

To: South Dakota Board of Technical Education
From: Nick Wendell, Executive Director *Nick Wendell*
Date: 5/21/20
RE: Recommendation to Approve WDT LEA Petition

This memo is intended to provide an outline of the steps that have been taken to consider a petition to establish a separate and distinct local education agency to govern Western Dakota Technical Institute (WDT) and a recommendation to approve the petition with contingencies, based on the petition criteria and information gathered thus far.

Relationship between WDT and Rapid City Area Schools

Currently, WDT is governed by the Rapid City Area Schools (RCAS) Board of Education. In September 2018, RCAS appointed a Governance Task Force to consider options for the future governance of WDT. In February 2019, the task force recommended the establishment of a separate and distinct local education agency (LEA), as identified in SDCL [13-39A-35](#).

This recommendation was formalized through the drafting of a memorandum of understanding (MOU) between WDT and RCAS, which was signed by both parties in May 2019. The MOU (Appendix A) set terms and conditions for the potential separation. In March 2020, WDT requested an extension (Appendix B) of the MOU through December 31, 2022.

Petition Development

In May 2019, the South Dakota Board of Technical Education (BOTE) created a subcommittee to consider the criteria for a petition to establish a separate and distinct LEA. Subcommittee members included Bob Faehn, Scott Knappe, and Diana Vanderwoude. The subcommittee developed criteria (Appendix C) informed by SDCL 13-39A-35 and feedback from subcommittee members. It should be noted that this criteria (and the related process) was not developed specifically for WDT. It is general in nature and was designed to serve the system in perpetuity.

I worked closely with WDT President Ann Bolman to make her aware of what information should be included in the petition. While the BOTE did not formally approve the criteria until December 2019, WDT did submit a petition to my office on October 19, 2019. I did not request a new version of the petition, as the submitted version aligned with the approved criteria.

Recommendation

I recommend the South Dakota Board of Technical Education accept WDT's petition and support the institution's intent to establish a separate and distinct local education agency. The acceptance of this petition represents the beginning of a transition period and BOTE approval should come with the following contingencies:

- Confirmation from the South Dakota Healthcare and Education Facilities Authority (SDHEFA) that the creation of a separate and distinct LEA will not have a negative impact on the system's debt capacity, bond rating, or ability to provide debt service coverage.
- Confirmation from the United States Department of Education (USDOE) that the creation of a separate and distinct LEA will not limit WDT's ability to maintain the current eligibility for federal financial aid.
- Confirmation from the Higher Learning Commission (HLC) that the creation of a separate and distinct LEA will not negatively impact WDT's current accreditation status or future accreditation efforts.

If WDT is not able to secure confirmation from the entities listed on page one, the institution should not proceed with the creation of a separate and distinct LEA. The institution should also not transfer assets between RCAS and WDT until such confirmations can be achieved. If such confirmations cannot be secured, WDT should return to the existing governance structure under the RCAS Board of Education.

Moving Forward

As previously noted, the approval of the petition should be viewed as the beginning of a transition period. Should the BOTE approve the petition, I will provide the necessary correspondence and the minutes of today's hearing to entities seeking confirmation of this action.

WDT and RCAS will have permission to proceed with the consideration and appointment of board members to serve on the new LEA. The membership of and the appointment process to the LEA is identified in SDCL [13-39A-36](#), [13-39A-37](#), and [13-39A-38](#).

President Bolman has assured me that a vetting committee has been developed to consider potential board appointments. The vetting committee includes President Bolman, two current members of the RCAS Board of Education, three current members of the WDT Skilled Workforce Advisory Council, and the WDT Director of Human Resources.

In preparation for today's meeting, we also drafted a high-level transition oversight document (Appendix D). This document identifies expectations of WDT and BOTE staff should the petition be accepted. Much of the reporting will be directed from WDT to me as the Executive Director. Reports will be shared with the Governance and Policy Subcommittee and the full board.

Appendices

A—RCAS and WDT Memorandum of Understanding (May 7, 2019)

B—WDT Requests for Extension of the Memorandum of Understanding (March 10, 2020)

C—LEA Petition Criteria (December 3, 2019)

D—LEA Transition Oversight, Processes, and Timelines (May 1, 2020)

APPENDIX A

MEMORANDUM OF UNDERSTANDING

Section 1.

PARTIES:

1.1 The parties to this Memorandum of Understanding ("MOU") are Rapid City Area School District 51-5 ("District") and Western Dakota Tech ("WDT").

Section 2.

PURPOSE:

2.1 It is contemplated by the parties to this MOU that WDT will become a separate and distinct local education agency ("LEA") as authorized under the provisions of SDCL Chapter 13-39A, South Dakota Board of Technical Education Act. The purpose of this MOU is to fix the terms and conditions under which the District and WDT will accomplish the shared goal to sever the relationship between the District and WDT, and establish WDT as a LEA.

NOW, THEREFORE, for good and valuable consideration and based upon the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged by the Parties, they agree as follows:

Section 3.

DISTRICT RESPONSIBILITIES:

3.1 District agrees to provide assistance and training with regard to bidding, payroll, purchasing, invoicing, and other operational processes required for the successful operation of an LEA.

3.2 District agrees to continue to allow WDT to use the Skyword system for employee timekeeping and other human resource related functions.

3.3 District agrees to continue to allow WDT employees and their dependents to remain as part of the district's employee health insurance group (under the same terms and conditions as applicable to its own employees) until June 30, 2021, unless other satisfactory arrangements are made earlier.

3.4 District agrees to continue to provide liability, workers compensation, and casualty insurance coverage for WDT and its operations until June 30, 2021.

3.5 District agrees to continue to include WDT as a budget category in its financial records and audit during the term of this MOU.

3.6 District agrees to continue to allow WDT to use the District's employer identification number (EIN) and Department of Education Grant identification number until such time as WDT is issued its own separate numbers.

3.7 District agrees that its Board of Education will continue to act as a governing entity over WDT until such time as WDT is established as a separate LEA, at which time District will appoint a new board of education for WDT as required by statute.

3.8 District agrees to execute all required deeds, titles, and related documents to effectuate the transfer of any real and personal property required for the operating of WDT as a separate and distinct LEA.

3.9 District agrees to provide such secretarial, maintenance, and other support services as needed by WDT (upon such terms and conditions as the parties may agree) until WDT becomes a separate and distinct LEA.

3.10 District agrees to provide such other support and services as reasonable and necessary to enable WDT to make a successful and timely transformation into a separate and distinct LEA.

Section 4.

WDT RESPONSIBILITIES:

4.1 WDT agrees to cooperate and use its best efforts to accomplish its separation from District and become established as a separate and distinct LEA.

4.2 WDT agrees to pay for the services provided by District under this agreement in the same manner as it has in the past.

Section 5.

TERM:

5.1 Except as provided herein, the initial term of this MOU shall commence upon its execution by the parties and shall continue until June 30, 2020, unless extended as provided for herein.

Section 6.

EXTENSION OF MOU:

6.1 The parties agree that this MOU may be extended upon the same terms and conditions or such other terms as the parties agree, if necessary, to enable WDT to successfully complete the transition to a separate and distinct LEA. In the event WDT requires an extension of this MOU, it shall provide written notice to the District's Superintendent and the President of the Board of Education by May 1, 2020.

Section 7.

AMENDMENT OF MOU:

7.1 The parties agree that this MOU may be amended at any time, as needed, but all such amendments shall be reduced to writing and signed by the authorized representative of each party. The parties further agree to execute any additional documents required for the performance of this MOU.

Section 8.

CHOICE OF LAWS AND SUBMISSION OF JURISDICTION:

8.1 This Agreement shall be deemed to have been made in Rapid City, South Dakota, and shall be construed in accordance with the laws of the State of South Dakota.

Section 9.

SEVERABILITY:

9.1 If any portion of this Agreement shall be found to be void or unenforceable, it shall in no way affect the validity or enforceability of any other portion hereof.

Section 10.

BINDING EFFECT:

10.1 This Agreement shall extend to and be binding upon the heirs, administrators, executors, successors, and assigns of the parties hereto.

Dated this 7th day of May, 2019

WESTERN DAKOTA TECH

BY: Gene Belman, Ed.D.
President

RAPID CITY AREA SCHOOL
DISTRICT NO. 51-4

BY: Ann Pollock
~~Second Vice-President of the School Board~~
First

WESTERN DAKOTA TECH

800 Mickelson Dr. • Rapid City, SD 57703
p. (800)544-8765 p. (605)394-4034 f. (605)394-2204

Dr. Lori Simon
RCAS Board Chair
Rapid City Area Schools
625 9th Street
Rapid City SD 57701

March 10, 2020

Dear Dr. Simon:

This letter serves as written notification that Western Dakota Tech requires additional time to complete the separation process from the Rapid City Area School District to successfully form a separate and distinct LEA.

The Memorandum of Understanding between the Rapid City Area School District and Western Dakota Tech, which was approved on May 7, 2019 states that

6.1 The parties agree that this MOU may be extended upon the same terms and conditions or such other terms as the parties agree, if necessary, to enable WDT to successfully complete the transition to a separate and distinct LEA. In the event WDT requires an extension of this MOU, it shall provide written notice to the District's Superintendent and the President of the Board of Education by May 1, 2020.

Western Dakota Tech requests that the same terms and conditions of the current MOU extend through **December 31, 2022**.

This extension will provide the time necessary to test Western Dakota Tech's new financial module to ensure that it will pass audit requirements, add payroll capabilities as well as human resource time keeping and position control functions, and to ensure adequate time is allowed for a data-driven review of the cost/benefit to both organizations of continuing to share health insurance programming.

We appreciate Rapid City Area Schools' continuing partnership, patience, and support through this separation process. Please let me know if you have any questions or require additional details.

Respectfully,



Ann Bolman, Ed.D.
President

WESTERN DAKOTA TECH

800 Mickelson Dr. • Rapid City, SD 57703
p. (800)544-8765 p. (605)394-4034 f. (605)394-2204

Mr. Mike Roesler
RCAS Board Chair
Rapid City Area Schools
625 9th Street
Rapid City SD 57701

March 10, 2020

Dear Mr. Roesler:

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We appreciate Rapid City Area Schools' continuing partnership, patience, and support through this separation process. Please let me know if you have any questions or require additional details.

Respectfully,



Ann Bolman, Ed.D.
President

South Dakota Board of Technical Education

Separate LEA Petition Subcommittee

Petition Consideration Process, Timelines

December 3, 2019

Background

On May 7, 2019, the Rapid City Area Schools (RCAS) Board of Education adopted a resolution to petition the South Dakota Board of Technical Education for the establishment of a distinct, separate local education agency (LEA) to govern Western Dakota Technical Institute (WDTI). South Dakota state law authorizes a South Dakota school district and/or postsecondary technical institute to file such a petition and requires Board approval of the petition before the creation of a new, separate LEA.¹

On May 15, 2019, the South Dakota Board of Technical Education (the “Board”) established a Separate LEA Petition Subcommittee (the “Subcommittee”). The Subcommittee is charged with developing recommendations for the criteria on which a petition will be considered. The Subcommittee was also charged with recommending a consideration process and timelines for approval or rejection of the petition. The Board has broad latitude in its consideration process. The recommended petition criteria and petition consideration process are intended to be universal, to be applied to any and all petitions submitted by any South Dakota school district and/or postsecondary technical institute. This document is meant to recommend policies for the Board to adopt.

Goals of Consideration Process

The Board should pursue three separate goals in its petition consideration process:

1. Due diligence in reviewing any petition to establish a separate LEA,
2. Clarity and expediency for the petitioner(s), and
3. Transparency for the public to understand the separation and provide a forum for public input.

¹ SDCL 13-39A-35

Recommended Petition Consideration Process

Receipt of Petition

After receiving a petition to establish a separate LEA, the Board, through its Executive Director, should provide the petitioner(s) with notice of receipt and set forth its timeline for consideration. The Board should give the petitioner(s) notice of its consideration timeline and process to be used within ten (10) days of receiving the petition.

Consideration Procedures

The Board should consider the use of an Executive Director recommendation and public hearing in coming to its decision as to whether to approve the petition. These roles will help the Board to meet its goals of due diligence, clarity, and transparency.

An Executive Director recommendation will put the primary burden of reviewing and vetting the petition on the Executive Director. The petition will still be provided to all Board Members to consider. The Executive Director would have the ability to seek more information from the petitioner(s) in certain areas without needing formal re-inquiry by the Board. In this way, the consideration process can keep moving in an expedient fashion. The Executive Director's recommendation should be in writing and provide the Board with the relative strengths and weaknesses of the petition as well as an assessment of whether separation would be beneficial or detrimental to the technical institute system as a whole.

The Board should hold a public hearing in the community of the petitioner(s), during which testimony can be heard from the petitioner(s) and community members. At this time, the Board will have a chance to ask public questions of the petitioner(s) as to the petition. The public hearing will be an opportunity for the community to observe and weigh in on the decision. It will also be an opportunity for the Board to fulfill its duty of diligence in probing the answers to the petition.

Timelines

The timelines established for consideration of each petition may vary based on the prior work and general situation of the petitioner(s). Each petition should be considered in an expedient fashion, while permitting a thorough, diligent review. The petition consideration timeline must, as previously noted, be made clear to the petitioner(s) as soon as the petition is submitted.

South Dakota Board of Technical Education

LEA Petition Subcommittee

Criteria for Petition to Create Separate, Distinct LEA

1. Rationale for Creation of Separate, Distinct LEA (“new LEA”)

- a. Process Prior to Petition
- b. Benefits of Creating new LEA
- c. Risks or Drawbacks to Creating a new LEA
- d. Community Input and/or Partner Organizations

2. Current School District (“District”) Role in Technical Institute (“TI”)

- a. Oversight Roles (Board vs. Superintendent vs. TI President)
- b. Services Provided by District to TI
- c. Compensation Paid by TI to District for Services
- d. Funds Provided by District to TI (Loan or Transfer)
- e. Contracts Held by District to be Transferred to new LEA
- f. Liabilities, Debts and Obligations Held by District to be Transferred to new LEA
- g. Assets Held by District to be Transferred to new LEA

3. Transition Proposal to South Dakota Board of Technical Education

- a. Budget and Finance
 - i. Budget-Setting
 - ii. Tuition and Fee Processing
 - iii. Obligation Recovery
 - iv. Perkins Funding and Federal Receipt Processes
 - v. State Funding and SD DOE Receipt Process
 - vi. South Dakota Board of Technical Education Consultation
 - vii. Accounting and Audit
- b. Personnel
 - i. Human Resources Services
 - ii. Healthcare Benefits
 - iii. Retirement Benefits
 - iv. Payroll
 - v. Timekeeping
 - vi. Contract Negotiation
- c. Administration
 - i. Information Technology (IT)
 - 1. E-mail System
 - 2. Equipment
 - 3. Software Systems
 - 4. Maintenance and Repair
 - 5. Data Management
 - 6. Cybersecurity
 - ii. Insurance
 - 1. Liability
 - 2. Casualty
 - 3. Automobile
 - 4. Workers’ Compensation
 - 5. Unemployment

- iii. Procurement
 - iv. Fleet and Travel
 - v. Security
 - vi. Buildings and Grounds Maintenance
 - vii. Legal Services & Risk Management
 - viii. Compliance Monitoring
 - 1. FERPA
 - 2. Higher Learning Commission
 - 3. Industry Accreditation
- d. Scholarships and Sponsorships
 - i. Build Dakota Scholarship
 - ii. Local Scholarships
 - iii. Sponsor Recruitment and Development
 - iv. Foundation Affiliation
- e. Asset Transfer
 - i. Real Property, including Bonds, Leases, and other Encumbrances
 - ii. Supplies, Furniture, and Equipment
 - iii. Maintenance and Repair
- f. New LEA Board
 - i. Board Membership Selection
 - ii. Board Meetings and Board Support
 - iii. Program Review
 - iv. Policy-Setting and Review
 - v. President Selection and Evaluation
 - vi. Relationship with State Board of Technical Education
- g. HLC Compliance
 - i. Provide Application for Change of Control, Structure or Organization [HLC Requires Application and Approval for a Management Change]
 - ii. HLC Approval Factors:
 - 1. Extension of the Mission
 - 2. Continuation and Maintenance of the Institution
 - 3. Continue to meet HLC Eligibility Requirements, Assumed Practices, and Criteria for Accreditation
 - 4. Sufficiency of Financial Support
 - 5. Previous Experience of new Board Members

For each of the topics under Heading (3), the Petitioner(s) shall provide:

- A. Transition Plan for Task, including Current Method and Plan for Post-Separation*
- B. Current Task Lead and Planned Post-Separation Task Lead, including Name and Title*
- C. Current Expense and FTE and Planned Post-Separation Expense and FTE*
- D. Timeline for Transition from District to new LEA*

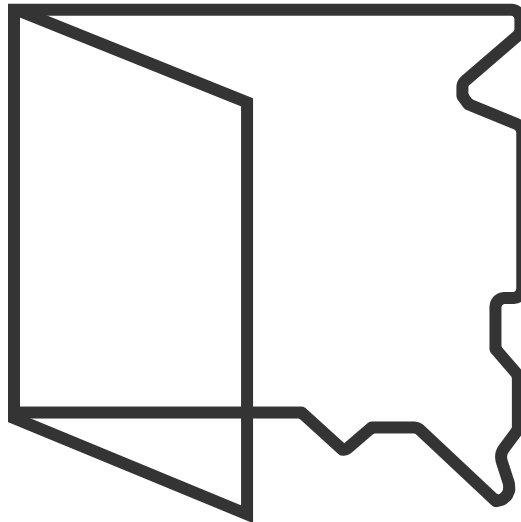
4. Post-Transition Administration

- a. Organizational Chart
- b. Projected Budget, including FTE
- c. Timeline for Full Transition
- d. Relationship with District
- e. Relationship with State Board of Technical Education

Petition Criteria

for

**Establishment of Separate, Distinct
Local Education Agency**



South Dakota Board of
Technical Education

I. Introduction

The primary goal of the petition process is due diligence in the Board's oversight capacity over the postsecondary technical institutes.

The following will provide the criteria to be included in any petition submitted by a South Dakota school district and/or postsecondary technical institute to the Board of Technical Education (the "Board") for the establishment of a separate, distinct local education agency ("new LEA") to oversee the postsecondary technical institute. South Dakota state law authorizes a school district and/or postsecondary technical institute to file such a petition and requires Board approval of the petition before the creation of a new LEA.¹

¹ SDCL 13-39A-35

II. Petition Criteria

The Petition criteria are grouped into four areas: Rationale for Separation, Current School District Role in Technical Institute, Transition Proposal, and Post-Transition Administration.

For each of the Petition criteria, please provide any exhibits or other documents that would be helpful to the Board in understanding your Petition.

A. Rationale for Creation of Separate, Distinct LEA

1. Please explain the anticipated benefits of creating a new LEA. In particular, please explain the projected impact on budgets, student population, and student success.
2. Please explain the anticipated drawbacks or risks of creating a new LEA.
3. Please explain the process undertaken by the petitioner(s) prior to any formal decision to submit a Petition to the Board for the creation of a new LEA. Please identify the factors considered, parties involved, and timeline of said process. Further, please provide any and all materials related to this process that were considered by the final decision-maker(s).
4. Please provide a list of all community input sought prior to the formal decision to submit a Petition. Further, please provide any state or local leaders, entities, or partner organizations that have formally endorsed the creation of a new LEA.

B. Current School District Role in Technical Institute

This subsection deals exclusively with the governance of the technical institute prior to the creation of a new LEA. It is intended to examine the arrangement as it currently exists. Please provide all answers with the most current available information.

1. Please explain the relative oversight roles of the school board, superintendent, and technical institute (the “TI”) president. Please explain the subject areas in which the TI president is unauthorized to make without consultation or approval from the superintendent and/or school board.
2. Please provide a list and describe all services provided by the school district (the “District”) to the TI. For each, please note if the TI compensates the District for the service or if the District provides the service without compensation. Please provide a copy of any and all agreements between the District and TI with respect to compensation for such services.
3. Please identify any funds provided by the District to the TI, whether by loan or direct support.
4. Please identify all contracts held by the District that are proposed to be transferred to a new LEA.
5. Please identify all liabilities, debts, and obligations held by the District that are proposed to be transferred to a new LEA.
6. Please identify a list of all assets held by the District, whether real or personal property, that are proposed to be transferred to a new LEA.
7. Please provide an organizational chart for the District and TI.
8. Please provide the most recent two (2) annual budgets for the District and TI.
9. Please describe the District’s current relationship with the South Dakota Board of Technical Education as it pertains to the TI.

C. Transition Proposal for Discrete Tasks

For each of the following items, please provide:

- *Transition Plan, including the current arrangement and the plan post-separation, where applicable;*
- *Lead Personnel or Contractor, currently and planned post-separation, including name, title, and whether internal or external, where applicable;*
- *Budget Impact, including funds and FTE currently allocated and anticipated post-separation; and*
- *Transition Timeline.*

i. Budget and Finance

1. Budget and Finance Oversight, including budget-setting, accounting and audit
2. Tuition and Fee Processing
3. Obligation Recovery
4. Federal Receipt Processing, including Perkins funding
5. State Receipt Processing
6. Budget Consultation and Reporting to Board of Technical Education

ii. Personnel

1. Human Resources Services, including grievance processing
2. Healthcare Benefits
3. Retirement Benefits
4. Payroll and Timekeeping
5. Contract Negotiation

iii. Information Technology

1. E-mail System
2. Data and File Management
3. Equipment
4. Software Systems
5. IT Maintenance and Repair
6. Cybersecurity

iv. Insurance

1. Liability
2. Casualty
3. Automobile
4. Workers' Compensation
5. Unemployment

v. General Administration

1. Procurement
2. Fleet and Travel
3. Security
4. Buildings and Grounds Maintenance and Repair
5. Legal Services and Risk Management

vi. Compliance Monitoring

1. Higher Learning Commission²
2. Industry Accreditation
3. Family Educational Rights and Privacy Act (FERPA)

vii. Scholarships and Sponsorships

1. Build Dakota Scholarship Administration
2. Local Scholarship Administration
3. Sponsor Development
4. Foundation Affiliation

viii. Asset Transfer

1. Real Property
2. Bond and Lease Transfer
3. Supplies, Furniture, Equipment, and Other Personal Property, including any compensation to be paid by the TI/new LEA to the District for such property

ix. Governing Board

1. New LEA Board Membership Recruitment and Selection Plan
2. Board Support
3. Program Review
4. Policy-Setting
5. President and Personnel Evaluation
6. Relationship with State Board of Technical Education

² Please provide the Application for Change of Control, Structure or Organization that petitioner(s) intend to submit to the Higher Learning Commission and any attachments.

D. Post-Transition Administration of Technical Institute

1. Please provide the proposed organizational chart TI under the new LEA.
2. Please provide a projected annual budget for the new LEA, including FTE.
3. Please provide a projected timeline to complete the transition.
4. Please describe the anticipated relationship of the new LEA and the TI with the District.
5. Please describe the anticipated relationship of the new LEA with the South Dakota Board of Technical Education.

APPENDIX D

South Dakota Board of Technical Education

Separate LEA Transition: Western Dakota Technical College

Transition Oversight, Processes, and Timelines

May 1, 2020

Background

On May 21, 2020, the South Dakota Board of Technical Education (the “Board”) will consider a petition by the Rapid City Area Schools and Western Dakota Technical College (“WDT”) to establish a distinct, separate local education agency to govern Western Dakota Technical College. South Dakota state law authorizes a South Dakota school district and/or postsecondary technical institute to file such a petition and requires Board approval of the petition before the creation of a new, separate LEA. The petition includes transition proposals for various aspects of WDT governance.

If the Board elects to adopt the WDT petition, the Board has an obligation to oversee, support, and monitor the governance transition of WDT from the Rapid City Area Schools Board of Education to the distinct, separate local education agency board. The goal of such oversight will be maintenance of program standards, accreditation, and fiscal solvency.

WDT Governance Transition: Board Oversight Process

If the Board approves the petition for establishment of a distinct, separate LEA, the Board shall undertake the following processes in its oversight, support, and monitoring of the governance transition of WDT:

1. The Board’s Governance and Policy Subcommittee shall be tasked with oversight of the WDT governance transition between Board meetings to provide feedback and oversight Board staff and WDT.
2. Board staff shall support and monitor WDT progress in completing the transition tasks and provide regular updates to the Governance and Policy Subcommittee.
3. Prior to the August 4, 2020 Board meeting, WDT shall submit complete, concise list and timeline of all transition tasks from WDT for Board review.
4. At each subsequent meeting of the full Board, WDT shall present an update to the Board of the transition tasks until such time as the transition is complete.

