

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

Members Present: Becky Guffin
Phyllis Heineman
Rich Meyer, New member
Terry Nebelsick
Linda Olsen
Steve Willard

Via ZOOM Julie Westra

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

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

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

Call to Order, Pledge of Allegiance, and Roll Call

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

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

Mr. Meyer gave a short autobiography.

Adoption of Agenda

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

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.

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

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

Fine Arts Standards

Proponent Testimony

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

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

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

Opponent Testimony

There was no opponent testimony.

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

Career and Technical Education (CTE) Standards

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

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

There was no opponent testimony.

Health Science Career

Proponent Testimony

Scheibe testified in favor of the proposed Health Science Career standards

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

Opponent Testimony

There was no opponent testimony.

Human Services Career

Proponent Testimony

Scheibe testified in favor of the proposed Human Services standards

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

Opponent Testimony

There was no opponent testimony.

Manufacturing Career

Proponent Testimony

Scheibe testified in favor of the proposed Manufacturing standards

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.

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

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

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.

Opponent Testimony

There was no opponent testimony.

Board questions and discussion.

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

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

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

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

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

ARSD 24:05 (Special Education)

Proponents

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

Turner presented the written comments that were received.

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

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

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

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

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

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

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

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

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

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

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

Board discussion and questions.

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

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

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

What is the difference between the evaluator and the examiner?

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

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

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

Opponents

There was no opponent testimony.

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

ARSD 24:05 (Special Education) concluded at approximately 10:46 a.m. MT.

Public Hearing-RULES: - ARSD 24:14 (Early Intervention)

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

ARSD 24:14 (Early Intervention)

Proponents

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Board questions and discussion

Legislature sets the appropriation, does the Department then have the authority to say where the dollars are allocated?

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

How would that be absorbed?

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

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

Proponent (continued)

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

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

Opponents

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

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

Board Questions and Discussion

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

What is the current rate for travel reimbursement?

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

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

Carter answered yes.

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

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

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

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

Is there a timeline restriction on approving these rules?

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

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

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

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

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

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

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

Secretary's Report

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

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

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

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

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

Sanderson reported that DOE staff is conducting a full review of our materials, technical assistance, web site, and professional development in line with Executive Order 2022-02 (EO). Ensuring that nothing we are putting out includes, promotes, or compels divisive concepts Sanderson stated that since the BOES is tasked with approving content standards and making surer there are no divisive concepts, that there may be rules related to the EO coming up for review in the future.

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

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

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

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

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

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

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

NEXT MEETING: July 18, 2022, Pierre SD.

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.

Ferne G. Haddock
Executive Secretary BOES

07/18/2022