

Meeting Minutes
SOUTH DAKOTA BOARD OF EDUCATION STANDARDS
City/School Administration Center, Council Chambers,
300 Sixth Street, Rapid City, South Dakota 57701
Friday, May 6, 2022, at 9:00 a.m. MT

For live streaming of meeting: <http://www.sd.net>

To join via conference call - 346 -248 -7799

Meeting ID: 987 1536 1611

Passcode: 731328

1 **Members Present:** Becky Guffin
2 Phyllis Heineman
3 Rich Meyer, New member
4 Terry Nebelsick
5 Linda Olsen
6 Steve Willard

7 **Via ZOOM** Julie Westra

8
9 **DOE Staff Present:** Tiffany Sanderson, Laura Scheibe, Amanda LaCroix, Vera Tipton,
10 Shannon Malone, Amy Miller, Sarah Carter, Holly Robling, and Ferne
11 Haddock.

12 **via ZOOM** Matt Gill, Amy Gabriel, Linda Turner, and Jennifer Tschetter

13
14 **Others in attendance :** Joe Hauge, Black Hills Special Services Cooperative, Brenda Tidball-
15 Zetlinger, Department of Social Services, David Sanderson, University of
16 South Dakota, Kris Detert, Holly Nordstrom, Bobbie Jo Donovan, Coleen
17 Keffeler, Shelly Skogstad, Melissa Gent, and other members of the public
18 in attendance in person, via ZOOM, or telephone.

19
20 **Call to Order, Pledge of Allegiance, and Roll Call**

21
22 The South Dakota Board of Education Standards (BOES) was called to order by President Guffin
23 at approximately 9:05 a.m. Mountain Time.

24
25 Secretary Sanderson introduced Rich Meyer as new member, and thanked Jacqueline Sly for
26 her service on the board.

27
28 Mr. Meyer gave a short autobiography.

29
30 **Adoption of Agenda**

31
32 Motion by Heineman second by Olsen to adopt the May 6, 2022, agenda. Voice vote. All
33 present voted in favor. Motion carried. Voting aye: Heineman, Meyer, Nebelsick, Olsen, Westra,
34 Willard, and Guffin.

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Approval of Minutes

Motion by Nebelsick second by Willard to approve the April 7, 2022, BOTE/BOES Joint meeting minutes, and the April 7, 2022, BOES Meeting minutes. Voice vote. Meyer abstained. Motion carried. Voting aye: Heineman, Nebelsick, Olsen, Westra, Willard, and Guffin.

Election of officers

President Guffin ceded gavel to Secretary Sanderson at approximately 9:11 a.m. MT.

Election of Vice President

Willard nominated Nebelsick for Vice President for 2022. Nominations closed Roll call vote for Nebelsick for Vice President. All present voted in favor. Voting Aye: Heineman, Mayer, Nebelsick, Olson, Westra Willard, and Guffin.

Secretary Sanderson ceded the gavel back to President Guffin at approximately 9: 13 a.m. MT.

Conflicts Disclosures (SDCL 3-23)

There were no conflict disclosures presented.

President Guffin declared a recess at approximately 9:15 a.m. MT to address technical issues.

President Guffin called the meeting back to order at approximately 9:20 a.m. MT.

Public Comment: SDCL 1-25-1

Shelly Skogstad, a School Psychologist, presented personal comment on School Psychological Examiner definition. Skogstad feels that there needs to be clarification regarding supervision of School Psychological Examiner, and their reports needing to be cosigned by School Psychologists. She felt that supervision requirements need to remain in place for School Psychological Examiners. Skogstad feels that the students, families, and school districts should be assured that all the issues surrounding the topic of school psychological examiners including ensuring that students are being provided psychological services by adequately trained professionals, are being addressed.

Melissa Gent, a School Psychologist, gave personal comment concerning the School Psychological Examiner oversight. Gent wants to make sure the oversight and training of School Psychological Examiners is appropriate. Gent stated that licensed School Psychologists should administer psychological assessments and evaluations.

78 **Public Hearing-Standards: Fine Arts and Career & Technical Education: Agriculture Food and**
79 **Natural Resources; Arts, A/V Technology & Communication; Finance Career; Health Science;**
80 **Human Services; and Manufacturing.**

81
82 The Board convened a public hearing at approximately 9:32 a.m. MT on the following proposed
83 standards: Fine Arts, and Career & Technical Education: Agriculture Food and Natural
84 Resources; Arts, A/V Technology & Communication; Finance Career; Health Science; Human
85 Services; and Manufacturing. This is the fourth of four hearings on these standards.

86
87 **Fine Arts Standards**

88
89 Proponent Testimony

90
91 Shannon Malone, Director, Division of Learning and Instruction, DOE, gave an overview of the
92 proposed Fine Arts Standards revision process and a summary of comments received. Malone
93 reported that DOE convened a Fine Arts Standards revision workgroup to review the Fine Arts
94 standards. The workgroup represented public and private school districts, university faculty,
95 and other stakeholders. They met via ZOOM seven times between June 21, 2021, and July 19,
96 2021.

97
98 Malone stated between the January 31, 2022, hearing and April 29, 2022, two additional
99 comments had been received. One addressed the issue of portfolios and the other a Visual Arts
100 creating standard. The comments were presented to the workgroup, no changes were made to
101 the proposed standards.

102
103 Dr. David Sanderson, Assistant Professor of Music Education, University of South Dakota (USD)
104 and workgroup member, testified on his own behalf in favor of the Fine Arts proposed
105 standards.

106
107 Opponent Testimony

108
109 There was no opponent testimony.

110
111 Motion by Heineman second by Nebelsick to approve the Fine Arts standards as presented.
112 Voice vote. Meyer abstained. Motion carried. Voting aye: Heineman, Nebelsick, Olsen, Westra,
113 Willard, and Guffin.

114
115 **Career and Technical Education (CTE) Standards**

116
117 Laura Scheibe, Director, Division of College, Career, and Student Success, DOE, provided a short
118 overview of the process used to revise the Career and Technical Education (CTE) standards:
119 Agriculture Food and Natural Resources; Arts, A/V Technology & Communication; Finance
120 Career; Health Science; Human Services; and Manufacturing.

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Agriculture Food and Natural Resources (AFNR)

Proponent Testimony

Scheibe testified in favor of the proposed Agriculture, Food and Natural Resources standards.

Scheibe stated there were no new public comments on the AFNR standards since the previous hearing.

Bobbie Donovan, Rapid City Area School teacher, testified on her own behalf, in favor of all the CTE standards.

Coleen Keffeler, Meade School District teacher, testified on her own behalf, in favor of all the CTE standards.

Opponent Testimony

There was no opponent testimony.

Arts, A/V Technology & Communications Career Cluster

Proponent Testimony

Scheibe testified in favor of the proposed Arts, A/V Technology & Communications (AAVTC) standards.

Scheibe stated there were no public comments on the AAVTC standards since the previous hearing.

Opponent Testimony

There was no opponent testimony.

Finance Career

Proponent Testimony

Scheibe testified in favor of the proposed Finance Career standards.

Scheibe stated there were no public comments received on the Finance Standards.

Opponent Testimony

166 There was no opponent testimony.

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168 **Health Science Career**

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170 Proponent Testimony

171

172 Scheibe testified in favor of the proposed Health Science Career standards

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174 Scheibe stated there were no public comments received on the Health Science Career standards.

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176 Opponent Testimony

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178 There was no opponent testimony.

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180 **Human Services Career**

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182 Proponent Testimony

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184 Scheibe testified in favor of the proposed Human Services standards

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186 Scheibe stated there were no public comments received on the Human Services standards.

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188 Opponent Testimony

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190 There was no opponent testimony.

191

192 **Manufacturing Career**

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194 Proponent Testimony

195

196 Scheibe testified in favor of the proposed Manufacturing standards

197

198 Scheibe stated that as noted at a previous hearing, Ag Metal Fabrication has been added to the Welding pathway per public comment received on the AFNR standards.

199

200 Scheibe stated there were no public comments received on the Manufacturing standards.

201

202 Meyer questioned if it was usual to not receive comments on the standards.

203

204 Scheibe responded that some public comments had been addressed at an earlier hearing, and due to the broad consultation and overall feedback used in during the process of putting the standards together, it is typical not to have more public comment.

205

210 Opponent Testimony

211

212 There was no opponent testimony.

213

214 Board questions and discussion.

215

216 Motion by Willard second by Heineman to move the Career and Technical Education (CTE)
217 standards: Agriculture Food and Natural Resources; Arts, A/V Technology & Communication;
218 Finance Career; Health Science; Human Services; and Manufacturing, proposed standards as
219 presented. Voice vote. Meyer abstained. Motion carried. Voting aye: Heineman, Nebelsick,
220 Olsen, Westra, Willard, and Guffin.

221

222 Nebelsick stated that the CTE standards are so important to keep up with industry standards
223 and that the Fine Arts standards allow for better communities in the future. Nebelsick wanted
224 to express gratitude for the work that goes into revising the standards.

225

226 Guffin also expressed that this in an arduous process. She appreciates all the time and feedback
227 by individuals that are part of the process.

228

229 **Public Hearing-RULES: - ARSD 24:05 (Special Education) and ARSD 24:14 (Early Intervention)**

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231 The Board convened a public hearing at approximately 10:15 a.m. MT on ARSD 24:05 (Special
232 Education) and ARSD 24:14 (Early Intervention) proposed rules changes

233

234 **ARSD 24:05 (Special Education)**

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236 Proponents

237

238 Linda Turner, Director Division of Special Education and Early Learning, DOE, testified in favor of
239 the revised rules for Article 24:05 (Special Education). These rules govern the Individuals with
240 Disabilities Education Act (IDEA).

241

242 Turner presented the written comments that were received.

243

244 Turner stated that revisions to Special Education rules are long overdue. State regulations are
245 aligned with Federal Administrative Rules under the IDEA, which has not been reauthorized
246 since 2004. However, there have been reauthorization of other Federal laws that are
247 referenced or have amended IDEA, that need to be reflected in our rules, along with some form
248 and style amendments. Turner further stated that these rules proposed are to reflect changes
249 to state policies, practices and procedures that have occurred during this time and are allowed
250 under the IDEA.

251

252 Turner stated that Special Education Programs has been collecting potential rules revisions for
253 several years to be considered when IDEA was reauthorized. IDEA is supposed to be

254 reauthorized every five years, it is currently 13 years overdue for reauthorization. Special
255 Education Programs have actively engaged with stakeholders to identify and draft revisions.
256 They have engaged with the Council for the Administrators of Special Education (CASE), South
257 Dakota Speech Language and Hearing Association (SDSLHA), South Dakota Association of School
258 Psychologists (SDASP), parent organizations, and the South Dakota Advisory Panel on Children
259 with Disabilities (SDAPCD). Turner added that drafts of the rules were widely shared with these
260 groups to engage in conversations and to continue to refine the rule package.

261
262 Turner stated the rules draft was presented for first read in January 2022, at the Board of
263 Education Standards (BOES) meeting and requested to be moved to a hearing. The proposed
264 rules were out for public comment beginning in February 2022. Turner stated the Special
265 Education Programs continued to work with groups on a small number of issues that not all
266 parties were not in agreement on. At the public hearing scheduled for April 7, 2022, the board
267 heard comments, but the Department asked to extend the public comment period, to continue
268 to work with stakeholders and release a revised draft to address outstanding concerns.

269
270 Turner stated that the draft presented today has been received favorably and with minimal
271 comment and opposition, except for a couple of areas that Turner went on to explain. Turner
272 stated that in the first round of public comment from February 23 to April 6, 2022, the
273 Department received eight comments from four individuals, two individuals submitted separate
274 comments on different rules, and two organizations through <https://rules.sd.gov/default.aspx>.
275 Turner stated that in addition to the formal public comment input was received during public
276 discussion during the SD CASE meeting on March 15, 2022, and at the SDAPCD meeting on
277 March 31, 2022. Turner stated that based on the input and testimony from the April 7, 2022,
278 hearing, some minor revisions were made, and the rules were reposted on April 12, 2022.
279 Turner stated that during the comment period from April 7 to May 4, 2022, five comments were
280 received from three individuals and two organizations through <https://rules.sd.gov/default.aspx>.

281
282 Turner said that in general, there was overall support for proposed the rules. Based on public
283 comment and recommends from Legislative Research Council (LRC) a few minor changes were
284 made along with form and style edits. A new draft of rules for Article 24:05 was posted for the
285 May 6, 2022, Board meeting.

286
287 Turner presented some of the non-substantive changes to the rules that received favorable
288 support or were not commented on, including but not limited to form and style changes. Turner
289 explained changed to terminology that was inconsistently used along with recognizable
290 accepted acronyms, age of accountability for services, definitions align with state and federal
291 changes in definitions based on amended law and rules and definitions were added for
292 clarification of terms. Turner continued with brief explanations of other form and style changes.

293
294 Turner went report on changes that have generated the most public comment/and or
295 opposition. Based on Public Comment and the testimony at the April 7, 2022, hearing, the
296 Department is proposing to repeal 24:05:23 (all the evaluator requirements). Turners stated
297 that much of the conversation and opposition was centered around the proposal to repeal the

298 School Psychological Examiner requirement from evaluators, as well as repealing School
299 Psychological Examiner from Certification and Preparation. The Board heard testimony at the
300 April 7th hearing and chose not to act on Certification and Preparation requirements. Therefore
301 the 24:28 (Educator Certification) and 24:53 (Educator Preparation) rules were removed from
302 the hearing today. The Department will be reviewing the issues of concern around those rules
303 and will form a workgroup with the possibility of bringing forth changes at a future time. Turner
304 added that the repeal of School Psychological Examiner in the initial proposal grew to a larger
305 recommendation to repeal the entire chapter for evaluators. Evaluators are not defined
306 generally under the evaluation procedures in IDEA. This revision does cover all the
307 requirements that were concerning about to ensure that evaluators were trained, and
308 knowledgeable on the instruments they were administering in conformance with the
309 publisher's instructions, it does not eliminate School Psychological Examiners endorsement
310 which is duplicated and still included in other areas. The rules change at this time should not
311 impact the requirements and provision for a School Psychological Examiner to be employed and
312 To evaluate students based on their training and knowledge with an evaluation instrument in
313 line with the publisher criteria, and having their reports signed off on by a certified School
314 Psychologist.

315
316 Turner continued her testimony on 24:05:27:12 graduation requirements. This centers around
317 how students with disabilities may not be able to meet graduation requirements to the same
318 standards as all students and can be awarded diploma or state recognized certification, but to
319 recognize meeting their requirements outlined in their Individual Education Plan and ensure
320 they are not negatively impacted for employment or by not having a diploma. The proposed
321 revision aligns with federal graduation requirements and end of eligibility for special education
322 for students with disabilities. A diploma is defined as a diploma that is issued based on meeting
323 the same standards as a predominance of students in the state. Districts have flexibility to allow
324 participation in graduation ceremonies and issue other types of awards. The Department is
325 open to exploring and considering new ways to ensure they are consistently applying, at a
326 statewide level, a standard for honoring and awarding students with disabilities a diploma or
327 certificate that considers their unique abilities and accomplishments.

328
329 Turner testified that Special Education Programs has taken great care and consulted multiple
330 parties and taken into consideration the feedback to develop these rules. That it meets federal
331 requirements and allows flexibility to clarify and improve programing to meet the needs of
332 students with disabilities. Turner asked for a favorable consideration on the rules.

333
334 Board discussion and questions.

335
336 Board appreciates the Department looking in to defining diploma-graduation requirements and
337 concluding action for issuing diplomas.

338
339 What is the value in repealing the repealing 24:05:23 (School Psychological Evaluator section)?
340

341 Turner stated that the evaluator requirements are not part of IDEA, and federally there is not a
342 definition of what the evaluators should be. The Departments concern on administration of
343 evaluations is that the evaluators are trained and knowledgeable with the instruments they
344 administer, and that they are in line with the publishers' criteria. Those items are included in
345 the evaluation requirements that are in the Article and having all the evaluators defined
346 separately was duplicative and was not adding anything to the chapter.

347
348 What is the difference between the evaluator and the examiner?
349

350 Turner responded that the terms are used interchangeably. The School Psychological Examiner
351 has an endorsement, and that terminology is used when referring to them. She continued that
352 evaluation and exam are synonymous.

353
354 For clarification: the section we are voting on for repealing this in this section of the rules
355 today, but the School Psychological Examiner rules are in another section.
356

357 Turner responded yes, the definition for School Psychological Examiner and to receive the
358 endorsement and the certification are outside of these special education rules.

359
360 Opponents

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362 There was no opponent testimony.
363

364 Motion by Olsen second by Nebelsick to approve ARSD 24:05 (Special Education) rules as
365 presented. Voice vote. All present voted in favor. Motion carried. Voting aye: Heineman,
366 Meyer, Nebelsick, Olsen, Westra, Willard, and Guffin.

367
368 ARSD 24:05 (Special Education) concluded at approximately 10:46 a.m. MT.
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370 **Public Hearing-RULES: - ARSD 24:14 (Early Intervention)**

371
372 The Board convened a public hearing at approximately 10:46 a.m. MT on ARSD 24:14 (Early
373 Intervention) proposed rules changes.

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375 **ARSD 24:14 (Early Intervention)**

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377 Proponents

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379 Sarah Carter, Administrator, Office of Early Childhood Services (also known as Birth to 3), DOE,
380 testified in favor of proposed changes to ARSD 24:14 (Early Intervention). Carter stated, these
381 rules govern the Individuals with Disabilities Education Act (IDEA - Part C program commonly
382 referred to as Birth to 3 in South Dakota). The Birth to 3 program serves children from birth
383 until their third birthday with developmental delays or disabilities and their families. All services
384 are provided at no cost to families.

385
386 Carter stated that the rules proposed today will be to clarify and update language that is
387 outdated or no longer in practice and propose restructure reimbursement formulas for
388 specialist instruction and family training services and travel time. The reason for adopting the
389 proposed rules is ensure definitions align across chapters and with the IDEA Part B program
390 along with language clean up. Restructuring the reimbursement formulas are in response to
391 increases to Medicaid rates scheduled for July 1, 2022.

392
393 Carter stated the proposed changes include items the state has researched and analyzed for
394 several years and involved stakeholders including providers and other state agencies such as
395 the Department of Social Services Medicaid office, in the conversations. During the public
396 comment period the state met with the State Interagency Coordinating Council (ICC), to
397 present changes. Carter added that input was received from this group along with formal
398 comments submitted through the public comment period.

399
400 Carter stated they received 33 comments related to the proposed changes. Please note that two
401 comments were received after the comment period closed but are included.

402
403 Carter stated there was support or no comment for most of the proposed rules changes. Two
404 areas did receive comments in opposition.

405
406 Carter testified to the rules that received no comment or opposition that provide clarification
407 and alignment with state and federal rules, policy and procedures and removing outdated
408 language. There are no major changes to these rules. As IDEA has not been reauthorized in
409 several years, there have been changes to practice that are allowable under IDEA, along with
410 proposed changes that update federal rule dates, punctuation, spelling, consistency of terms or
411 acronyms throughout the chapter

412
413 Carter stated that several comments have been received related to how direct service providers
414 are reimbursed for their travel to and from serving children. Those rules are reflected in
415 Chapter 24:14:04 Financial Matters and include a fiscal impact to the program. Carter went on
416 to inform the board there have been rumors and some misinformation circulating about these
417 rules and the impact on the program and ability to continue serving children. The proposed
418 rules do not cut funding to the program, instead we are proposing a formula change for
419 calculating reimbursement to direct service providers when traveling.

420
421 Carter stated that to fully understand the changes proposed, she directed the board to two
422 important rules that set the stage for these changes. First ARSD 24:14:04 Financial Matters Part
423 C / Birth to 3 early intervention services are provided at no cost to families. All services are at
424 no cost to families. Also, ARSD 24:14:04:12 states providers for authorized services are
425 reimbursed at established Medicaid rates. Early intervention services that are not eligible for
426 Medicaid, are currently reimbursed as outlined in this section. Carter went on to explain that
427 using state general dollars, Birth to 3 reimburses eligible direct service providers according to
428 established Medicaid rates. Those direct services include Physical Therapy (PT), Occupational

429 Therapy (OT) and Speech Language Pathology (SLP). Medicaid reimbursement rates will be
430 increasing effective July 1, 2022. These rate changes are going into effect on July 1st regardless
431 of what action is taken on these rules today. The new rates reflect both the Medicaid billing
432 unit. New rates reflect the Medicaid increase and the 6% increase that was approved during
433 the 2022 legislative session for Medicaid providers.

434
435 Carter testified that when the Medicaid office shared the new rates, the Birth to 3 Program
436 conducted a fiscal impact analysis. Using data from 2018-2019 (pre-covid) it is estimated these
437 changes to provider direct service reimbursements will have an annual cost increase to the
438 program of \$375,000 to \$400,000.

439
440 Carter reiterated that certain services are eligible for Medicaid rate reimbursement and that
441 others are not. ARSD 24:14:04:12 presents early intervention services that are not reimbursable
442 by Medicaid: Those are special instruction and family training. These two services
443 reimbursement rates have remained stagnant for several years. Since they are not Medicaid
444 reimbursable, they have not been eligible for the index factor increases other providers have
445 received as part of annual appropriations. The Department is proposing rule changes that
446 would formulate how these providers are reimbursed over time vs. a set rate scripted in
447 administrative rule. They are proposing these services be moved to 80% of the most commonly
448 billed speech rate code 92507. The existing rule for these rates has not been touched for over
449 12 years. This change will assist the state in attracting these professionals to the program to
450 offer support to families. Those individuals who qualify for this are certified teachers with early
451 childhood special education endorsements, counselors, and social workers. Carter stated that
452 this change would allow for a much overdue adjustment to their current rate and ensure the
453 rates stay up to date over time. Carter stated that using the same 2018-2019 data from the
454 fiscal analysis, the changes associated with this proposed rule change are estimated to increase
455 the program cost by \$47,000 annually. Carter said that there was no opposition brought
456 forward on this, and the state ICC was very much in support of this change, and letters of
457 support have been received from proponents to this change.

458
459 Carter stated that if this change is approved and adding the July 1 cost increases presented
460 earlier, the program will have an estimated increased annual cost of \$422,000 to \$447,000.
461 Carter said that regardless of 24:14 changes being adopted, the Medicaid reimbursement for
462 PT, OT and SLP will go into effect July 1, 2022. Given this large increase the state did an in depth
463 look at if these costs could be absorbed given the programs current structure. The short answer
464 is, they can't. The longer answer is tied to child count, or the number of children served each
465 year. Prior to COVID child count was growing each year. In 2019 we took a slight dip and of
466 course 2020 was the COVID year. The last count on December 1, 2021, shows a very steady
467 increase in the number of children served. Carter stated that given this and the increases to
468 provider reimbursement rates, cost savings had to be found, so that the program would not
469 exceed its budget.

470
471 Carter stated that with the new Medicaid rates that will go into effect July first, the program
472 cannot sustain the provider increases to services and the existing travel time reimbursement.

473 After looking at other state programs, they discovered that other Medicaid providers are not
474 reimbursed for their travel time. The service rate for Medicaid is designed to cover both face-
475 to-face services and other overhead costs like travel time and documentation. Birth to 3
476 providers, though, go to their clients and families, where most other programs have clients
477 come into a clinic or therapy office. Thus, covering some costs for mileage make sense. We are
478 recommending providers be reimbursed at a flat rate of \$1.00 per mile beginning in fiscal year
479 2023. This proposal is the same approach that the Unified Judicial System has in paying mileage
480 for attorneys. In addition, we're proposing that the mileage reimbursement rate will increase
481 each year by the adopted index factor during the legislature's appropriations work. Carter
482 reported that moving the mileage reimbursement to a flat rate to \$1.00 per mile will result in a
483 cost savings of an estimated \$319,862 to the program. Carter stated that as mentioned earlier
484 that the increased Medicaid rates would raise program costs by up to \$449,000. With the
485 decrease on the travel side of the budget, we would still have a total increase in cost of about
486 \$129,000. This difference is something our existing budget can accommodate.

487
488 Carter continued by stating that the early intervention program has taken great care, consulted
489 with stakeholders, other state Part C programs and other state agencies and taken into
490 consideration extensive factors and feedback to develop and bring forward a rules package that
491 meets federal requirements and remains fiscally responsible. They are aware that, with these
492 changes, there will be sometimes when providers will receive less than what they have received
493 in the past, but we also know there will be instances where providers will receive more than
494 they do currently. We are at an important decision point in our program as we cannot sustain
495 the rate increases and the travel reimbursement rates. If we do not make changes we will run
496 out of funds; when we run out of funds, services to children stop. We must be fiscally
497 responsible and fair, ensuring our youngest learners have services that set them up well for
498 their lifetime.

499
500 Carter stated that as stated earlier the state received 33 comments during the public comment
501 period. Eleven comments were from parents and physicians whose spoke to concerns over
502 cutting funding to the program; that is not the case funds are not being cut to the program.
503 Sixteen individual comments were received representing three entities or groups and eight
504 individual providers in opposition to the changes to travel reimbursement. Carter reported that
505 some comments appreciated the increases to Medicaid rates but were opposed to the
506 restructuring of travel reimbursement .Several comments spoke to a 6% increase, which
507 appears to be misunderstanding, the increases as shown today and sent to providers when
508 notifying of the proposed rule changes included the increases and were sent again through our
509 listserv to ensure everyone could see the correct amounts. Carter stated that some suggestions
510 were made to offer a set schedule for services; that is not possible. The intent of the program is
511 to individualize the services to the child needs and family priorities, and some suggestions were
512 made about combining services in the event one was missed, considering of the age of the
513 children they serve, having an early intervention session go from 2 units or 30 minutes to one
514 full hour for an infant or toddler isn't realistic. Some comments suggested requiring all
515 providers to bill private insurance. Currently the program does require all providers to be
516 Medicaid eligible, however, providers may, with parents' permission, bill the families private

517 insurance and charge their usual and customary charges and may still bill the state for their
518 travel. The state has not made that mandatory. They have looked to this, but they do not have
519 the program staff to oversee that. Other comments included reimbursements or Medicaid rates
520 in surrounding states. Each state's Part C program is unique and administered differently.
521 Special Education Services is conducting monitoring of all state part C and Part B programs in
522 the next four years.

523
524 Carter stated that there has been concern over providers limited services and not enough
525 providers to see all the children. The Department understand providers will need to make
526 choices for their private business. While not first choice, they can offer virtual services. Again,
527 not first choice but with the pandemic this has become an acceptable option and our Medicaid
528 office has approved it and providers may bill Medicaid for those services. The Governor's focus
529 on broad band this has increased opportunities in our more rural areas.

530
531 Carter shared that they also received comments in support, the ICC has been aware of the
532 possible changes and agreed with the changes. In addition to our advisory council, which
533 includes providers and parents, we received one comment that was not opposing, but asking
534 questions related to how providers would be informed annually of increases to travel. That will
535 be done annually with new fiscal years when announcements of increases to rates occur.

536
537 Board questions and discussion
538
539 Legislature sets the appropriation, does the Department then have the authority to say where
540 the dollars are allocated?

541
542 Carter responded that South Dakota receives a maintenance of effort, a set amount. All the
543 state dollar funds go to service provider reimbursement, not to a state office. The Part C
544 program is considered the payer of last resort. Carter said that all providers are reimbursed at
545 the Medicaid rates, so that all families are served equally, not based on the family's private
546 insurance. Medicaid is billed first, with the parent's permission. If the child is not Medicaid
547 eligible, or the parent does not give permission then they bill our state dollars. The OT, PT, and
548 SLP reimbursement rates are set by Medicaid and must be absorbed within the budget. The
549 mentioned amount of \$47,000 are for two other services, Special Instruction, and Family
550 Training. Those rates have been stagnant for years. It was felt that this was the time to adjust
551 those rates and make them more equitable, given the education and background that are the
552 qualifications for those providers. The additional \$129,00 would have to be absorbed in the
553 budget.

554
555 How would that be absorbed?

556
557 Carter said that one way was through teletherapy. It is much more acceptable due to the
558 pandemic. This in not a first choice, but it is an option
559

560 One board member felt that the flat rate may affect those in the city more than in rural areas,
561 as sometimes it is difficult to get providers to travel to rural areas.

562

563 Proponent (continued)

564

565 Joe Hauge, Executive Director, Black Hills Special Services Cooperative, stood in support of the
566 proposed rules. Hauge said that he recognizes the issues with the travel rates, but really thinks
567 that the OT, PT, and SLP Medicaid reimbursement rate increases are a top priority.

568

569 Brenda Tidball-Zetlinger, Deputy Secretary, Department of Social Services (DSS), testified in
570 favor of the proposed rules. Tidball-Zetlinger felt this was a good collaborative partnership with
571 DOE and DSS. The Medicaid agency supports and is a member serving with the ICC for Birth to
572 3. The South Dakota Medicaid program regularly examines and reviews reimbursement rates
573 for providers. They recognize that in these specific therapy services there have been some
574 discrepancies with the rates. Medicaid rates are reimbursed with a fee for service basis. She
575 stated that in addition to the 6% provider inflation increase voted on by the Legislature in the
576 2022 session for these services, the Medicaid program July 1st will implement the rate
577 reimbursement changes. Zetlinger added that the Federal regulatory guidelines include travel
578 as a component of the Medicaid Reimbursement rate for services.

579

580 Opponents

581

582 Holly Nordstrom, a Speech Language Pathologist in the Rapid City, Black Hills area, testified in
583 opposition to the proposed rules. She felt the new rate would turn providers away from Birth to
584 3. The current unit rate reimburses the time it takes to get to the children.

585

586 Kris Detert, an independent physical therapy provider/contractor, Sioux Falls, testified in opposition to
587 the rules. She feels that the flat rate travel reimbursement will result in a net loss for providers. She
588 does not feel that virtual sessions are in the best interest of the child. Detert did not want drive time
589 reimbursement to be cut.

590

591 Board Questions and Discussion

592

593 The Board felt that the details of the presentation were helpful, that the testimony was
594 informative, and that the fiscal impact will be felt even more than predicted. Inflation is a factor
595 when providing services.

596

597 What is the current rate for travel reimbursement?

598

599 Carter stated that there isn't any one rate across the state, that it varies across disciplines. At
600 present OT, PT, and SLP rates, plus city versus rural rates. There are formulas to figure out the
601 per unit rate.

602

603 Follow up: Will the changes clear up the variances and move to just the flat rate per mile
604 reimbursement?

605
606 Carter answered yes.

607
608 How did you arrive at the \$1.00 per mile?

609
610 Carter responded that they visited with Medicaid and other state entities that provide Medicaid
611 reimbursement. On visiting with Medicaid office their rates consider 40% for the provider is
612 with the family, and 60% is additional cost which includes travel. They also looked at other
613 states and there was no clear method.

614
615 A Board member felt the \$1.00 flat rate would simplify the system. There is only so much
616 money whether you pay in milage and or services through Medicaid. Some folks will benefit
617 some will not.

618
619 The Board felt the Legislature sets the allotment, and you must stay within the allotment and
620 not go above the amount.

621
622 Is there a timeline restriction on approving these rules?

623
624 Amanda LaCroix, Senior Staff Attorney, DOE, stated that we are not bound by a strict timeline,
625 but we are trying to get as close to the fiscal year as possible.

626
627 Sanderson, DOE added that while there is no absolute timeline as far as the milage is
628 concerned, to continue services to students, we need to ensure that we are fiscally responsible
629 to both the Medicaid reimbursement rates and the changes coming July 1st, and the funding for
630 milage. Birth to 3 is unique in that even though milage is considered in the Medicaid
631 reimbursement rates, we feel an additional reimbursement is necessary and we feel that the
632 budget can handle the \$1.00 per mile rate.

633
634 Motion by Nebelsick second by Olsen to approve ARSD 24:14 (Early Intervention) rules as
635 presented., but with a one-year analysis on the impact of the changes had on providers. Voice
636 vote. All present voted in favor. Motion carried. Voting aye: Heineman, Meyer, Nebelsick,
637 Olsen, Westra, Willard, and Guffin.

638
639 **First Reading -Administrative Rules – ARSD 24:55 (Public School Accountability System)**

640
641 Shannon Malone, Director, Division of Learning and Instruction, DOE, presented proposed
642 changes to ARSD 24:55 (Public School Accountability System). Malone stated that the proposed
643 ARSD 24:55 rules reflect changes in policies, practices, and procedures and that maintain
644 alignment and consistency with the state accountability system that occur in relation to Every
645 Student Succeeds Act (ESSA).

646

647 Malone testified that most of the changes relate to consistency with ESSA and necessary
648 changes to reflect the evolving needs of districts, to ensure that all students are making
649 educational progress. The effect of the rules will be to revise criteria pertaining to attendance,
650 coursework readiness, exiting the English learner program, comprehensive and targeted
651 support designation calculations, and to clarify and update language, and the reason for
652 adopting the proposed rules is to provide clarity and ensure that these calculation changes align
653 with the recently approved amendments to ESSA.

654
655 Motion by Heineman second by Willard to move the ARSD 24:55 (Public School Accountability
656 System) rules to a hearing. Voice vote. All present voted in favor. Motion carried. Voting aye:
657 Heineman, Meyer, Nebelsick, Olsen, Westra, Willard, and Guffin.

658
659 **Secretary's Report**

660
661 Tiffany Sanderson, Secretary of Education, DOE, began her report with information celebrating
662 on State Employee Appreciation week. May 6th is School lunch superhero day, and this week
663 ends teacher appreciation week. Sanderson stated that DOE has 190 teammates never get
664 enough recognition for their hard work and dedication and she wanted publicly to say thank
665 you all the DOE staff.

666
667 Sanderson stated that a press release went out May 2, 2022, in relation to Teacher appreciation
668 week, naming the five regional teachers of the year.

669
670 Sanderson stated that the South Dakota Week of Work in April 2022 presented opportunities
671 across the state for businesses and schools to engage Middle School and High School students
672 to experience work firsthand in a variety of ways. Partnerships between SD DOE, SD
673 Department of Labor, SD Retailers Association, South Dakota Chamber of Commerce &
674 Industry, enabled dozens of online panels with people in different professions were able to
675 share stories and career paths. Sanderson reported that there were many varied options for
676 student participation during the Week of Work.

677
678 Sanderson stated that at the end of April 2022, she had the opportunity to visit with the
679 Aspiring School Leaders Group. Each year the department partners with the South Dakota
680 Administrators Association and the Black Hills Special Services Cooperative to offer a cohort of
681 about 30 teachers the opportunity to experience and learn more about what it takes to take
682 the next step in their career path as a school leader or administrator.

683
684 Sanderson reported that the Social Studies Standards Commission will be meeting this week
685 and they plan on meeting a couple of times per month in June, July, and August and should be
686 on track for public comment starting in August. The Social Studies hearing process should begin
687 in September 2022. In sync with the Social Studies standards are several areas of Career &
688 Technical standards going through the revision process and set to begin then as well.

689

690 Sanderson reported that DOE staff is conducting a full review of our materials, technical
691 assistance, web site, and professional development in line with Executive Order2022-02 (EO) .
692 Ensuring that nothing we are putting out includes, promotes, or compels divisive concepts
693 Sanderson stated that since the BOES is tasked with approving content standards and making
694 surer there are no divisive concepts, that there may be rules related to the EO coming up for
695 review in the future.

696
697 Sanderson stated that a lot of DOE work at this time is in connection with the Federal Covid
698 related funding. There is a federal funding dashboard on the DOE website: <https://doe.sd.gov/>.
699 Sanderson highlighted the attendance campaign that had been mentioned at the November
700 2021 BOES meeting. Sanderson stated that the campaign would continue this school year,
701 focusing on high school students and how to engage them and get the message out that school
702 attendance matters. Sanderson said that the attendance campaign would start again this fall
703 and continue for the next two years. There will be resources for schools around attendance and
704 staying engaged with school, but also media campaigns that reach the community and
705 encourage engagement in school. Sanderson also reported on Middle School Career Camps in
706 partnership with DOE, BOR, Technical Colleges, and business and industry. The response had
707 been tremendous. They had hoped for 150 applicants but got over 600 applications. They have
708 added a camp, and brought in more counselors, so they should be able to accommodate about
709 300 students this year. Sanderson stated that they hope to expand the camps over the
710 summers of 2023 and 2024.

711
712 Sanderson shared a new tool, called The Future Workforce Finder, that debuted this week. In
713 terms of work-based learning it is often hard to know what businesses have internships, or job
714 shadowing, or work experiences, and vice versa businesses may be interested in hosting
715 students or hiring students. This is an online platform: futureworkforcesd.com/. This is a
716 connection point for businesses and schools.

717
718 Sanderson stated that in the beginning of June the Summer Mentorship Academy will take
719 place. About 1200 educators will gather for a week to cap off the year. This is a combination of
720 experienced educators who have serves as mentors and first- and second-year teachers.

721
722 Sanderson stated that looking ahead to the July BOES meeting, there will be rules to consider as
723 well as other business. There will also be a joint meeting with BOR and BOTE.

724
725 Willard commented that he did participate on the panel for Aspiring Administrators, and it was
726 a joyful panel. Willard appreciates the effort in putting the program together.

727
728 Guffin went on to thank the state employees on behalf of the Board, especially Secretary
729 Sanderson and her staff.

730
731 Guffin thanked the teachers for all their hard work, as it is teacher appreciation week.
732

733 NEXT MEETING: July 18, 2022, Pierre SD.

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Adjournment:

Motion by Heineman second by Meyer to adjourn. Voice vote. All present voted in favor.
Motion carried. Voting aye: Heineman, Meyer, Nebelsick, Olsen, Westra, Willard, and Guffin.
Meeting adjourned at approximately 12:04 p.m. MT.

743
744
745

Ferne G. Haddock
Executive Secretary BOES

Date:

DRAFT