



## South Dakota Board of Examiners for Speech-Language Pathology

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### **Draft-Teleconference** **BOARD MEETING AGENDA**

TO: All Board Members

FROM: Carol Tellinghuisen

DATE: January 4, 2021

MEETING DATE: January 22, 2021

LOCATION: Teleconference with public access at:  
  
Board Office  
629 Main Street  
Spearfish, SD  
605-642-1600

Persons interested in joining the meeting may do so by appearing in person for the conference call at the location listed above or by calling 1-866-410-8397. Key in the Passcode: 605-773-4946#

MEETING TIME: 9:30AM CST / 8:30AM MST

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#### **Agenda Item Number**

1. Call to Order/Welcome and Introductions-Schmidt
2. Roll Call-Schmidt
3. Corrections or additions to the agenda
4. Approval of the agenda
5. Public Testimony/Public Comment Period at 9:35 a.m. CST
6. Election of Officers
7. New legal counsel for DOH-Borchert, Prosecutor-Williams
8. Review-Role of Board Member and Conflict of Interest-Borchert

9. Approval of the minutes from April 17, May 29, 2020
10. FY Financial Update
11. Renewal Update/Online renewal system
12. Executive Session Pursuant to SDCL 1-25-2
  - a. Complaints/Investigations
  - b. Executive Secretary Contract Renewal
13. Executive Orders Update
14. Board Combination Bill Update
15. Legislative Updates
16. Audiology and Speech-Language Pathology Interstate Compact Update
17. Any other business coming in between date of mailing and date of meeting
18. Schedule next meetings

# BOARDS AND COMMISSIONS

{STATE OF SOUTH DAKOTA}

## State of South Dakota Boards and Commissions Meeting Guidelines



It is the expectation of the State of South Dakota that public information and meeting materials for board and commission meetings be transparent, timely and accurate.

State of South Dakota  
Office of the Governor  
500 East Capitol Avenue  
Pierre, SD 57501  
Phone: (605) 773-3212  
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10/01/2019

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## **State of South Dakota**

### **What is South Dakota Open Meetings Law?**

South Dakota Open Meetings Law embodies the principle that the public is entitled to the greatest possible information about public affairs and is intended to encourage public participation in government. SDCL 1-25 requires that official meetings of public bodies must be public and noticed in advance of the meetings.

An "official meeting" is defined as "any meeting of a quorum of a public body at which official business or public policy of that public body is discussed or decided by the public body, whether in person or by means of teleconference."

No Board may prevent a person from recording, through audio or video technology, an official meeting as long as the recording is reasonable, obvious, and not disruptive. The Board may designate a place in the meeting room for audio or video recording equipment.

### **Who Does the Open Meetings Law Apply To?**

South Dakota Open Meetings Law applies to all public bodies "of the state or its political subdivisions" that exercise "sovereign power derived from state law." This includes cities, counties, school boards and other public bodies created by ordinance or resolution, such as appointed boards, task forces, and committees, so long as they have authority to actually exercise sovereign power.

### **Open Meetings**

#### **In-person Meetings**

In addition to statutory requirements, the State of South Dakota is fully committed to transparency and would like to provide some additional information regarding public accessibility of official board meetings. Boards and commissions in-person meetings are required to be accessible both in person and via telephone (as a minimum method) or via the internet or web-meeting.

Boards and Commissions can facilitate these meetings using a variety of methods including:

- 1) Utilizing tools like Skype or Livestream which may still require a phone line; OR
- 2) Establishing a dial in number or conference line for people to participate by phone.

Meeting notices and agendas should clearly indicate how interested persons can arrange for meeting access via telephone. How to dial in to the meeting, or who to call for the RSVP process, should be clearly stated in the same place in the notice or agenda as meeting location information.

#### **Teleconferences**

Teleconference meetings are allowed. These meetings can be an information exchange conducted by audio or video if a place is provided for the public to participate by phone. If less than a quorum is present at the location open to the public, arrangements must be made for the public to listen by telephone or internet. The public must be notified of teleconference meetings under the same notice requirements as any other meeting. Members are deemed in attendance if the member answers present to the roll call for the purpose of determining a quorum. All votes shall be taken by roll call.

The term "teleconference" is defined as "information exchanged by any audio, video, or electronic medium, including the internet." This definition includes the use of email and text message. If a quorum of a board discusses official business as part of an e-mail or text message group, it is legally considered an official meeting and all Open Meetings laws will apply. Members of boards need to ensure they do not unintentionally violate Open Meetings requirements by discussing official business among themselves if a quorum or more of the board is part of the email or text message group.

### **Notice of Quorum**

In accordance with SDCL 1-25-1, for any event hosted by a nongovernmental entity to which a quorum of the Board is invited, and public policy may be discussed, but the Board does not control the agenda, the Board may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum shall meet the posting requirements of § 1-25-1.1 or 1-25-1.3 and shall contain, at a minimum, the date, time, and location of the event. For example, if a majority of Board members will be in attendance at a conference hosted by an association, the Board may post a "Notice of Quorum" to include the date, time and location of the event, which states a quorum may be present at the conference, but no board action will take place.

## **Meetings Closed to the Public**

### **Executive Sessions**

The requirement to provide one or more places for the public to listen to the teleconference does not apply to an executive or closed meeting. Executive or closed meetings may be held for the sole purposes of:

- 1) Discussing personnel issues pertaining to officers or employees;
- 2) Consideration of the performance or discipline of a student, or the student's participation in interscholastic activities;
- 3) Consulting with or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;
- 4) Employee contract negotiations;
- 5) To discuss marketing or pricing strategies of a publicly-owned competitive business; or
- 6) Discussing information about the protection of property and persons within the property as described in SDCL 1-27-1.5(8) and (17), such as emergency response plans, public safety information, or network security.

Executive session may also be appropriate to comport with other federal or state laws that require confidentiality or permit executive or closed meetings.

Recording can be prohibited at meetings closed to the public pursuant to law.

### **Procedure for Executive Sessions**

Motions for executive sessions must refer to the specific state law allowing for the executive session (e.g. "pursuant to SDCL 1-25-2(3)) and pass by a majority vote of the voting members present. To avoid public confusion a best practice would be for a board to explain the reason for going into executive session. An example would be: "Motion to go into executive session pursuant to SDCL 1-25-2(1) for the purpose of discussing a personnel matter," or "Motion to go into executive session pursuant to SDCL 1-25-2(3) for the purpose of consulting with legal counsel." Executive session discussion must be strictly limited to the announced subject. No official action or vote may be taken on any matter during an executive session. The public body must return to open session before any official action can be taken.

## Meeting Notices

SDCL 1-25-1.3 Notice of meetings of the State which includes its boards, commissions, and departments shall provide public notice of a meeting by posting a copy of the proposed agenda at the principal office of the board, commission, or department holding the meeting. The proposed agenda shall include the date, time, and location of the meeting; it must be visible, readable, and accessible to the public. The State of South Dakota values public input. In accordance with SDCL 1-25-1, the board shall reserve a period for public comment during each regularly scheduled official meeting. The public comment period must be sufficient to reasonably accommodate all members of the public wishing to testify. For example, if the agenda has five minutes set aside for public comment and two people wish to testify, the time allowed is likely sufficient. However, if ten people wish to testify, the Board must extend the public comment time period.

The agenda shall be posted at least three business days (72 hours) before the meeting is scheduled to start according to the agenda. Three business days does not include Saturdays, Sundays, or legal holidays. Three business days may include the day the agenda is posted. A violation of SDCL 1-25-1.3 is a Class 2 misdemeanor.

Boards and Commissions will post all meeting notices to the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/>.

The public must be notified of teleconference meetings under the same notice requirements as any other meeting. All votes shall be taken by roll call.

### Sample Meeting Timeline

Scheduled meeting date	Monday, May 20, 2019
Date to post the agenda / notice	Tuesday, May 14, 2019
Date to post meeting documents if available	Tuesday, May 14, 2019
Date to post approved agenda & *draft minutes	Tuesday, June 4, 2019

\*Approved minutes are posted the day following the meeting they were accepted as final.

## Posting Meeting Documents

SDCL 1-25-1.4 State boards, commissions, or departments required to provide public notice shall make the notice available on a state website designated by the commissioner of the Bureau of Finance and Management, if the information exists, to include the following:

1. Financial statements;
2. Audit reports;
3. A list of members of the board or commission;
4. A schedule of future meetings;
5. Public meeting materials that are available before a public meeting;
6. Meeting minutes; and
7. Annual reports

Boards and Commissions will post all required information to the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov/>. Required documents must be submitted electronically to the Boards and Commissions department contact for timely posting.

## Sample Meeting Agenda

**Meeting Agenda**  
**Name of Board, Commission or Advisory Council**  
**Building/Location, City, SD Zip Code**  
**Month Day, Year**  
**Time AM/PM to Time AM/PM (Time Zone)**  
**Call In Number: (605-XXX-XXXX)**  
**Access Code: (XXXXXXX)**

**Purpose:** Summary statement of the Board, Commission or Advisory Council (shall be to guide or advise the ...)

	When	Agenda Item	Who
1.	<Time>	Call to Order/Welcome and Introductions	<Name>
2.	<Time>	Roll Call	<Name>
3.	<Time>	Approval of Agenda	<Name>
4.	<Time>	Approval of Minutes	<Name>
5.	<Time>	Action Item	<Name>
6.	<Time>	Action Item	<Name>
7.	<Time>	Executive Session	<Name>
8.	<Time>	Other Business	<Name>
9.	<Time>	Public Testimony/Public Comment Period	<Name>
10.	<Time>	Set Next Meeting Date	<Name>
11.	<Time>	Adjourn	<Name>

Individuals requiring assistive technology or other services in order to participate in the meeting should submit a request to <Contact Person> by phone or email at least <b>1 day prior to the meeting</b> in order to make accommodations available.
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## **Taking Meeting Minutes**

State of South Dakota Bureau of Human Resources offers a 2.5 hour class on the art of taking meeting minutes for a nominal fee. The course covers subjects such as preparing to take minutes, the scope and focus of minutes, how to take minutes at a board meeting, recording action items, transcribing minutes, administrative duties and accountability.

### **Draft Minutes**

SDCL 1-27-1.17 Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. While §1-27-1.17 does not require draft minutes to be posted if there is an audio or video recording of the meeting, it is the expectation that all boards under the Executive Branch will post draft minutes in addition to any audio or video recording. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of Chapter 1-26.

Boards and Commissions will post all meeting minutes to the South Dakota Boards and Commissions Portal at <http://boardsandcommissions.sd.gov>. To meet meeting minute requirements, draft minutes must be submitted electronically within 9 days after the meeting to the department's Boards and Commission contact.

## Meeting Minutes Example

Meeting Minutes  
Name of Board, Commission or Advisory Council  
Building/Location, City, SD Zip Code  
Month Day, Year  
Time AM/PM to Time AM/PM (CST) / (MST)

Call Information:  
Call In Number: (605-XXX-XXXX)  
Access Code: (XXXXXXX)

**Members Present:**

**Members Absent:**

**Department Staff Present:**

**Others in Attendance:**

**Purpose:** Summary statement of the Board, Commission or Advisory Council (The purpose of the board shall be to guide or advise the ...)

- I. **Call to Order/Welcome and Introductions** <Name>  
<Member Name> called the meeting to order at <Time> <AM/PM> and welcomed members to the meeting.
- II. **Roll Call** <Name>  
<Member Name> called the roll. A quorum was present.
- III. **Approval of Agenda** <Name>  
<Member Name> made a motion to approve the meeting agenda. <Member Name> seconded the motion. **MOTION PASSED.**
- IV. **Approval of Minutes** <Name>  
<Member Name> made a motion to approve the <Date> meeting minutes. <Member Name> seconded the motion. **MOTION PASSED.**
- V. **Action Item** <Name>
- VI. **Action Item** <Name>
- VII. **Executive Session** <Name>  
<Member Name> made a motion to go into executive session pursuant to SDCL 1-25-2(1) for the purpose of discussing a personnel matter. **OR** <Member Name> made a motion to go into executive session pursuant to SDCL 1-25-2(3) for the purpose of consulting with legal counsel. **MOTION PASSED.**
- VIII. **Public Testimony/Public Comment Period** <Name>
- IX. **Set Next Meeting Date** <Name>
- X. **Adjourn** <Name>

<Member Name> made a motion to adjourn the meeting at <Time> <AM/PM>.  
<Member Name> seconded the motion. **MOTION PASSED.**

**Meeting Adjourned at (Time of day AM/PM).**

# **Code of Conduct and Conflict of Interest Policy for Use By State Authority, Board, Commission, and Committee Members**

## **Purpose**

The purpose of this code of conduct and conflict of interest policy ("Code") is to establish a set of minimum ethical principles and guidelines for members of state authorities, boards, commissions, or committees when acting within their official public service capacity. This Code applies to all appointed and elected members of state authorities, boards, commissions, and committees (hereinafter "Boards" and "Board member(s)"). A Board may add provisions to, or modify the provisions of, the Code. However, any change that constitutes a substantive omission from the Code must be approved by the State Board of Internal Control.

## **Conflict of Interest for Board Members**

Board members may be subject to statutory restrictions specific to their Boards found in state and federal laws, rules and regulations. Those restrictions are beyond the scope of this Code. Board members should contact their appointing authority or the attorney for the Board for information regarding restrictions specific to their Board.

## **General Restrictions on Participation in Board Actions**

A conflict of interest exists when a Board member has an interest in a matter that is different from the interest of members of the general public. Examples of circumstances which may create a conflict of interest include a personal or pecuniary interest in the matter or an existing or potential employment relationship with a party involved in the proceeding.

Whether or not a conflict of interest requires a Board member to abstain from participation in an official action of the Board depends upon the type of action involved. A Board's official actions are administrative, quasi-judicial or quasi-legislative.

A quasi-judicial official action is particular and immediate in effect, such as a review of an application for a license or permit. In order to participate in a quasi-judicial official action of the Board, a Board member must be disinterested and free from actual bias or an unacceptable risk of actual bias. A Board member must abstain from participation in the discussion and vote on a quasi-judicial official action of the Board if a reasonably-minded person could conclude that there is an unacceptable risk that the Board member has prejudged the matter or that the Board member's interest or relationship creates a potential to influence the member's impartiality.

A quasi-legislative official action, also referred to as a regulatory action, is general and future in effect. An example is rule-making. If the official action involved is quasi-legislative in nature, the Board member is not required to abstain from participation in the discussion and vote on the action unless it is clear that the member has an unalterably closed mind on matters critical to the disposition of the action.

Administrative actions involve the day-to-day activities of the Board and include personnel, financing, contracting and other management actions. Most of the administrative official actions of a Board are done through the Board's administrative staff. To the extent Board members are involved, the conflict of interest concern most frequently arises in the area of state contracting which is addressed in more detail below. If issues arise that are not directly addressed by this Code, the Board member should consult with the attorney for the Board.

"Official action" means a decision, recommendation, approval, disapproval or other action which involves discretionary authority. A Board member who violates any of these restrictions may be subject to removal from the Board to which the member is appointed.

## **Contract Restrictions**

There are federal and state laws, rules and regulations that address conflict of interest for elected and appointed Board members in the area of contracts. As an initial matter, a Board member may not solicit or accept any gift, favor, reward, or promise of reward, including any promise of future employment, in exchange for recommending, influencing or attempting to influence the award of or the terms of a state contract. This prohibition is absolute and cannot be waived.

Members of certain Boards are required to comply with additional conflict of interest provisions found in SDCL Chapter 3-23 and are required to make an annual disclosure of any contract in which they have or may have an interest or from which they derive a direct benefit. The restrictions apply for one year following the end of the Board member's term. The Boards impacted by these laws are enumerated within SDCL 3-23-10. For more information on these provisions, see the State Authorities/Boards/Commissions page in the Legal Resources section of the Attorney General's website at: <https://atg.sd.gov/Legal/OpenGovernment/authorityboardcommission.aspx>.

Absent a waiver, certain Board members are further prohibited from deriving a direct benefit from a contract with an outside entity if the Board member had substantial involvement in recommending, awarding, or administering the contract or if the Board member supervised another state officer or employee who approved, awarded or administered the contract. With the exception of employment contracts, the foregoing prohibition applies for one year following the end of the Board member's term. However, the foregoing prohibition does not apply to Board members who serve without compensation or who are only paid a per diem. See SDCL 5-18A-17 to 5-18A-17.6. For more information on these restrictions see the Conflict of Interest Waiver Instructions and Form on the South Dakota Bureau of Human Resources website at <https://bhr.sd.gov/files/ConflictofInterestInstructions.pdf>.

Other federal and state laws, rules and regulations may apply to specific Boards. For general questions regarding the applicability of SDCL Chapter 3-23 or other laws, a Board member may contact the attorney for the Board. However, because the attorney for the Board does not represent the Board member in his or her individual capacity, a Board member should contact a private attorney if the member has questions as to how the conflict of interest laws apply to the Board member's own interests and contracts.

## **Consequences of Violations of Conflict of Interest Laws**

A contract entered into in violation of conflict of interest laws is voidable and any benefit received by the Board member is subject to disgorgement. In addition, a Board member who violates conflict of interest laws may be removed from the Board and may be subject to criminal prosecution. For example, a Board member may be prosecuted for theft if the member knowingly uses funds or property entrusted to the member in violation of public trust and the use resulted in a direct financial benefit to the member. See SDCL 3-16-7, 5-18A-17.4, and 22-30A-46.

## **Retaliation for Reporting**

A Board cannot dismiss, suspend, demote, decrease the compensation of, or take any other retaliatory action against an employee because the employee reports, in good faith, a violation or suspected violation of a law or rule, an abuse of funds or abuse of authority, a substantial and specific danger to public health or safety, or a direct criminal conflict of interest, unless the report is specifically prohibited by law. SDCL 3-16-9 & 3-16-10.

Board members will not engage in retaliatory treatment of an individual because the individual reports harassment, opposes discrimination, participates in the complaint process, or provides information related to a complaint. See SDCL 20-13-26.

## **Anti-Harassment/Discrimination Policy**

While acting within their official capacity, Board members will not engage in harassment or discriminatory or offensive behavior based on race, color, creed, religion, national origin, sex,

pregnancy, age, ancestry, genetic information, disability or any other legally protected status or characteristic.

Harassment includes conduct that creates a hostile work environment for an employee or another Board member. This prohibition against harassment and discrimination also encompasses sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexually harassing nature, when: (1) submission to or rejection of the harassment is made either explicitly or implicitly the basis of or a condition of employment, appointment, or a favorable or unfavorable action by the Board member; or (2) the harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Harassment or discriminatory or offensive behavior may take different forms and may be verbal, nonverbal, or physical in nature. To aid Board members in identifying inappropriate conduct, the following examples of harassment or discriminatory or offensive behavior are provided:

- ◆ Unwelcome physical contact such as kissing, fondling, hugging, or touching;
- ◆ Demands for sexual favors; sexual innuendoes, suggestive comments, jokes of a sexual nature, sexist put-downs, or sexual remarks about a person's body; sexual propositions, or persistent unwanted courting;
- ◆ Swearing, offensive gestures, or graphic language made because of a person's race, color, religion, national origin, sex, age or disability;
- ◆ Slurs, jokes, or derogatory remarks, email, or other communications relating to race, color, religion, national origin, sex, age, or disability; or
- ◆ Calendars, posters, pictures, drawings, displays, cartoons, images, lists, e-mails, or computer activity that reflects disparagingly upon race, color, religion, national origin, sex, age or disability.

The above cited examples are not intended to be all-inclusive.

A Board member who is in violation of this policy may be subject to removal from the Board.

### **Confidential Information**

Except as otherwise required by law, Board members shall not disclose confidential information acquired during the course of their official duties. In addition, members are prohibited from the use of confidential information for personal gain.

### **Reporting of Violations**

Any violation of this Code should be reported to the appointing authority for the Board member who is alleged to have violated the Code.

This Code of Conduct and Conflict of Interest Policy was adopted by the State Board of Internal Control pursuant to SDCL § 1-56-6.

## **The Origin of the PEPL Fund in South Dakota**

The mid-1980's witnessed an increasingly expensive commercial insurance market for public entities seeking tort liability coverage.

In response, the South Dakota State Legislature passes what is known as the "PEPL Law," SDCL Chapter 3-22, in 1986. That law allows certain public entities to pool contributions to provide tort liability coverage.

Subsequently, the Public Entity Pool for Liability (PEPL Fund) was activated on July 1, 1988, to provide tort liability coverage for employees of the state of South Dakota. The State Risk Manager is appointed the PEPL Fund Executive Director.

### **Explanation of Coverage**

#### **Sovereign Immunity**

Sovereign immunity according to Barron's Law Dictionary is "a doctrine precluding the institution of a suit against the sovereign [government] without the sovereign's consent." Public entities in the United States enjoyed this immunity from lawsuit, until judicial decisions in the last 40 years began limiting its application.

#### **State Employee Liability Exposure**

South Dakota law provides that sovereign immunity is waived to the extent that coverage is provided either through the purchase of insurance or an arrangement such as the State has with the PEPL Fund. Therefore, the "Agreement" and "Memorandum of Coverage" between the State and PEPL carve out the instances where the State waives sovereign immunity and agrees to cover damages for which an employee becomes liable.

Initially, the PEPL Fund excluded coverage to state employees sued for economic damages resulting from their errors or omissions. However, on August 16, 1995, the South Dakota Supreme Court ruled state employees have no immunity for damages resulting from ministerial acts. Ministerial acts are defined by the South Dakota State Supreme Court as "that which involves obedience to instructions, but demands no special discretion, judgment or skill," such as driving a vehicle. In response to this further erosion of the state's sovereign immunity, the PEPL Fund coverage document was amended to cover non-economic damages resulting from ministerial acts.

#### **Coverage and Limit of Liability**

PEPL provides State employees with a \$1,000,000 per occurrence coverage limit for general liability, public officials errors and omissions liability, automobile liability, law enforcement liability, and some medical malpractice liability. Details of the coverage are provided in a formal "Agreement" and "Memorandum of Coverage" between the State and PEPL. (See pages 2-6 through 2-18 of this Manual.)

A state employee is defined as all current and former employees and elected officers of the state whether classified, unclassified, licensed or certified, permanent or temporary, whether compensated or not. The term includes employees of all branches of government including the judicial and legislative branches and employees of constitutional, statutory and executive order boards, commissions and officers. The term does not include independent contractors.

#### **Automobile Coverage**

Under the PEPL program, coverage is provided for a state employee's liability (up to \$1,000,000 per occurrence) to other persons due to the state employee's negligence in operating a state-owned vehicle on state business.

It should be noted that if a state employee is operating their personally-owned vehicle on official state business, their personal automobile liability coverage is primary and PEPL is secondary.

There is no PEPL Fund coverage for:

- ◆ Property damage to the state owned vehicle;
- ◆ Injuries covered by other insurance;
- ◆ Losses which agencies, employees and agents did not cause or were not legally responsible to prevent;
- ◆ Actions wrongfully meant to harm someone or actions not related to state employment;
- ◆ Personal belongings in vehicles; and
- ◆ Reckless disregard for the safety of others.

\*State-owned vehicles are exempt from "proof of insurance" laws (SDCL 32-35-124). Therefore, even though liability coverage exists, state-owned vehicles carry no "proof of insurance" cards.

## **Premiums**

Each agency contributes to the PEPL fund annually. Upon receipt of an annual actuarial report, the PEPL Fund Director determines the amount required from the state to maintain a sound fund balance. The amount required for general liability coverage is divided equally between the number of FTE covered by the fund. The amount required for vehicle coverage is divided equally among the number of vehicles in the state fleet.

## **The Responsibilities of the PEPL Fund to the State of South Dakota**

- ◆ Provide tort liability coverage to the employees of the state of South Dakota.
- ◆ Manage liability claims to keep losses and costs down: ensuring an adequate reporting procedure, ensuring claims are properly investigated and handled, negotiating settlements advantageous to the state, identifying loss trends and keeping agencies abreast of their losses.
- ◆ Manage lawsuits including the selection of the most competent attorneys to represent state employees, the monitoring of lawsuits to ensure efficient and cost-effective litigation, and negotiating settlements advantageous to the state.
- ◆ Provide detailed financial statements and budgets for each coverage period.
- ◆ Conduct independent audits of claims administration services.
- ◆ Conduct independent actuarial studies of loss and contingency reserves.

## **The Responsibilities of the State of South Dakota to the PEPL Fund**

- ◆ Prompt payment of coverage contributions to the PEPL Fund.
- ◆ Prompt and proper reporting of accidents, incidents, and unsafe conditions.
- ◆ Prompt and proper reporting of claims and lawsuits filed against the state and its employees.
- ◆ Cooperation with the PEPL Fund in the settlement and defense of claims and lawsuits.

## **Participation Agreement between the Public Entity Pool for Liability and the State of South Dakota**

View the Participation Agreement and the Memorandum of Coverage online at <https://boa.sd.gov/risk-management/docs/participationagreement.pdf>.

**Disclaimer**

The information contained in this document is current as of this printing. It is provided as a quick reference guide intended to help State of South Dakota boards and commissions comply with open public meeting requirements, code of conduct and conflict of interest policies, and risk management and liabilities policies; it is exemplary in nature and is not intended to be comprehensive.



## South Dakota Board of Examiners for Speech-Language Pathology

Mailing Address:  
810 North Main Street, Suite 298  
Spearfish, SD 57783

Phone: (605) 642-1600 E-Mail: [proflic@rushmore.com](mailto:proflic@rushmore.com)  
Home Page: [speechpath.sd.gov](http://speechpath.sd.gov)

### REVISED OFFICIAL BOARD MINUTES FOR April 17, 2020 TELECONFERENCE

**MEMBERS PRESENT:** Brittany Schmidt, President  
Jane Heinemeyer, Vice-President  
Shirley Hauge, Member  
Jaculin Protexter, Member  
Connie Tucker, Lay Member

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Carol Tellinghuisen, Executive Secretary  
Jill Lesselyoung, Executive Assistant  
Brooke Tellinghuisen Geddes, Executive Assistant  
Jennifer Schultz, SDSLHA  
Tiffany Trask, SDSLHA

**CALL TO ORDER/WELCOME AND INTRODUCTIONS:** President Schmidt called the meeting to order at 8:34AM MDT.

**ROLL CALL:** Schmidt requested Lesselyoung to call the roll. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes. A quorum was present.

**CORRECTIONS OR ADDITIONS TO THE AGENDA:** None

**APPROVAL OF THE AGENDA:** Tucker made a motion to approve the agenda. Hauge seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

**PUBLIC TESTIMONY/PUBLIC COMMENT PERIOD:** Schmidt called for any public comments. There were no public comments.

**TELEHEALTH-COVID-19:** Tellinghuisen advised under Executive Order 2020-7, which recognizes the licenses of medical professionals licensed in another state in accordance with the Emergency Management Assistance Compact, Speech-language pathologists licensed in other states have the authority to practice in SD based on an active license in another state. They do not need to gain another license in SD. The order originally authorized practice through April 12<sup>th</sup> but has since been extended to May 31, 2020. The Speech Language Pathologists were added to the list of professions on April 3.

**EXECUTIVE SESSION PURSUANT TO SDCL 1-25-2:** Hauge made the motion to enter executive session at 8:42AM. Heinemeyer seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes. Schmidt made the motion to exit executive session at 8:58AM. Heinemeyer seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

**COMPLAINTS/INVESTIGATIONS:** Schmidt recommended to dismiss complaint #100 due to lack of substantive evidence. Heinemeyer made a motion to dismiss complaint #100 due to lack of substantive evidence. Tucker seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, abstain; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes. Schmidt reported complaint #101 as pending.

**APPROVAL OF THE MINUTES FROM February 21, 2020:** Hauge made a motion to approve the minutes from February 21, 2020. Schmidt seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

**FY FINANCIAL UPDATE:** Lesselyoung reported fiscal year-to date figures as of February 29, 2020: revenue of \$79,609.41, expenditures of \$27,315.85 and cash balance on hand of \$189,465.76. The Board accepted the financials as presented.

**OPEN MEETING LAWS:** Schmidt advised the Board had been provided a copy of the State of South Dakota Boards and Commissions Meeting Guidelines which covers meeting requirements, open meeting laws, and the Code of Conduct and Conflict of Interest Policy for Board Members. The SDSLHA had expressed interest in having a Board member on the discussion panel at the scheduled convention in October. Tellinghuisen advised she had grave concerns on that breaking open meeting laws and asked Larson to explain further. Larson advised Board members are subject to open meeting laws at all times not just when in attendance at a Board meeting. If Board members were to participate in discussing matters related to the Board or industry related actions, they are subject to open meeting laws. Members were advised to err on the side of caution; listening is permitted but participation could cause problems. It is best to fully disclose duties as Board members. In order to fully protect the Board members, they should excuse themselves from holding office or participation in other meetings. It could exclude the ability to vote if involved in other matters.

**NCSB ANNUAL CONFERENCE OCTOBER 22-24, 2020, SANTA FE:** The Board agreed to send two members and or staff. Any members interested will need to contact the Board office.

**QUESTION REGARDING LIMITED LICENSE SIGNATURE:** The question came before the Board as to how a limited licensee should sign their name on an evaluation report. It is not denoted in statute that the licensee must sign a specific way. The signature should be equivalent to the level of licensure and not

misleading to the public. Individuals are encouraged to ask their agencies for their signature policy.

**AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY INTERSTATE COMPACT (ASLP-IC):**

Schultz advised that UT, WV, and WY passed the compact this year and there are multiple states listed on the gray area of the compact map. The SDSLHA received a grant to employ lobbyists and distribute educational material to promote the acceptance of the compact.

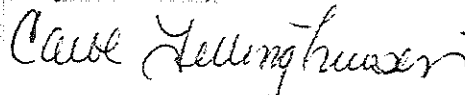
**LEGISLATIVE UPDATE:** Tellinghuisen advised HB1276, an act to provide for a review of occupational regulation was tabled for this session but the general subject is expected to come up again at a future date. The Board plans to review statutes and rules for revision at a separate meeting at a future date. All members are encouraged to review HB1276 as well. Heinemeyer exited the meeting at 9:31AM.

**ANY OTHER BUSINESS COMING IN BETWEEN DATE OF MAILING AND DATE OF MEETING:** There was no other business.

**NEXT MEETING DATE:** The Board office will send around dates for the next meeting.

Hauge made a motion to adjourn at 9:42AM. Protexter seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes.

Respectfully submitted,



Carol Tellinghuisen  
Executive Secretary

1-27-1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.



## South Dakota Board of Examiners for Speech-Language Pathology

Mailing Address:  
810 North Main Street, Suite 298  
Spearfish, SD 57783

Phone: (605) 642-1600 E-Mail: [proflic@rushmore.com](mailto:proflic@rushmore.com)  
Home Page: [speechpath.sd.gov](http://speechpath.sd.gov)

### OFFICIAL BOARD MINUTES FOR May 29, 2020 TELECONFERENCE

**MEMBERS PRESENT:** Brittany Schmidt, President  
Jane Heinemeyer, Vice-President  
Shirley Hauge, Member  
Jaculin Protexter, Member  
Connie Tucker, Lay Member

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Carol Tellinghuisen, Executive Secretary  
Jill Lesselyoung, Executive Assistant  
Brooke Tellinghuisen Geddes, Executive Assistant  
Jennifer Schultz, SDSLHA

**CALL TO ORDER/WELCOME AND INTRODUCTIONS:** President Schmidt called the meeting to order at 10:02AM MDT.

**ROLL CALL:** Schmidt requested Lesselyoung to call the roll. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes. A quorum was present.

**CORRECTIONS OR ADDITIONS TO THE AGENDA:** None

**APPROVAL OF THE AGENDA:** Hauge made a motion to approve the agenda. Tucker seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

**PUBLIC TESTIMONY/PUBLIC COMMENT PERIOD:** Schmidt called for any public comments. Schultz advised that ASHA has started to accept applications for the Speech Language Pathology Assistant Certification through ASHA. Schultz updated the Board on the Audiology and Speech-Language Pathology Interstate Compact (ASLP-IC). She advised four states have now passed the compact. The leadership met

with ASHA and is willing to meet with licensure boards to answer questions. Board members are encouraged to access the website and send their questions to the Board office, so the subject can be addressed at a future meeting. Members can also contact them directly with any questions. The Board office will contact to see them to see if they are able to join the next Board meeting.

**EXECUTIVE SESSION PURSUANT TO SDCL 1-25-2:** Heinemeyer made the motion to enter executive session at 10:19AM. Schmidt seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes. Tucker made the motion to exit executive session at 11:04AM. Protexter seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

**COMPLAINTS/INVESTIGATIONS:** Schmidt recommended to send the letter of reprimand to the licensee that was discussed during executive session on complaint #101. Protexter made a motion to send the letter. Heinemeyer seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, abstain; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

**QUESTION REGARDING TELE-SUPERVISION OF SLPA:** Following discussion, the Board agreed on a policy of allowing tele-supervision of the SLPA and adopted a broad definition of direct supervision as meaning as under the auspices of the supervisor, even if the supervisor is not physically present. The Board agreed to add a statement to the frequently asked questions on the website. Heinemeyer made a motion to allow tele-supervision. Tucker seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

**ANY OTHER BUSINESS COMING IN BETWEEN DATE OF MAILING AND DATE OF MEETING:** There was no other business.

**NEXT MEETING DATE:** The Board office will send around dates for the next meeting.

Tucker made a motion to adjourn at 11:18AM. Protexter seconded the motion. **MOTION PASSED** by roll call vote. Schmidt, yes; Heinemeyer, yes; Hauge, yes; Protexter, yes; Tucker, yes.

Respectfully submitted,



Carol Tellinghuisen  
Executive Secretary

1-27-1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

STATE OF SOUTH DAKOTA  
REVENUE SUMMARY BY BUDGET UNIT  
FOR PERIOD ENDING: 06/30/2020

AGENCY	09	HEALTH					
BUDGET UNIT	09212	BOARD OF SPEECH-LANGUAGE PATHOLOGY -INFO					
CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE		
COMPANY NO 6503							
COMPANY NAME PROFESSIONAL & LICENSING BOARDS							
092120068622	6503	4293201	INITIAL APPLICATION FEE	400.00	1,600.00		
092120068622	6503	4293202	LICENSE FEE	1,270.00	3,120.00		
092120068622	6503	4293203	RENEWAL FEE	150.00	75,500.00		
ACCT:	4293		BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	1,820.00	80,220.00	*	
ACCT:	42		LICENSES, PERMITS & FEES	1,820.00	80,220.00	**	
092120068622	6503	4920045	NONOPERATING REVENUES	.00	2,959.41		
ACCT:	4920		NONOPERATING REVENUE	.00	2,959.41	*	
ACCT:	49		OTHER REVENUE	.00	2,959.41	**	
CNTR:	092120068622			1,820.00	83,179.41	***	
CNTR:	092120068			1,820.00	83,179.41	****	
CNTR:	0921200			1,820.00	83,179.41	*****	
COMP:	6503			1,820.00	83,179.41	*****	
B UNIT:	09212			1,820.00	83,179.41	*****	

STATE OF SOUTH DAKOTA  
MONTHLY OBJECT/SUB-OBJECT REPORT BY BUDGET UNIT  
FOR PERIOD ENDING: 06/30/2020

AGENCY BUDGET UNIT CENTER-5	09 09212 09212	HEALTH BOARD OF SPEECH-LANGUAGE PATHOLOGY -INFO BOARD OF SPEECH-LANGUAGE PATHOLOGY -INFO	CURRENT MONTH	YEAR-TO-DATE
CENTER	COMP	ACCOUNT	DESCRIPTION	
COMPANY NO	6503	PROFESSIONAL & LICENSING BOARDS		
COMPANY NAME	PROFESSIONAL & LICENSING BOARDS			
092120068622	6503	510103000000000000	BOARD & COMM MBRS FEES	.00
ACCT: 5101		EMPLOYEE SALARIES		.00
092120068622	6503	510201000000000000	OASI-EMPLOYER'S SHARE	.00
ACCT: 5102		EMPLOYEE BENEFITS		.00
ACCT: 51		PERSONAL SERVICES		.00
092120068622	6503	520402000000000000	DUES & MEMBERSHIP FEES	.00
092120068622	6503	520409000000000000	MANAGEMENT CONSULTANT	.00
092120068622	6503	520420000000000000	CENTRAL SERVICES	.00
092120068622	6503	520420200000000000	PROPERTY MANAGEMENT	.58
092120068622	6503	520420700000000000	HUMAN RESOURCES SERVICES	97.42
092120068622	6503	520451000000000000	RENTS-OTHER	.00
092120068622	6503	520458000000000000	TRUCK-DRAYAGE & FREIGHT	.00
ACCT: 5204		CONTRACTUAL SERVICES		97.42
092120068622	6503	520502000000000000	OFFICE SUPPLIES	.00
092120068622	6503	520531000000000000	PRINTING-STATE	.00
092120068622	6503	520532000000000000	PRINTING-COMMERCIAL	.00
092120068622	6503	520535000000000000	POSTAGE	.00
ACCT: 5205		SUPPLIES & MATERIALS		.00
ACCT: 52		OPERATING EXPENSES		97.42
COMP: 6503		PROFESSIONAL & LICENSING BOARDS		97.42
CENTER: 092120068622				97.42
B UNIT: 09212				97.42

AGENCY: 09 HEALTH  
BUDGET UNIT: 09212 BOARD OF SPEECH-LANGUAGE PATHOLOGY - INFO

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100068622	1140000	183,723.89	DR	
COMPANY/SOURCE TOTAL 6503 686			183,723.89	DR *	BD OF EXAMINERS FOR SPEECH-LANGUAGE PATH
COMP/BUDG UNIT TOTAL 6503 09212			183,723.89	DR **	
BUDGET UNIT TOTAL 09212			183,723.89	DR ***	

STATE OF SOUTH DAKOTA  
REVENUE SUMMARY BY BUDGET UNIT  
FOR PERIOD ENDING: 12/31/2020

PAGE

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AGENCY	09	HEALTH	REVENUE SUMMARY BY BUDGET UNIT FOR PERIOD ENDING: 12/31/2020		
BUDGET UNIT	09212	BOARD OF SPEECH-LANGUAGE PATHOLOGY - INFO			
CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE
COMPANY NO	6503				
COMPANY NAME	PROFESSIONAL & LICENSING BOARDS				
092120068622	6503	4293201	INITIAL APPLICATION FEE	600.00	4,900.00
092120068622	6503	4293202	LICENSE FEE	550.00	8,140.00
092120068622	6503	4293203	RENEWAL FEE	150.00	12,020.00
ACCT: 4293		BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	1,300.00	25,060.00	*
ACCT: 42		LICENSES, PERMITS & FEES	1,300.00	25,060.00	**
092120068622	6503	4393204	LATE FEE	50.00	70.00
ACCT: 4393		PENALTIES (NON-GOVERNMENTAL)	50.00	70.00	*
ACCT: 43		FINES, FORFEITS & PENALTIES	50.00	70.00	**
092120068622	6503	4599205	MISC INCOME	1,270.00	3,450.00
ACCT: 4599		OTHER CHARGES (NON-GOVERNMENTAL)	1,270.00	3,450.00	*
ACCT: 45		CHARGES FOR SALES & SERVICES	1,270.00	3,450.00	**
092120068622	6503	4910000	OPERATING TRANSFERS IN	.00	270.00
ACCT: 4910		OPERATING TRANSFERS IN	.00	270.00	*
092120068622	6503	4920045	NONOPERATING REVENUES	.00	4,142.94
ACCT: 4920		NONOPERATING REVENUE	.00	4,142.94	*
ACCT: 49		OTHER REVENUE	.00	4,412.94	**
CNTR: 092120068622			2,620.00	32,992.94	***
CNTR: 092120068			2,620.00	32,992.94	****
CNTR: 0921200			2,620.00	32,992.94	*****
COMP: 6503			2,620.00	32,992.94	*****
B UNIT: 09212			2,620.00	32,992.94	*****

STATE OF SOUTH DAKOTA  
MONTHLY OBJECT/SUB-OBJECT REPORT BY BUDGET UNIT  
FOR PERIOD ENDING: 12/31/2020

AGENCY BUDGET UNIT CENTER-5	09 09212 09212	HEALTH BOARD OF SPEECH-LANGUAGE PATHOLOGY -INFO BOARD OF SPEECH-LANGUAGE PATHOLOGY -INFO	CURRENT MONTH	YEAR-TO-DATE	
COMPANY NO	6503				
COMPANY NAME	PROFESSIONAL & LICENSING BOARDS				
092120068622	6503	510103000000000000	BOARD & COMM MERS FEES	.00	300.00
ACCT: 5101		EMPLOYEE SALARIES		.00	300.00
092120068622	6503	510201000000000000	OASI-EMPLOYER'S SHARE	.00	22.95
ACCT: 5102		EMPLOYEE BENEFITS		.00	22.95
ACCT: 51		PERSONAL SERVICES		.00	322.95
092120068622	6503	520402000000000000	DUES & MEMBERSHIP FEES	.00	450.00
092120068622	6503	520409000000000000	MANAGEMENT CONSULTANT	2,892.39	20,368.88
092120068622	6503	520420000000000000	CENTRAL SERVICES	230.15	373.95
092120068622	6503	520420300000000000	PURCHASING CENTRAL SERV	.00	1.26
092120068622	6503	520420700000000000	HUMAN RESOURCES SERVICES	.00	103.83
092120068622	6503	520458000000000000	TRUCK-DRAYAGE & FREIGHT	.00	58.33
ACCT: 5204		CONTRACTUAL SERVICES		3,122.54	21,356.25
092120068622	6503	520531000000000000	PRINTING-STATE	.00	148.26
092120068622	6503	520532000000000000	PRINTING-COMMERCIAL	.00	216.69
092120068622	6503	520535000000000000	POSTAGE	.00	6.63
ACCT: 5205		SUPPLIES & MATERIALS		3,122.54	371.58
ACCT: 52		OPERATING EXPENSES		.00	21,727.83
COMP: 6503		PROFESSIONAL & LICENSING BOARDS		3,122.54	22,050.78
CENTER: 092120068622				3,122.54	22,050.78
B UNIT: 09212				3,122.54	22,050.78

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STATE OF SOUTH DAKOTA  
CASH CENTER BALANCES  
AS OF: 12/31/2020

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AGENCY: 09 HEALTH  
BUDGET UNIT: 09212 BOARD OF SPEECH-LANGUAGE PATHOLOGY -INFO

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100068622	1140000	194,666.05	DR	
COMPANY/SOURCE TOTAL 6503 686			194,666.05	DR *	
COMP/BUDG UNIT TOTAL 6503 09212			194,666.05	DR **	
BUDGET UNIT TOTAL 09212			194,666.05	DR ***	BD OF EXAMINERS FOR SPEECH-LANGUAGE PATH

**STATE OF SOUTH DAKOTA  
OFFICE OF THE GOVERNOR  
EXECUTIVE ORDER 2020-34**

**Whereas,** An outbreak of the severe acute respiratory disease, COVID-19, which is caused by the person-to-person spread of the novel coronavirus, has been declared a public health emergency and pandemic by the World Health Organization and the Centers for Disease Control and Prevention (CDC); and,

**Whereas,** The President of the United States of America declared that the COVID-19 outbreak constitutes a national emergency; and,

**Whereas,** The CDC has issued guidance to all state and local governments and all citizens recommending preparedness, nonessential travel, social distancing, and other mitigation strategies impacting many sectors of daily life to slow the spread and guard against the COVID-19 outbreak; and,

**Whereas,** The State Emergency Operations Center and the National Guard have been activated to support the State's response to COVID-19, along with the activation of local emergency operations centers in several South Dakota counties and in the City of Sioux Falls; and,

**Whereas,** The impending threat of COVID-19 is a public health emergency requiring the State to deploy substantial resources, to involve every state agency to help mitigate the impact of COVID-19 in our state, and to implement the emergency powers of the governor to protect the health and safety of South Dakotans; and,

**Whereas,** A state of emergency has been declared by Executive Order 2020-04 on March 13, 2020, which has been extended by Executive Orders 2020-15, 2020-26, and 2020-30, and continues to currently exist within the State of South Dakota; and,

**Whereas,** This emergency poses a danger to the public health and safety in all of South Dakota and impacts the daily lives of our citizens, health care systems, businesses, and the function of state and local governments; and,

**Whereas,** Strict compliance with the regulatory requirements for annual training of family daycare and child care program staff will prevent, hinder, or delay necessary actions to cope with this emergency in all counties of our state because staff members have been periodically absent from work due to quarantine or isolation requirements for close contacts or positive cases, and because state licensing staff verify completion of the current year's training requirements the following year during the annual monitoring process:

**NOW, THEREFORE,** I, KRISTI NOEM, Governor of the State of South Dakota, by the authority vested in me by the Constitution and the Laws of this State, including but not limited to SDCL 34-48A, do hereby declare that a state of emergency exists within the State of South Dakota and hereby order and direct the following:

**Section 1 Declaration.** I do hereby declare that a State of Emergency continues to exist in all counties in the State of South Dakota, and I direct the plans and procedures of the State Emergency Operations Plan continue to be implemented. State agencies and departments are directed to utilize state resources and to continue to do everything reasonably possible to assist efforts to respond to and recover from this emergency.

**Section 2 Oversight.** I direct and order that the South Dakota Department of Health, by and through the secretary, has continuing authority and oversight of measures to control and contain the spread of COVID-19, and other agencies to identify and utilize appropriate state personnel and resources for conducting necessary and ongoing incident related assessments.

**Section 3 Resources.** I direct and order the Department of Health and any other agency of the State of South Dakota to continue to seek and accept any funding or other resources from any entity, governmental or private, to treat, control, and slow the spread of COVID-19.

**Section 4 Extension of Previously Suspended Statutes and Administrative Rules.** I hereby extend these 10 Executive Orders related to the suspension of statutes and administrative rules due to the COVID-19 emergency for the duration of the emergency, and continue to temporarily suspend the enforcement of the statutory and regulatory requirements as previously suspended by the following sections of these Executive Orders:

- a. 2020-07, Sections 1 to 4.
- b. 2020-10, Sections 1 to 4.
- c. 2020-14, Sections 1 to 3.
- d. 2020-16, Sections 1 to 36, and 39.
- e. 2020-19, Sections 1 to 4.
- f. 2020-21, Sections 11 to 12.
- g. 2020-24, Sections 1 to 2.
- h. 2020-25, Sections 1 to 2.
- i. 2020-28, Section 1.
- j. 2020-33, Sections 1 to 8.

**Section 5 Termination of Executive Orders.** I hereby terminate Executive Orders 2020-17, 2020-23, and 2020-31 so that the statutory and regulatory requirements suspended by these Orders are in full force and effect as of the date of this Order, to wit:

- a. 2020-17, Section 2 relating to the enforcement of overstocking pork operations.
- b. 2020-23, Section 1 relating to the non-renewal of alcoholic beverage licenses for delinquent state and local taxes.
- c. 2020-23, Section 2 relating to the submission to the Commission on Gaming of annually reviewed financial statements for licensed operators and route operators in Deadwood, SD.
- d. 2020-31 relating to the use of a SmarterBalanced assessment score for South Dakota Opportunity Scholarship eligibility.

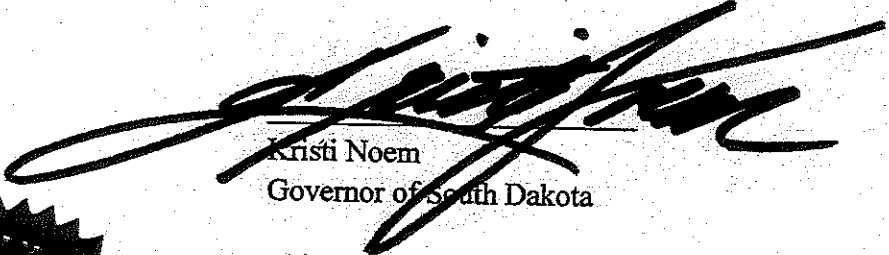
**Section 6 Termination of Suspension of Statutes and Administrative Rules.** I hereby terminate the following sections of these Executive Orders so that these statutory and regulatory requirements suspended by these sections of these Orders are in full force and effect as of the date of this Order, to wit:

- a. 2020-16, Section 38 relating to the notarization of applications for public grain warehouse licenses and grain buyer licenses. A licensee who was granted a license without submission of a notarized application pursuant to the 2020-16 Executive Order suspension of that requirement shall submit a notarized application to the Public Utilities Commission as part of the first license renewal application following this termination of the suspension.
- b. 2020-19, Section 3 relating to the timely payment of the report fee for the 2019 Tier II Hazardous Chemical Inventory Report.
- c. 2020-30, Section 6 relating to the expiration of certain operator licenses, identification cards, or permits. Licensees, permittees, and cardholders shall comply with statutory requirements and renew their respective license, permit, or card.

**Section 7 Staff Training.** Further, I hereby temporarily suspend the regulatory provisions of ARSD 67:42:03:07.02, 67:42:10:06, and 67:42:14:13 governing annual child care program staff training requirements for 2020.


**BE IT FURTHER ORDERED,** This Executive Order shall be in effect at 12:01 a.m. on December 31, 2020 and shall continue until expiration on June 30, 2021, unless sooner terminated or extended.

Dated in Pierre, South Dakota this 18th day of December, 2020.

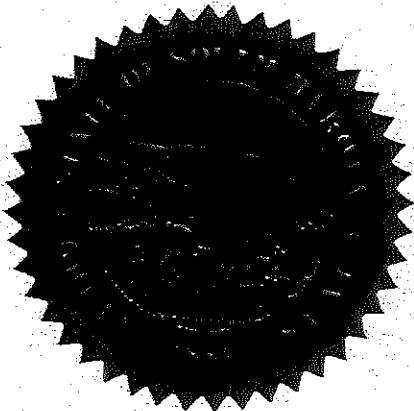


Kristi Noem  
Governor of South Dakota

ATTEST:



Steve Barnett  
Secretary of State



# 2021 South Dakota Legislature

## Draft 181

*Requested by: at the request of the Department of Health*

**An Act to establish the South Dakota Board of Speech-Language Pathology, Audiology, and Hearing Aid Dispensing and to repeal the South Dakota Board of Hearing Aid Dispensers and Audiologists and the South Dakota Board of Examiners for Speech-Language Pathology.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

**Section 1.** That a NEW SECTION be added:

**36-39-1. Definitions.**

Terms used in this Act mean:

- (1) "Audiogram," a graphic summary of the measurements of hearing loss showing number of decibels loss at each frequency tested;
- (2) "Audiologist," any person who engages in the practice of audiology and who meets the qualifications set forth in this Act. A person represents oneself to be an audiologist if that person holds out to the public by any means, or by any service or function performed, directly or indirectly, or by using the terms audiology, audiologist, audiometrist, audiological, hearing therapy, hearing therapist, hearing clinic, hearing clinician, hearing aid audiologist, or any variation that expresses these terms;
- (3) "Audiology," the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders;
- (4) "Board," the South Dakota Board of Speech-Language Pathology, Audiology, and Hearing Aid Dispensing;
- (5) "Disorders of hearing," any condition, whether of organic or nonorganic origin, peripheral or central, that impedes the normal process of human communication including disorders of auditory sensitivity, acuity, function, or processing;
- (6) "Dispense," any transfer of title, possession, or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with a distributor or dealer;
- (7) "Endoscopy," an imaging procedure included within the scope of practice for speech-language pathologists in which a speech-language pathologist uses a

- 1 flexible nasal endoscopy, rigid oral endoscopy, or stroboscopy for the purpose of  
2 evaluating and treating disorders of speech, voice, resonance, and swallowing  
3 function;
- 4 (8) "Hearing aid," any wearable instrument or device offered for the purpose of aiding  
5 or compensating for impaired human hearing and any parts, attachments, or  
6 accessories to the instrument or device, including ear molds, but excluding  
7 batteries and cords. The term, hearing aid, does not include cochlear implant or  
8 cochlear prosthesis;
- 9 (9) "Hearing aid dispenser," any person, other than an audiologist, engaged in the  
10 evaluation or measurement of the powers or range of human hearing by means of  
11 an audiometer, or by any other means devised, and the consequent selection or  
12 adaptation or sale of a hearing aid intended to compensate for hearing loss,  
13 including the making of an ear impression;
- 14 (10) "Instruction," is either of the following:
- 15 (a) Providing audiology services or teaching in an infant or toddler program, a  
16 preschool, an elementary school, a secondary school, or a developmental  
17 disability program; or
- 18 (b) Teaching students in institutions of higher education;
- 19 (11) "License," any license issued by the board to dispense hearing aids, serve as a  
20 speech-language pathology assistant practice audiology, or practice speech-  
21 language pathology;
- 22 (12) "Mentorship," the direct on-site supervision and monitoring of a speech-language  
23 pathologist with a provisional license by a licensed speech-language pathologist;
- 24 (13) "Provisional license," the license issued to an applicant who is practicing speech-  
25 language pathology while completing the supervised postgraduate professional  
26 experience following completion of a master's degree in speech language pathology  
27 or to an applicant who is practicing audiology while completing the postgraduate  
28 professional experience as required by this Act for an audiologist, or to an applicant  
29 as a hearing aid dispenser trainee and supervised by a person who holds a valid  
30 hearing aid dispensing license or audiology license;
- 31 (14) "Research," the systematic investigation designed to develop or contribute to  
32 generalizable knowledge about human communication, human communication  
33 disorders, and evaluation or treatment strategies. The term does not include  
34 activities that take place under the auspices of a recognized institutional review  
35 board which reviews, approves, and monitors proposals and activities involving

1 human subjects to ensure that the rights and welfare of such subjects are  
2 protected;

3 (15) "Speech-language pathologist," any person who engages in the practice of speech-  
4 language pathology and who meets the qualifications set forth in this Act;

5 (16) "Speech-language pathology assistant," any person who assists in the practice of  
6 speech-language pathology and who meets the qualifications set forth in this Act;

7  
8 (17) "Telepractice," the application of telecommunication technology to deliver speech-  
9 language pathology or audiology at a distance for assessment, intervention, or  
10 consultation.

11 **Section 2.** That a NEW SECTION be added:

12 **36-39-2. Board of Speech-Language Pathology, Audiology, and Hearing Aid**  
13 **Dispensing created.**

14 The Governor shall appoint a seven-member Board of Speech-Language Pathology,  
15 Audiology, and Hearing Aid Dispensing as follows:

16 (1) Two speech-language pathologists in active practice in South Dakota and with at  
17 least five years of experience practicing speech-language pathology. One speech-  
18 language pathologist shall be employed in a school setting and one speech-  
19 language pathologist shall be employed in a health care setting;

20 (2) Two audiologists in active practice in South Dakota and with at least five years of  
21 experience practicing audiology;

22 (3) Two hearing aid dispensers in active practice in South Dakota and with at least five  
23 years of experience in the practice of fitting and dispensing hearing aids; and

24 (4) One member of the public who is not associated with or financially interested in  
25 the practice or business of speech-language pathology, audiology, or hearing aid  
26 dispensing and who is not a member of a related profession or occupation.

27 **Section 3.** That a NEW SECTION be added:

28 **36-39-3. Board--Terms of office--Vacancies--Removal of member.**

29 The terms of members shall begin on October thirty-first of the calendar year in  
30 which the Governor appoints the member, unless otherwise designated by the Governor.  
31 The appointee's term expires on October thirtieth in the third year of appointment.

32 No member of the board may serve more than three consecutive full terms.  
33 Appointment of a person to an unexpired term is not considered a full term for this

1 purpose. The Governor shall make appointments to the board for terms of three years.  
2 Each member shall hold office until a successor is appointed and qualified. The Governor  
3 shall, by appointment, fill any vacancy for the balance of the unexpired term. The  
4 Governor may stagger terms to enable the board to have different terms expire each year.  
5 The Governor may remove any member from the board for neglect of any duty  
6 required by law, incompetence, or unprofessional or dishonorable conduct.

7 **Section 4.** That a NEW SECTION be added:

8 **36-39-4. Board--Officers.**

9 The board shall annually elect from its members a president, vice president, and  
10 secretary-treasurer. No member may serve as president for more than three consecutive,  
11 one-year terms.

12 **Section 5.** That a NEW SECTION be added:

13 **36-39-5. Board--Meetings--Quorum.**

14 The board shall hold at least two meetings annually at times and places to be set  
15 by the board. The board may hold one or more other meetings at times and places set by  
16 the president or a majority of the board. A majority of board members constitutes a  
17 quorum. A majority vote of those present constitutes a decision of the entire board.

18 **Section 6.** That a NEW SECTION be added:

19 **36-39-6. Board--Acceptance of funds--Separate fund--Payments from fund--**  
20 **Expense limited by revenue.**

21 All moneys coming into the custody of the board, including any fees and any other  
22 payments, shall be paid by the board to the state treasurer. The state treasurer shall  
23 credit the moneys to a separate board account to be used by the board for the purpose of  
24 paying the expense of administering and enforcing the provisions of this Act. The total  
25 expenses incurred by the board may not exceed the total moneys collected.

26 **Section 7.** That a NEW SECTION be added:

27 **36-39-7. Board--Compensation.**

28 Each board member shall receive a per diem established pursuant to § 4-7-10.4  
29 and may be reimbursed for expenses as provided by law while engaged in official duties.

1 **Section 8.** That a NEW SECTION be added:

2 **36-39-8. Board--Powers and duties.**

3 The board may:

- 4 (1) Establish educational, training, and competency standards governing the  
5 examination and practice of licensees using board-approved national accrediting  
6 agencies and accepted nationally established standards, if applicable;  
7 (2) Examine an eligible applicant for a speech-language pathologist, speech-language  
8 pathology assistant, audiologist, or hearing aid dispenser license;  
9 (3) Issue a license to an applicant who has met the licensure standards of this Act and  
10 renew the license of speech-language pathologists, speech-language pathology  
11 assistants, audiologists, and hearing aid dispensers who continue to meet the  
12 licensure standards of this Act;  
13 (4) Establish continuing education requirements;  
14 (5) Establish standards for telepractice;  
15 (6) Establish a budget;  
16 (7) Conduct all disciplinary proceedings under this Act;  
17 (8) Issue subpoenas, examine witnesses, administer oaths, conduct hearings, and, at  
18 its discretion, investigate allegations of violations of this Act;  
19 (9) Establish peer review committees within each discipline for review purposes;  
20 (10) Promulgate rules, pursuant to chapter 1-26, to:  
21 (a) Delineate qualifications for licensure;  
22 (b) Specify requirements for the renewal of licensure;  
23 (c) Regulate the delivery of services via telepractice;  
24 (d) Establish standards of professional conduct;  
25 (e) Specify procedures for suspension and revocation of licensure;  
26 (f) Establish a schedule of disciplinary actions for violations of professional  
27 conduct;  
28 (g) Permit inactive licensures;  
29 (h) Establish procedures for collection and management of fees and payments;  
30 (i) Establish application, biennial licensure;  
31 (j) Biennial renewal;  
32 (k) Delineate activities that may or may not be delegated to an assistant; and  
33 (l) Specify requirements for the supervision of assistants.  
34 (11) Employ personnel in accordance with the needs and budget of the board;  
35 (12) Establish and collect fees as provided for by this Act;

- 1     (13) Enter into contracts as necessary to carry out the board's responsibilities pursuant  
2     to the provisions of this Act;
- 3     (14) Communicate disciplinary actions and licensure status to relevant state and federal  
4     governing bodies as may be required, including the National Practitioner Data  
5     Bank; and
- 6     (15) Carry out the purposes and enforce the provisions of this Act.

7     **Section 9.** That a NEW SECTION be added:

8             **36-39-9. Speech-language pathology--Practice defined.**

9             For the purposes of this Act, the practice of speech-language pathology is the  
10     application of principles, methods, and procedures related to the development, disorders,  
11     and effectiveness of human communication and related functions, including providing  
12     prevention, screening, consultation, assessment/evaluation, diagnosis,  
13     treatment/intervention management, counseling, collaboration, and referral services for  
14     disorders of speech, language, feeding, and swallowing, and for cognitive aspects of  
15     communication. The practice of speech-language pathology also includes:

16             (1) Establishing augmentative and alternative communication techniques and  
17     strategies, including developing, selecting, and prescribing of such systems and devices  
18     but excluding the dispensing and fitting of hearing aids;

19             (2) Providing services to individuals with hearing loss and their families;

20             (3) Screening persons for hearing loss or middle ear pathology using conventional  
21     pure-tone air conduction methods, otoacoustic emissions screening or screening  
22     typanometry;

23             (4) Using instrumentation to observe, collect data, and measure parameters of  
24     communication and swallowing;

25             (5) Selecting, fitting, and establishing effective use of prosthetic or adaptive  
26     devices for communication, swallowing, or other upper aerodigestive functions; and

27             (6) Providing services to modify or enhance communication performance.

28     **Section 10.** That a NEW SECTION be added:

29             **36-39-10. Speech-language pathologist--License eligibility.**

30             To be eligible for licensure by the board as a speech-language pathologist, the  
31     applicant shall:

32             (1) Submit an application, upon a form prescribed by the board;

33             (2) Pay the application fee pursuant to § 36-39-35;

- 1     (3) Possess a master's or doctoral degree from an educational institution accredited  
2         by the accrediting agency of the American Speech-Language-Hearing Association  
3         and from an educational institution approved by the United States Department of  
4         Education;  
5     (4) Complete supervised clinical practicum experiences from an educational institution  
6         or its cooperating programs;  
7     (5) Complete a supervised postgraduate professional experience;  
8     (6) Pass a written national examination in speech-language pathology; and  
9     (7) Have committed no act for which disciplinary action may be justified.

10    **Section 11.** That a NEW SECTION be added:

11                 **36-39-11. Speech-language pathologist--Limited licensure--Persons**  
12                 **certified by Department of Education as of July 1, 2012.**

13                 Any person who holds any speech-language pathologist certificate from the South  
14                 Dakota Department of Education as of July 1, 2012, and does not otherwise meet the  
15                 qualifications set forth in this Act, may apply for and shall be granted a limited license to  
16                 practice as a speech-language pathologist as long as:

- 17                 (1) The application is made no later than July 1, 2014; and  
18                 (2) The applicant complies with the provisions of subdivisions 36-39-10(1), (2), and  
19                 (7).

20                 The limits of the license shall be determined by the board in rules promulgated  
21                 pursuant to chapter 1-26.

22    **Section 12.** That a NEW SECTION be added:

23                 **36-39-12. Speech-language pathology--Provisional licensure--Practice**  
24                 **limited.**

25                 The board shall issue a provisional license in speech-language pathology to an  
26                 applicant who:

- 27                 (1) Except for the postgraduate professional experience, meets the academic,  
28                 practicum, and examination requirements of this Act;  
29                 (2) Submits an application, upon a form prescribed by the board, including a plan for  
30                 the content of the postgraduate professional experience;  
31                 (3) Pays the application fee for a provisional license pursuant to § 36-39-35; and  
32                 (4) Has not committed any act for which disciplinary action may be justified.

1        A person holding a provisional license may practice speech-language pathology  
2        only while working under the mentorship of a speech-language pathologist licensed in this  
3        state. The term for a provisional license and the conditions for its renewal shall be  
4        determined by the board in rules promulgated pursuant to chapter 1-26.

5        **Section 13.** That a NEW SECTION be added:

6                **36-39-13. Speech-language pathology assistant--Licensure.**

7                The board shall issue a speech-language pathology assistant license to an applicant  
8        who:

- 9        (1) Submits an application, upon a form prescribed by the board;  
10       (2) Pays the application fee pursuant to § 36-39-35;  
11       (3) Holds an associate's degree in speech-language pathology assisting or a bachelor's  
12       degree with major emphasis in speech-language pathology or communication  
13       disorders from an accredited academic institution;  
14       (4) Submits an official transcript verifying necessary academic preparation and clinical  
15       experiences;  
16       (5) Completes a supervised clinical practicum of a minimum of one hundred clock hours  
17       as a speech-language pathology assistant while either on the job or during  
18       academic preparation as certified by completion of the Verification of Completed  
19       Supervised Practicum form; and  
20       (6) Has committed no act for which disciplinary action is justified.

21        While completing the clinical practicum required in subdivision (5), neither the  
22        speech-language pathology assistant applicant nor supervising speech-language  
23        pathologist may represent the applicant as a licensed assistant. A supervising speech-  
24        language pathologist shall be present at all times when an applicant is completing the  
25        clinical practicum on the job.

26        **Section 14.** That a NEW SECTION be added:

27                **36-39-14. Speech-language pathology assistant--Licensure for**  
28        **paraprofessionals certified by Department of Education as of July 1, 2012.**

29        Any person who is employed as a paraprofessional providing speech-language  
30        pathology services under the direct supervision of a speech-language pathologist who  
31        holds a speech-language pathologist certificate from the South Dakota Department of  
32        Education as of July 1, 2012, and does not otherwise meet the qualifications set forth in

this Act may apply for and shall be granted a speech-language pathology assistant license and may continue to practice as a speech-language pathology assistant as long as:

(1) The application was made no later than July 1, 2014;

(2) The applicant continued to render speech-language pathology services in the public school or school district where the applicant was employed at the time of application; and

(3) The renewal fee is paid pursuant to § 36-39-35.

**Section 15.** That a NEW SECTION be added:

**36-39-15. Speech-language pathology assistant--Supervision by licensed pathologist.**

A speech-language pathology assistant shall be supervised by a licensed speech-language pathologist with at least two years of experience or a limited licensed speech-language pathologist with at least two years of experience. The time licensed as a provisional speech-language pathologist counts toward the two years of experience. The supervising speech-language pathologist:

(1) Is responsible for the extent, kind, and quality of service provided by the assistant, consistent with the board's designated standards and requirements;

(2) Shall ensure that persons receiving services from an assistant receive prior written notification that services are to be provided, in whole or in part, by a speech-language pathology assistant; and

(3) May not supervise more than three speech-language pathology assistants at one time.

An assistant may have more than one supervisor if the board is notified.

**Section 16.** That a NEW SECTION be added:

**36-39-16. Speech-language pathologist-- Nonmedical endoscopy-- Requirements.**

Any person who is licensed as a speech-language pathologist in South Dakota may perform assessment, treatment, and procedures related to speech, voice, resonance, and swallowing function using nonmedical endoscopy as long as the person has received training and is competent to perform these procedures. A licensed speech-language pathologist shall have protocols in place for emergency medical backup when performing procedures using an endoscope.

1 **Section 17.** That a NEW SECTION be added:

2 **36-39-17. Audiology--Practice described.**

3 The scope of practice of audiology includes:

- 4 (1) Activities that identify, assess, diagnose, manage, and interpret test results related  
5 to disorders of human hearing, balance, and other neural systems;
- 6 (2) Otoscopic examination and external ear canal management for removal of cerumen  
7 in order to evaluate hearing or balance, make ear impressions, fit hearing  
8 protection or prosthetic devices, and monitor the continuous use of hearing aids;
- 9 (3) The conduct and interpretation of behavioral, electroacoustic, or electrophysiologic  
10 methods used to assess hearing, balance, and neural system function;
- 11 (4) Evaluation and management of children and adults with central auditory processing  
12 disorders;
- 13 (5) Supervision and conduct of newborn hearing screening programs;
- 14 (6) Measurement and interpretation of sensory and motor evoked potentials,  
15 electromyography, and other electrodiagnostic tests for purposes of  
16 neurophysiologic intraoperative monitoring and cranial nerve assessment;
- 17 (7) Provision of hearing care by selecting, evaluating, fitting, facilitating adjustment  
18 to, and dispensing prosthetic devices for hearing loss, including hearing aids,  
19 sensory aids, hearing assistive devices, alerting and telecommunication systems,  
20 and captioning devices;
- 21 (8) Assessment of the candidacy of persons with hearing loss for cochlear implants and  
22 provision of fitting, programming, and audiological rehabilitation to optimize device  
23 use;
- 24 (9) Provision of audiological rehabilitation, including speech reading, communication  
25 management, language development, auditory skill development, and counseling  
26 for psychosocial adjustment to hearing loss for persons with hearing loss and their  
27 families or caregivers;
- 28 (10) Consultation to educators as members of interdisciplinary teams about  
29 communication management, educational implications of hearing loss, educational  
30 programming, classroom acoustics, and large-area amplification systems for  
31 children with hearing loss;
- 32 (11) Prevention of hearing loss and conservation of hearing function by designing,  
33 implementing, and coordinating occupational, school, and community hearing  
34 conservation and identification programs;

- 1     (12) Consultation and provision of rehabilitation to persons with balance disorders using  
2         habituation, exercise therapy, and balance retraining;
- 3     (13) Design and conduct of basic and applied audiologic research to increase the  
4         knowledge base, to develop new methods and programs, and to determine the  
5         efficacy of assessment and treatment paradigms, and to disseminate research  
6         findings to other professionals and to the public;
- 7     (14) Education and administration in audiology graduate and professional education  
8         programs;
- 9     (15) Measurement of functional outcomes, consumer satisfaction, effectiveness,  
10         efficiency, and cost-benefit of practices and programs to maintain and improve the  
11         quality of audiological services;
- 12     (16) Administration and supervision of professional and technical personnel who provide  
13         support functions to the practice of audiology;
- 14     (17) Screening of speech-language, use of sign language, and other factors affecting  
15         communication function for the purposes of an audiological evaluation or initial  
16         identification of individuals with other communication disorders;
- 17     (18) Consultation about accessibility for persons with hearing loss in public and private  
18         buildings, programs, and services;
- 19     (19) Assessment and nonmedical management of tinnitus using biofeedback, masking,  
20         hearing aids, education, and counseling;
- 21     (20) Consultation to individuals, public and private agencies, and governmental bodies;  
22         or as an expert witness regarding legal interpretations of audiology findings, effects  
23         of hearing loss and balance system disorders, and relevant noise-related  
24         considerations;
- 25     (21) Case management and service as a liaison for consumers, families, and agencies  
26         in order to monitor audiologic status and management and to make  
27         recommendations about educational and vocational programming;
- 28     (22) Consultation to industry on the development of products and instrumentation  
29         related to the measurement and management of auditory or balance function; and
- 30     (23) Participation in the development of professional and technical standards.

31     **Section 18.** That a NEW SECTION be added:

32             **36-39-18. Audiologist--License eligibility.**

33             To be eligible for licensure by the board as an audiologist, the applicant shall:

- 34             (1) Be of good moral character;

- (2) Possess a master's or doctorate degree in audiology from a regionally accredited educational institution;
- (3) Complete the supervised clinical practicum experience from a regionally accredited educational institution or its cooperating programs;
- (4) Complete a period of supervised graduate professional experience in audiology as recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology; and
- (5) Pass a national standardized examination in audiology as recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology.

**Section 19.** That a NEW SECTION be added:

**36-39-19. Audiologist--License eligibility pending approval.**

An applicant who does not meet the provisions of subdivision 36-39-18(4) or (5) may be issued a license to practice as an audiologist pending board approval if the applicant demonstrates the following:

- (1) Has formally and consistently represented oneself to the public as an audiologist;
- (2) Has a master's or doctorate degree in audiology from a regionally accredited educational institution;
- (3) Has spent the majority of working hours in the practice of audiology;
- (4) Passed any board designated written or oral exam for applicants who have not met subdivision 36-39-18(5);
- (5) Submits an application on a form prescribed by the board; and
- (6) Pays the application fee pursuant to § 36-39-35.

**Section 20.** That a NEW SECTION be added:

**36-39-20. Audiology--Provisional licensure--Practice limited.**

The board shall issue a provisional audiology license to any applicant who:

- (1) Except for the postgraduate professional experience, meets the academic, practicum, and examination requirements of this Act;
- (2) Applies to the board on a form prescribed by the board, with a plan for the content of the postgraduate professional experience; and
- (3) Pays the application fee pursuant to § 36-39-35.

A person holding a provisional audiology license is authorized to practice audiology only while working under the supervision of a licensed audiologist under the provisions of

1 this Act. The term for provisional audiology licenses and the conditions for renewal shall  
2 be determined by the board by rules promulgated pursuant to chapter 1-26.

3 **Section 21.** That a NEW SECTION be added:

4 **36-39-21. Speech-language pathology and audiology--Student participation.**

5 Nothing in this Act may be construed as preventing or restricting the activities and  
6 services of persons pursuing a course of study leading to a degree in speech-language  
7 pathology, speech-language pathology assistant, or audiology at a college or university if  
8 these activities and services constitute a part of a planned course of study at that  
9 institution and these persons are designated by a title such as intern, trainee, student,  
10 volunteer, occupational hearing conservationist, industrial audiometric technician, or by  
11 other such title clearly indicating the status appropriate to their level of education, and  
12 these persons work under the supervision of a person licensed by this state as a speech-  
13 language pathologist or audiologist.

14 **Section 22.** That a NEW SECTION be added:

15 **36-39-22. Hearing aid dispensing--License requirements.**

16 Any applicant for licensure to practice hearing aid dispensing shall:

- 17 (1) Be of good moral character;  
18 (2) Be eighteen years of age or older;  
19 (3) Be a high school graduate or the equivalent; and  
20 (4) Pass an examination approved by the board.

21 The applicant may not be the holder of an audiology license.

22 **Section 23.** That a NEW SECTION be added:

23 **36-39-23. Hearing aid dispensing--License examination--Notice to appear.**

24 An applicant for a hearing aid dispensing license having been notified by the board  
25 that the applicant has fulfilled the requirements of § 36-39-22 shall appear at a time,  
26 place, and before such persons as the board may designate, to be examined by written  
27 and oral tests to determine that the applicant is qualified to practice the fitting and  
28 dispensing of hearing aids. As the volume of applications may make appropriate, the board  
29 shall administer the qualifying examinations throughout the year as the board may  
30 designate.

31 **Section 24.** That a NEW SECTION be added:

**36-39-24. Hearing aid dispensing--Examination qualifications--Scope.**

Any applicant who otherwise qualifies for a license to practice hearing aid dispensing is entitled to be examined. The examination shall include the following:

(1) Tests of knowledge in the following areas as they pertain to the fitting and dispensing of hearing aids:

(a) Basic physics of sound;

(b) The human hearing mechanism, including the science of hearing and the rehabilitation of abnormal hearing disorders; and

(c) Structure and function of hearing aids; and

(2) Tests of proficiency in the following techniques as they pertain to the fitting and dispensing of hearing aids:

(a) Pure tone audiometry, including air conduction and bone conduction testing;

(b) Live voice and recorded voice speech audiometry, including speech threshold testing and speech discrimination testing;

(c) Effective masking;

(d) Recording and evaluation of audiograms and speech audiometry tests to determine hearing aid candidacy;

(e) Selection and adaptation of hearing aids and testing of hearing aids; and

(f) Taking earmold impressions, and proficiency in any other skills as they pertain to the fitting and dispensing of hearing aids.

No test under this section may include any questions requiring a medical or surgical education.

Applicants holding a current license to practice hearing aid dispensing in another state are exempt from the examination requirement in this section upon furnishing proof of a current, valid license and passage of a board-approved, written national examination.

**Section 25.** That a NEW SECTION be added:

**36-39-25. Hearing aid dispensing--Provisional licensure--Services limited.**

The board shall issue a provisional hearing aid dispensing license following a submission of application of license, to an applicant to provide hearing aid services to a person who is waiting to take the hearing aid dispensing examination under this Act. The board may issue a provisional hearing aid dispensing license, not to exceed a one-year period, to provide hearing aid services only to a person who:

1     (1) Except for taking and passing an examination under this Act, otherwise qualifies  
2     for a hearing aid dispensing license;

3     (2) Submits an application on the form prescribed by the board; and

4     (3) Pays the application fee pursuant to § 36-39-35.

5     The provisional hearing aid dispensing license may not be renewed except for good  
6     cause shown to the satisfaction of the board.

7     While the provisional hearing aid dispensing license is in effect, the holder may  
8     provide hearing aid services only while being trained under the supervision of a licensed  
9     hearing aid dispenser or licensed audiologist.

10    **Section 26.** That a NEW SECTION be added:

11           **36-39-26. Receipt for sale of hearing aid--Contents--Refund--Violation as**  
12           **misdemeanor.**

13           Any person who practices the dispensing of hearing aids in the State of South  
14           Dakota shall deliver to each person sold a hearing aid a receipt which contains the seller's  
15           signature; the business address of the seller; the specifications of the hearing aid  
16           furnished, including whether it is new, used, or rebuilt; the serial number of the aid; the  
17           date of sale; and the total purchase price charged for the aid, less any allowance for a  
18           trade-in; and the net amount paid by the purchaser. A copy of the original sales order  
19           constitutes a valid receipt and a legal bill of sale, and the purchaser's signature constitutes  
20           full acknowledgment of the terms of the sale. Any purchaser of a hearing aid is entitled to  
21           a refund of the full purchase price paid by the purchaser for the hearing aid, less a  
22           maximum of ten percent upon the return of the hearing aid by the purchaser to the  
23           licensee within thirty days from the date of delivery unless set by contract for more than  
24           thirty days. Any refund shall be paid within thirty days of the return date. A violation of  
25           this section is a Class 2 misdemeanor.

26    **Section 27.** That a NEW SECTION be added:

27           **36-39-27. License required for practice.**

28           No person may engage in the practice of speech-language pathology, audiology,  
29           or hearing aid dispensing, or display a sign, or in any other way advertise or hold oneself  
30           out as a person who practices speech-language pathology, audiology, or hearing aid  
31           dispensing in the State of South Dakota unless the person holds a current license issued  
32           by the board as provided in this Act.

1 **Section 28.** That a NEW SECTION be added:

2 **36-39-28. Application form and fees.**

3 Any applicant pursuant to this Act shall apply on a form prescribed by the board  
4 and pay any applicable fees pursuant to § 36-39-35. The applicant shall also meet all  
5 other qualifications specified within this Act for each respective profession for which the  
6 person seeks licensure.

7 **Section 29.** That a NEW SECTION be added:

8 **36-39-29. Issuance of license.**

9 The board shall issue a license to any applicant for a speech-language pathology,  
10 speech-language pathology assistant, audiology, or hearing aid dispensing license who  
11 meets the requirements of this Act and pays the application fee set by the board pursuant  
12 to § 36-39-35.

13 **Section 30.** That a NEW SECTION be added:

14 **36-39-30. Expiration of license--Renewal.**

15 A license or provisional license issued to a speech-language pathologist or speech-  
16 language pathology assistant under this Act expires biennially at a time specified by rules  
17 promulgated by the board pursuant to chapter 1-26. A license or provisional license issued  
18 to an audiologist or hearing aid dispenser under this Act expires annually at a time  
19 specified by rules promulgated by the board pursuant to chapter 1-26. In order to renew,  
20 a person licensed under this Act shall:

- 21 (1) Pay a renewal license fee established by the board, pursuant § 36-39-25;  
22 (2) Submit an application for renewal on a form prescribed by the board; and  
23 (3) Meet the continuing education requirements established by the board.

24 Licensees are granted a grace period of thirty days beyond the expiration date of  
25 the license to renew retroactively as long as licensees are otherwise eligible and pay to  
26 the board the renewal fee and any late fee pursuant to § 36-39-35.

27 **Section 31.** That a NEW SECTION be added:

28 **36-39-31. Failure to renew--Reinstatement--New license.**

29 A licensee who fails to renew by the end of the thirty-day grace period may have  
30 the license reinstated if:

1     (1) The person submits an application for reinstatement to the board within twenty-  
2     four months after the expiration date of the license;

3     (2) The person meets the requirements established by the board as conditions for  
4     license renewal; and

5     (3) The person pays to the board a reinstatement fee that equals the renewal fee in  
6     effect on the last regular renewal date immediately preceding the date of  
7     reinstatement, plus any late fee pursuant to § 36-39-35.

8     Any person who fails to renew a license within twenty-four months from the  
9     expiration date may not have the license reinstated. The person may apply for and obtain  
10    a new license if in compliance with the requirements of this Act and the rules promulgated  
11    thereunder by the board pursuant to chapter 1-26, and after paying to the board any  
12    appropriate fees.

13    **Section 32.** That a NEW SECTION be added:

14           **36-39-32. Renewal of suspended license--Reinstatement of revoked license.**

15           A suspended license is subject to expiration and may be renewed as provided in  
16           this Act, but the renewal does not entitle the licensee, while the license remains suspended  
17           and until the license is reinstated, to engage in the licensed activity or in any other conduct  
18           or activity in violation of the order of judgment by which the license was suspended.

19           A license revoked on disciplinary grounds is subject to expiration as provided in  
20           this Act, and the license may not be renewed. If the license is reinstated after its  
21           expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee  
22           equal to the renewal fee in effect on the last regular renewal date immediately preceding  
23           the date of reinstatement, plus any late fee pursuant to § 36-39-35.

24    **Section 33.** That a NEW SECTION be added:

25           **36-39-33. Issuance of license to out-of-state licensee.**

26           The board shall issue a speech-language pathology, speech-language pathology  
27           assistant, audiology, or hearing aid dispensing license to an applicant holding a valid  
28           license from another state in the applicant's respective professional area who:

29           (1) Applies to the board on a form prescribed by the board;

30           (2) Pays the application fee pursuant to § 36-39-35;

31           (3) Shows proof of current valid professional licensure;

32           (4) Holds a license from a state with equivalent licensure standards, or for speech-  
33           language pathology, holds a current Certificate of Clinical Competence in Speech-

- 1       Language Pathology from the American Speech-Language-Hearing Association;  
2       and  
3       (5) Is practicing speech-language pathology, audiology, or hearing aid dispensing in  
4       the state in which the license was issued.

5       **Section 34.** That a NEW SECTION be added:

6               **36-39-34. Foreign-educated applicant for a license.**

7               The board shall waive the education, practicum, and professional experience  
8       requirements for applicants who received a professional education in another country if  
9       the board is satisfied that equivalent education and practicum requirements have been  
10       met and the applicant passes the national examination as specified by the board.

11       **Section 35.** That a NEW SECTION be added:

12               **36-39-35. Fees.**

13               The board shall promulgate rules, pursuant to chapter 1-26, to establish  
14       nonrefundable fees, provided for in this Act, within the following limits:

15       (1) Audiologists:

- 16               (a) Application for licensure, not more than three hundred fifty dollars;  
17               (b) Provisional license, not more than one hundred fifty dollars;  
18               (c) Annual license renewal, not more than three hundred fifty dollars; and  
19               (d) Late fee, not more than one hundred dollars;

20       (2) Hearing aid dispensers:

- 21               (a) Application for licensure, not more than three hundred fifty dollars;  
22               (b) Provisional license, not more than one hundred fifty dollars;  
23               (c) Annual license renewal, not more than three hundred fifty dollars; and  
24               (d) Late fee, not more than one hundred dollars; and

25       (3) Speech-language pathologists and speech-language pathology assistants:

- 26               (a) Application for licensure, not more than one hundred fifty dollars;  
27               (b) Annual license renewal, not more than one hundred fifty dollars;  
28               (c) Provisional license, not more than one hundred fifty dollars; and  
29               (d) Late fee, not more than one hundred dollars.

30       **Section 36.** That a NEW SECTION be added:

1           **36-39-36. Posting of certificate of license--Violation a misdemeanor.**

2           The license required by this Act shall be kept conspicuously posted in the licensee's  
3           office or place of business at all times. A violation of this section is a Class 2 misdemeanor.

4           **Section 37.** That a NEW SECTION be added:

5           **36-39-37. Notice to board of change of name or address.**

6           Each licensee, upon changing a place of residence, name, place of employment, or  
7           place of business shall, within ninety days thereafter, furnish the board with updated  
8           information. A post office box number may not be the address of a place of business.

9           **Section 38.** That a NEW SECTION be added:

10           **36-39-38. Disciplinary actions.**

11           Any person licensed under this Act is subject to disciplinary action pursuant to this  
12           section and § 36-39-39. Disciplinary action is subject to contested case procedures in  
13           chapter 1-26. The board may impose separately, or in combination, any of the following  
14           disciplinary actions on a licensee after formal or informal disciplinary action:

- 15           (1) Refuse to issue or renew a license;  
16           (2) Issue a letter of reprimand or concern;  
17           (3) Require the licensee to reimburse the board for costs for the investigation and  
18           proceedings;  
19           (4) Impose probationary conditions;  
20           (5) Suspend or revoke a license;  
21           (6) Impose practice or supervision requirements, or both; or  
22           (7) Require the licensee to attend continuing education programs specified by the  
23           board as to content and hours.

24           **Section 39.** That a NEW SECTION be added:

25           **36-39-39. Disciplinary action--Grounds.**

26           The board may take disciplinary action for the following conduct:

- 27           (1) Fraudulently or deceptively obtaining or attempting to obtain a license or a  
28           provisional license;  
29           (2) Fraudulently or deceptively using a license or provisional license;  
30           (3) Altering a license or provisional license;  
31           (4) Aiding or abetting unlicensed practice;

- 1     (5) Selling, bartering, or offering to sell or barter a license or provisional license;  
2     (6) Committing fraud or deceit in the practice of speech-language pathology,  
3     audiology, or hearing aid dispensing, including:  
4         (a) Willfully making or filing a false report or record in the practice of speech-  
5             language pathology, audiology, or hearing aid dispensing;  
6         (b) Submitting a false statement to collect a fee; or  
7         (c) Obtaining a fee through fraud or misrepresentation;  
8     (7) Using or promoting or causing the use of any misleading, deceiving, improbable,  
9     or untruthful advertising matter, promotional literature, testimonial, guarantee,  
10    warranty, label, brand insignia, or any other representation;  
11    (8) Falsely representing the use or availability of services or advice of a physician;  
12    (9) Misrepresenting the applicant or licensee by using the term, doctor, or any similar  
13    word, abbreviation, or symbol, if the use is not accurate or if the degree was not  
14    obtained from a regionally accredited institution;  
15    (10) Committing any act of dishonesty, immorality, or unprofessional conduct while  
16    engaging in the practice of speech-language pathology, audiology, or hearing aid  
17    dispensing;  
18    (11) Engaging in illegal, incompetent, or negligent practice;  
19    (12) Providing professional services while:  
20         (a) Mentally incompetent;  
21         (b) Under the influence of alcohol; or  
22         (c) Using any narcotic or controlled dangerous substance or other drug that is  
23             in excess of therapeutic amounts or without valid medical indication;  
24    (13) Providing services or promoting the sale of devices, appliances, or products to a  
25    person who cannot reasonably be expected to benefit from such services, devices,  
26    appliances, or products;  
27    (14) Violating any provision of this Act, or any lawful order given, or rule adopted, by  
28    the board;  
29    (15) Being convicted or pleading guilty or nolo contendere to a felony or to a crime  
30    involving moral turpitude, whether or not any appeal or other proceeding is  
31    pending to have the conviction or plea set aside;  
32    (16) Being disciplined by a licensing or disciplinary authority of any state or country, or  
33    any nationally recognized professional organization, or convicted or disciplined by  
34    a court of any state or country for an act that would be grounds for disciplinary  
35    action under this section;

- 1     (17) Exploiting a patient for financial gain or sexual favors;  
2     (18) Failing to report suspected cases of child abuse or vulnerable adult abuse;  
3     (19) Diagnosing or treating a person for speech disorders by mail or telephone, unless  
4         the person has been previously examined by the licensee and the diagnosis or  
5         treatment is related to such examination; or  
6     (20) Violating federal, state, or local laws relating to the profession.  
7         The board shall adopt, by rules promulgated pursuant to chapter 1-26, a schedule  
8         of sanctions to be imposed as the result of formal or informal disciplinary activities  
9         conducted by the board.

10    **Section 40.** That a NEW SECTION be added:

11           **36-39-40. Suspended or revoked license--Reinstatement.**

12           If the board imposes suspension or revocation of a license, application may be  
13           made to the board for reinstatement. If a licensee is placed on probation, the board may  
14           require the license holder to:

- 15           (1) Report regularly to the board on matters that are the basis of the probation;  
16           (2) Limit practice to the areas prescribed by the board; or  
17           (3) Participate in continuing education until the license holder attains a degree of skill  
18           satisfactory to the board in those areas that are the basis of the probation.

19    **Section 41.** That a NEW SECTION be added:

20           **36-39-41. Disciplinary hearing--Decision--Appeal.**

21           The board may take disciplinary action or suspend, revoke, or reissue a license or  
22           certification only after a hearing conducted by a hearing examiner appointed by the board  
23           of by a majority of the members of the board.

24           Any disciplinary proceedings relative to the revocation or suspension of a license  
25           or certification shall otherwise conform to the procedure set forth in chapter 1-26.

26           Any decision of the board to discipline, suspend, revoke, or reissue a license or  
27           certification requires a majority vote of the board membership.

28           Any party feeling aggrieved by any acts, rulings, or decisions of the board acting  
29           pursuant to § 36-39-38, 36-39-39, or 36-39-40, has the right to appeal under the  
30           provisions of chapter 1-26.

31    **Section 42.** That a NEW SECTION be added:

1       **36-39-42. Injunction for violation.**

2           Any person violating the provisions of this Act may be enjoined from further  
3       violations at the suit of the state's attorney of the county where the violation occurred or  
4       suit may be brought by any citizen of this state. An action for injunction is an alternative  
5       to criminal proceedings, and the commencement of one proceeding by the board  
6       constitutes an election.

7       **Section 43.** That a NEW SECTION be added:

8       **36-39-43. Telepractice.**

9           Any person licensed pursuant to this Act may provide services via telepractice  
10       pursuant to chapter 34-52. Services delivered via telepractice shall be equivalent to the  
11       quality of services delivered face-to-face.

12       **Section 44.** That a NEW SECTION be added:

13       **36-39-44. Certain activities not prevented or restricted.**

14           Nothing in this Act may be construed as preventing or restricting:

- 15       (1) A person licensed or registered by this state in another profession from practicing  
16       the profession for which licensed or registered;  
17       (2) A person certified as a teacher of the deaf or hard of hearing students providing  
18       instruction to persons who are deaf or hard of hearing;  
19       (3) The activities of any person who is not licensed in this state from engaging in the  
20       practice of speech-language pathology or audiology for the purpose of providing  
21       training or continuous education as long as they hold an active license in another  
22       state, agree to abide by the standards of professional conducts, and do not engage  
23       in such activities exceeding five days in any calendar year; and  
24       (4) Any person possessing a valid certificate as a certified industrial audiometric  
25       technician or occupational hearing conservationist recognized by the board as  
26       meeting Council for Accreditation in Occupational Hearing Conservation Standards  
27       if such service is performed in cooperation with either an audiologist licensed under  
28       this Act or a physician licensed pursuant to chapter 36-4.

29       **Section 45.** That §§ 36-24-1 to 36-24-21.1 be REPEALED.

30       **Section 46.** That §§ 36-24-24.1 to 36-24-46 be REPEALED.

31       **Section 47.** That §§ 36-37-1 to 36-37-25 be REPEALED.