

For purposes of facilitating family access to critical educational resources, the DOE will to the extent permitted by law, notify SDSD and SDSBVI that an infant or child has been identified as having a hearing or visual impairment. DOE agrees to cooperate with BOR, SDSD and SDSVI and other state government agencies in order to obtain such legally authorized identifying information. The DOE will attempt to notify SDSD and SDSBVI of this information prior to an infant reaching six months of age. DOE and the BOR 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 hearing or visually impaired children. The SDSD and the SDSBVI will actively encourage parents of children birth to two years, served in outreach efforts to access local interagency coordinating networks across the state to assure full coordination of needed services for children.

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 (IDEIA) 2004 and the Rehabilitation Act mandate education and rehabilitation services work together to assure appropriate transition services for students. The agencies agree to collaborate in all activities in the area of transition.

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

The SDSD and the SDSBVI agree to provide awareness information to public schools and parents having students with hearing and/or visual disabilities from age 16 through 21 regarding transition issues.

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

The BOR, the SDSD, the SDSBVI, and the DOE 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) (ARSD 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. (SDCL 13-37-30 Braille assessment)

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 program for each student with a hearing and/or vision disability. (SDCL 13-33 B-1 Program for deaf/hard of hearing)

LEAST RESTRICTIVE ENVIRONMENT

The BOR, the SDDS, the SDSBVI and the DOE 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. BOR, SDDS, SDSBVI and DOE agree that the two schools may be the appropriate placement for a child based upon individual needs.

The agencies 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; and,
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 SDDS and the SDSBVI to inform school districts about the range of services available through the special schools, including alternative placement opportunities. The SDDS and SDSBVI agree to provide direct assistance to public schools for reintegration planning for students moving from special schools to public school regular education settings.

INDIVIDUALIZED EDUCATIONAL PLANS

The BOR, the SDDS, the SDSBVI and the DOE agree that the special schools shall assume responsibility for scheduling IEP team meetings, for providing required notices, for assigning necessary special school staff or contractors to participate in the IEP process, for distributing information to parents and IEP team members, for creating records of IEP team proceedings and for otherwise providing support to the school district insofar as concerns the operation of IEP team meetings convened at the special school.

The school district will retain responsibility for providing a free appropriate public education to each child it has placed at the special school. The BOR, the SDDS, the SDSBVI agree that

the special schools shall assume responsibility for delivering services that they agree to provide in an IEP when the special school accepts a student. 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 BOR, the SDSD, the SDSBVI, and the DOE 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 BOR, the SDSD, the SDSBVI, and the DOE agree that it is the intent of 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 BOR, the SDSD, and the SDSBVI, and the DOE 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 BOR, the SDSD, the SDSBVI, and the DOE agree that it is the intent of ARSD 24:05:27:04 Determination of related services and ARSD 24:05:27:16 Related services provided at no cost 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 Department of Education, Special Education Programs via the monitoring system.

The BOR, the SDSD, the SDSBVI and the DOE 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 BOR, the SDSD, the SDSBVI and the DOE agree to collaborate in the provision of services and resources for families wishing information and access to training and support services.

ASSURING FULL COORDINATION FOR STAFF DEVELOPMENT

The BOR, the SDSD, and the SDSBVI, and the DOE 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 agencies agree to work collaboratively to ensure that highly qualified professional and paraprofessional staff is working with children with hearing and/or visual disabilities.

The Department of Education, Special Education Programs 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 three agencies agree to work together to develop strategies to implement curricula for LEAs.

USE OF TECHNOLOGY

The BOR, the SDSD, the SDSBVI and the DOE agree to explore and utilize the available technologies to improve educational opportunities for children with hearing and/or visual disabilities.

PROCEDURAL SAFEGUARDS AND DUE PROCESS COMPLAINTS

The BOR, the SDSD, the SDSBVI, and the DOE agree that the 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 BOR, the SDSD, the SDSBVI and the DOE 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.

To this end, the parties agree that each placement agreement should specify that the special school and the school district will encourage parents to address concerns about IEP plans or with

the implementation of those plans to the special school superintendent for informal resolution. Such procedures shall not preclude the parents from filing due process complaints about such matters, as permitted under regulation, but such due process complaints should be directed to the school districts since they have primary responsibility to provide a free appropriate public education.

Each placement agreement should specify that the special school and the school district will encourage parents to address concerns about IEP plans or with 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 rule.

In the event that a parent initiates a due process complaint, the special school shall cooperate fully with the school district in meetings with parents convened 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 ARSD Chapter 24:05:30 Procedural Safeguards, the process here described will be available to the special schools and to school districts where IEP meetings and additional evaluations have failed to resolve the disputes between them. As with interagency disputes, during the pendency of this dispute resolution process, the Board of Regents and DOE 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 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. Non-binding 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, Special Education Programs. 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 Special Education, Department of Education, Special Education Programs, 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 Department of Education and the Executive Director of the Board of Regents. These individuals will jointly make a final determination with 30 calendar days.

INTERAGENCY DISPUTE RESOLUTION

During the pendency of the dispute resolution procedures described herein, SDSD, SDSBVI 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, Department of Education, Special Education Programs and the superintendent of the respective agency involved, either SDSD or SDSBVI. 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 by the Director of Special Education, Department of Education, Special Education Programs and the Superintendent of the school involved in the dispute, the matter will be referred to the Secretary of the Department of Education and the Executive Director of the Board of Regents. These individuals will jointly make a final determination with 30 calendar days.

ENACTMENT OF AGREEMENT

The terms of this agreement shall begin on this 1st day of July, 2009 and shall remain in effect until modifications are deemed necessary and mutually acceptable changes are negotiated.

The agencies understand the need of periodic review of this interagency agreement. The South Dakota Special Education Advisory Panel, a panel appointed by the Governor which works in conjunction with the Department of Education, Special Education Programs, will review this agreement every three years. The respective boards of SDSD and SDSBVI will also review this agreement every three years.