

# Interagency Agreement

2020

Between

**The Department of Education, Special Education Programs**

And

**The Department of Corrections**

## Introduction

The South Dakota Department of Corrections (DOC), on behalf of itself and the South Dakota Department of Education (DOE) enter into this interagency agreement. All of the parties to the agreement are hereafter collectively referred to as “the parties.”

The parties recognize the responsibility to develop and implement programs to meet the educational needs of eligible students in the custody of the South Dakota Department of Corrections. Therefore, the purpose of this agreement is to ensure collaboration in the development and implementation of individual education programs (IEP) for the provision of special education or special education and related services to ensure that eligible students in adult and juvenile correctional institutions receive a free appropriate public education (FAPE) pursuant to applicable federal and state regulations.

The parties are committed to the assurance of appropriate educational services for children with disabilities as identified by the Individual with Disabilities Education Improvement Act (IDEA) and Section 504 of the Rehabilitation Act of 1973. South Dakota Codified Law (SDCL) Chapter 13-37 (Special Assistance and Related Services), and the Administrative Rules of South Dakota (ARSD) Article 24:05 (Special Education). The DOC will provide for: the use of supplementary aids and services; outreach services directly and through consultation with school districts across South Dakota; access to a lending library and related materials for students, their families, and school districts across the state; in-service training; evaluation; related technical assistance; extended school year and transition services. If these services do not result in satisfactory educational achievement in regular classes, the DOC will ensure alternative placement educational programming is provided by the local education agency (LEA). The DOE will monitor compliance and provide ongoing technical assistance to assist the DOC in providing special education and related services to students placed with the DOC.

## **Philosophical Foundations**

The parties agree that there are five philosophical foundations in serving students with disabilities. They are: student-centered decisions, equal access, right to service, respect for human dignity, and least restrictive environment.

### **Student Centered Decisions**

This principle is the central focus of special education. It reflects the essential premise that all decisions related to a student with a disability are made by a team **that** works cooperatively to determine, implement, and evaluate services based on the needs of the individual student.

### **Equal Access**

The parties are committed to the principle of equal access for all students. Students with disabilities are guaranteed equal access to programs and services for the general student population and a free appropriate public education (FAPE) through specially-designed instruction by qualified personnel.

### **Right to Service**

This principle guarantees the right of a student with a disability, age birth through twenty-one, to receive the services which promote and increase independence and competence. The ultimate goal for all persons is to live to the greatest degree possible as full contributing members of society. Services for students with disabilities shall be directed toward this goal.

### **Respect for Human Dignity**

The principle of human dignity is closely related to a person's ability to make choices, select and maintain possessions, be treated with respect, participate in programs which foster individuality and cultural integrity, allow privacy and confidentiality in decisions that affect **individual** lives, and receive an individualized educational program or individualized family service program tailored to **a student's** own unique needs. As such, it is the intent of the parties that students with disabilities are provided the same degree of dignity and respect that is afforded to all students.

### **Least Restrictive Environment**

This principle establishes that, to the maximum extent appropriate, each student with a disability is educated with children who are not disabled. The principle further affirms that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature and severity of the disability are

such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

## **AREAS OF INTENT TO COOPERATE**

### **Agency Financial Responsibility**

The provisions of the IDEA apply to all political subdivisions of the State that are involved in the education of students with disabilities, including State and local juvenile and adult correctional institutions. DOE, in coordination with DOC, will **ensure** the provision of special education or special education and related services to eligible students at correctional institutions. DOC will ensure that all eligible students with disabilities assigned to the care and custody of DOC are provided with special education and related services.

### **Conditions and Terms of Responsibility**

The DOC has direct responsibility to ensure the provision of special education and related services for students placed in correctional institutions. The DOC may make annual application for federal flow through funds to the DOE. The DOC may request that the resident district of student's parents provide reimbursement for transportation to IEP meetings at the DOC institutions. LEAs will be responsible for reimbursement at the state-designated rate. If neither parent can participate in a meeting in which a decision is to be made relating to the special education program or placement of their child, the LEAs shall use other methods to ensure parent participation, including individual or conference telephone calls, or video conferencing.

### **Appropriate Educational Programming**

The parties agree that there are specific considerations for students placed with the DOC in the development of each child's IEP.

### **Student Identification**

The DOC staff will implement a referral procedure for students who may be in need of special education to include students 21 years and younger who have not completed a program leading to a high school diploma.

### **Individual Evaluation**

The LEA serving the student shall conduct individual evaluations of students. These provisions include: initial evaluation, evaluation procedures, determination of needed evaluation data, determination of eligibility, procedures for determining eligibility and placement, reevaluation, additional team members, criteria for determining the existence of a specific learning disability, observation and written report.

## **Assuring Related Services**

The parties agree that the intent of this agreement is to **ensure** that children placed with the DOC receive related services in a timely manner to meet all identified needs of the child. Identification of related services needed and funding for those services addressed on the IEP, as part of the IEP team process, will be reviewed by the DOE via the monitoring process.

## **Assuring Full Coordination for Staff Development**

The parties agree to work cooperatively and collaboratively to **ensure** availability of qualified staff to meet the needs of children in need of special education or related services who are placed with the DOC. The parties agree to work collaboratively to ensure that qualified professional and paraprofessional staff are working with children in need of special education or related services who are placed with the DOC.

## **Use of Technology**

The parties agree to explore and utilize the available technologies to improve educational opportunities for children in need of special education or related services who are placed with the DOC.

## **Placement Committee/Individual Education Program**

The LEA serving the student will initiate and conduct placement committee meetings to determine a student's eligibility for special education or special education and related services, and to develop an individual education program (IEP). ARSD Chapter 24:05:27. These provisions include: responsibility of SEA and other public agencies for IEPs; when IEPs must be in effect; IEP meetings; IEP team; parent participation; development; review, revision and implementation of IEP; content of IEP; agency responsibilities for transition services; and IEP accountability. Exceptions to the above requirements can be found in ARSD Chapter 24:05:27.

The following requirements do not apply to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons: SDCL 26-11A-4; ARSD 24:05:27:26

1. The requirements related to participation of children with disabilities in statewide assessments.
2. The requirements relating to transition planning and **transition services, with respect to the students whose eligibility under Part B of IDEA, will end because of their age before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.**
3. The IEP team of a student with a disability, who is convicted as an adult under State law and incarcerated in an adult prison, may modify the student's IEP or placement

if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

### **Direct Instruction**

All assigned staff providing special education or related services instruction shall hold current certification and applicable licensure requirements.

### **Procedural Safeguards/Surrogate Parent**

Procedural safeguards relative to written prior notice, consent for evaluation and initial placement, impartial hearing, and surrogate parents apply to eligible students at correctional institutions. 34 CFR 300.300.

Prior to preplacement evaluation and initial placement, written consent will be obtained from the student, if 18 years old or older, or the parent, if the student is younger.

For students under 18 years of age, the parties will cooperate to appoint a surrogate parent for special education purposes if: 1) no parent can be identified, 2) after reasonable efforts, the parent cannot be located, or 3) the student is a ward of the state.

In the case of a student who is a ward of the state, a surrogate parent may alternatively be appointed by the judge overseeing the student's care, provided that the surrogate meets the requirements. The **State** shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the student needs a surrogate.

### **Transfer of Parental Rights**

All rights accorded to parents under Part B of IDEA transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution upon reaching the age of majority.

### **Records**

The requirements outlined in the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended, apply.

### **Operational Considerations Emergencies**

The parties agree that in the event of an emergency, temporary interruption of services may occur. If services are withdrawn for more than 10 cumulative days in a school year, the DOC agrees to give prompt notification of such to the DOE and the parents if the student has not

reached the age of majority, or the adult student/legal guardian, and to reinstate such services as soon as practicable.

### **Staff Training/Staff Supervision**

The DOC agrees to provide facilities, utilities, and security for educational staff. The parties will each identify staff members as liaisons in order to facilitate consistent communication, evaluate programs' effectiveness, and identify and resolve any issues in implementation of the terms of this agreement.

The DOC agrees to make reasonable efforts to encourage student participation in special education programs, and avoid unnecessary conflicts with other programs and activities.

### **Data Sharing/Program Evaluation**

The parties agree to share data on students to evaluate the implementation of the program.

### **Monitoring**

The DOE Special Education Programs will monitor the provision of special education or special education and related services to students at correctional institutions. The DOC agrees to cooperate in monitoring activities, and work with the DOE in resolution of any compliance issues. The parties agree that DOE has the responsibility under IDEA to monitor the educational programs at the DOC institutions in order to ensure compliance with IDEA. As such, the DOE has the responsibility to oversee corrective actions as a result of compliance monitoring.

The parties agree that state and federal special education laws require that parents or the adult student have access to due process procedures to resolve concerns about IEPs or with the implementation of those IEPs. The parties agree that cooperation between the parties will be essential to ensure parents' recourse to effective decision-makers who have the financial resources to provide services found to be necessary.

In the event that a parent or adult student initiates a due process complaint, the applicable DOC facility shall cooperate fully in resolution sessions, or any meetings with parents or the adult student to attempt to resolve the concern, in mediation sessions, if any, and in preparing for and participating in any formal hearings.

## **INTERAGENCY DISPUTE RESOLUTION**

During the pendency of the dispute resolution procedures described herein, DOC and DOE will ensure that services required to provide a free appropriate public education (FAPE) will continue. Disputed service(s) currently being provided will continue until the outcome of the dispute resolution process. The implementation of disputed service(s) not previously provided will be pursuant to a decision through the described resolution process.

All attempts will be made to resolve disputes at the lowest possible level.

When disputes cannot be resolved by designated department representatives, a written explanation of the dispute will be sent to the DOE Director of Special Education Programs and the DOC Educational Services Coordinator. These individuals, in consultation with each other, shall review the issues and make a determination as to how the dispute should be resolved. The decision will be shared in writing with each level involved within twenty (20) calendar days of receipt of request for the determination and will include reasons for the decision. If they are unable to reach resolution, they will refer the issue to the Secretary of the Department of Education and the Secretary of the Department of Corrections.

If a resolution is not obtained by the Director of Special Education Programs and DOC Educational Services Coordinator, the Secretary of the Department of Education and the Secretary of the Department of Corrections will jointly make a final determination within thirty (30) calendar days.

## ENACTMENT OF AGREEMENT AND GENERAL PROVISIONS

The terms of this agreement shall begin on this \_\_\_\_\_ day of \_\_\_\_\_, 2020 and shall remain in effect until terminated or amended by mutual agreement of the parties. Any termination or amendment must be in writing and signed by authorized representatives of all parties.

This agreement shall be reviewed by all parties at least every three years and evaluated regarding the need for amendments. This agreement is intended to govern only the rights and interests of the parties named herein. It is not intended to, does not and may not be relied upon to create any rights, substantial or procedural, enforceable at law by any third party in any matters, civil or criminal.

*The DOC has the full authority to enter into and secure performance of this agreement on behalf of the South Dakota Department of Corrections, and the DOE has full authority to enter into and secure performance of this agreement on behalf of the South Dakota Department of Education. Each individual signing this agreement has been properly authorized to enter into this agreement.*

\_\_\_\_\_, Secretary, South Dakota Department of Education

**Dr. Ben Jones**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_, Secretary, South Dakota Department of Corrections

**Mike Leidholt**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2020.