

ARSD 24:05 (SpEd) Public Hearing Public Hearing Comments and Response

(Received from posting 2/23/2022 to 4/6/2022)

In addition to formal comments submitted through Rules.SD.gov (12 comments received from seven individuals and two organization), input was received by direct email and through public discussion during the SD CASE meeting 3/15/22 and the SD Governor's Advisory Panel for Children with Disabilities meeting on 3/31/22. In general, there is overall support for the proposed rules, with three areas receiving specific comments as outlined below.

Overall comment:

Proponent:

Name: Sean Hegyi

Date: 4/5/22

Comment: On behalf of Disability Rights South Dakota: ARSD 24:05:14:14.01 – With these changes, it will be important to clarify with schools and parents what makes something an alternate assessment. Frequently, the differences and impacts between modifications and accommodations are not discussed with parents at an early stage. With this change of language, the State will want to make sure that parents are informed about the differences between modifications and accommodations almost annually. Students that are given alternate assessments in K-5 are less likely to progress in core academic areas and impacts the child's ability to graduate with a general education diploma. We believe that all parents, not just the parents of students selected to be assessed based on alternate academic achievements should be informed about these differences to help with planning their child's education in the future. ARSD 24:05:24.01:13 - We agree with this change. By removing "significantly," this change will allow more students to qualify under Orthopedic impairment and receive beneficial services under IEPs. ARSD 24:05:24.01:17 – We agree with the name change to Emotional Behavioral Disability as emotional disturbance sounds more aggressive. We believe that the changes to remove "the school and one or more other sources" in favor of "documentation from more than one source" is a great change. There are a lot of students with emotional behavioral disabilities that demonstrate significant behavioral problems multiple settings but might not show it in school – for whatever reason. With this change, schools would be required to multiple sources to determine whether the child would qualify under emotional behavioral disability – and this would allow the evaluation team to put more weight on sources outside of the school district. This is a positive change for South Dakotans with disabilities. While we agree with removing the "two standard deviations" portion out of the definition, we are a little concerned about the additions of "clinically significant impairment in social, emotional, behavioral..." No where in the statutes does it define "clinically significant." Most definitions about "clinically significant" in case law refer to a doctor's (MD/DO) medical diagnosis of a patient. It is not clear whether this change would require a medical diagnosis from a

doctor to qualify for special education services. In addition, it seems to suggest that the IEP team would have to make a medical determination on what is clinically significant – which might be out of the IEP team’s area of expertise. To solve this issue, we would request that the SD DOE define clinically significant in the statutes to provide guidance to parents and school districts on what this change would look like and require.

Comments related to evaluator ARSD’s proposals

Proponent:

Name: Mercedes Borgen

Date: 3/25/22

Comment: As a school psychologist in SD, I am for the repeal or removal of the school psychological examiner endorsement. To become a school psychologist requires specialized training. It also requires specialized training in administration of certain materials. Currently, the tests that we administer also require that we have that specialized training. Parents and children deserve a quality evaluation done by someone who has the specialized training.

Name: Kayla Ederveen, Ed.S

Date: 3/25/22

Full testimony posted under Developmental Delay comments

Name: Dr. Kari Oyen

Date: 3/8/2022

Comment: South Dakota Board of Education Standards Greetings Honorable Board of Education Standards Committee members, I am writing in support of the revisions highlighted in in Article 24:05 Special Education revisions. In particular, I support the inclusion of the definition of a psychological evaluation, the removal of the term “emotional disturbance” and replacing it with “emotional behavioral disability”, the increase of age of developmental delay to age nine, as well as the clarification of the credentials necessary to conduct psychological evaluations in schools. School psychologists receive specialized advanced graduate preparation that includes coursework and practical experiences relevant to both psychology and education. School psychologists complete either a specialist-level degree program (at least 60 graduate semester hours) or a doctoral degree (at least 90 graduate semester hours), both of which include a year-long 1,200-hour supervised internship (600 hours are required in schools). In the State of South Dakota, certification for a school psychologist requires a degree in school psychology that aligns to the National Association of School Psychologists standards. This includes coursework in the following 10 domains (Data-based decision making, consultation and collaboration, academic interventions and instructional supports, mental and behavioral health services and interventions, school-wide practices that promote learning, services to promote safe and supportive schools, family, school, and community collaboration, equitable practices for diverse student populations, research and evidence-based practice, as well as legal, ethical, and

professional practice). In addition to this training, NASP standards require the passage of the National Praxis Examination of School Psychology to ensure that competent professionals are engaging in practice. The key component of this training is that the credential is issued through a national credentialing body and is maintained through the requirement of continuing education credits for renewal. The history of the school psychological examiner in South Dakota is unknown and the training and scope of practice is problematic. The endorsement requires any master's degree (30 semester hours) with courses that include individual psychological evaluation, practicum in individual psychological evaluation, group testing, the child with disabilities, and educational statistics (none of which are regulated as credential bearing credit). In addition, they may have coursework in an array of psychology courses, none of which are regulated or held to a certain standard of practice. School psychology examiner is not a national credential, nor does it have a national body of certification. Why this is problematic for students is because the role of school psychologist is to help identify and assess children for educational classification for disabilities. By allowing non credentialed individuals to conduct assessments and make classifications outside of their scope of practice, it has the potential to be harmful to children and can be a liability to school districts. As an example, if a school psychology examiner gave a brief intellectual assessment and gave an incorrect diagnosis of specific learning disability as opposed to cognitive disability, it would have an impact on the services that this child would receive as well as less funding for the local school district who would be responsible for ensuring a comprehensive psychological evaluation under IDEA. Further, as stated in Standards for Psychological Testing and Assessment (2014), "Those who use psychological tests should confine their testing and related assessment activities to their area of competence, as demonstrated through education, training, experience, and appropriate credentials" This is a very complicated issue as I fully acknowledge that SD has a critical shortage of school psychologist. However, the resolve for this issue is not to have non credentialed professionals conducting work outside of the scope of standards and comprehensive training. I propose that the Department of Education, SDASP, as well as local training programs work together to create mechanisms to recruit, train, and retain high quality school psychologists in the State of South Dakota. Beginning steps that have been taken in order to reach these goals include: applying for federal grants to set up paid and competitive salary internship sites in areas of South Dakota where recruiting and retaining school psychologists has been especially difficult, applying for federal grants in order to hire additional School Psychology professors at the University of South Dakota in order to train more school psychologists, and providing a pathway for our current school psychological examiners to become certified school psychologists. I would be thrilled to partner on helping to address these workforce shortages and look forward to finding ways to ensure that appropriately trained professionals are helping some of our most vulnerable children in schools.

3/29/22 – after notification of posted revisions based on comment:

Thanks for this update. It makes complete sense.

Kali Ahlers on behalf of the SD Association of School Psychologists

3/01/22 via email



South Dakota Association of School Psychologists
An organization that believes that all children can learn.
www.sdasponline.org

02/08/2022

South Dakota Board of Education Standards

Greetings Honorable Board of Education Standards Committee member,

We are writing in support of the revisions highlighted in Article 24:05 Special Education revisions. In particular, we support the inclusion of the definition of a psychological evaluation, the removal of the term “emotional disturbance” and replacing it with “emotional behavioral disability”, the increase of age of developmental delay to age nine, as well as the clarification of the credentials necessary to conduct psychological evaluations in schools.

SDASP represents the school psychologists in the State of South Dakota. School psychologists receive specialized advanced graduate preparation that includes coursework and practical experiences relevant to both psychology and education. School psychologists complete either a specialist-level degree program (at least 60 graduate semester hours) or a doctoral degree (at least 90 graduate semester hours), both of which include a year-long 1,200-hour supervised internship (600 hours are required in schools). In the State of South Dakota, certification for a school psychologist requires a degree in school psychology that aligns to the National Association of School Psychologists standards. This includes coursework in the following 10 domains (Data-based decision making, consultation and collaboration, academic interventions and instructional supports, mental and behavioral health services and interventions, school-wide practices that promote learning, services to promote safe and supportive schools, family, school, and community collaboration, equitable practices for diverse student populations, research and evidence-based practice, as well as legal, ethical, and professional practice). In addition to this training, NASP standards require the passage of the National Praxis Examination of School Psychology to ensure that competent professionals are engaging in practice. The key component of this training is that the credential is issued through a national credentialing body and is maintained through the requirement of continuing education credits for renewal.

The history of the school psychological examiner in South Dakota is unknown and the training and scope of practice is problematic. The endorsement requires any master’s degree (30 semester hours) with courses that include individual psychological evaluation, practicum in individual psychological evaluation, group testing, the child with disabilities, and educational statistics (none of which are regulated as credential bearing credit). In addition, they may have coursework in an array of psychology courses, none of which are regulated or held to a certain standard of practice. School psychology examiner is not a national credential, nor does it have a national body of certification. Why this is problematic for students is because the role of school psychologist is to help identify and assess children for educational classification for disabilities. By allowing non credentialed individuals to conduct assessments and make classifications outside of their scope of practice, it has the potential to be harmful to children and can be a liability to school districts. As an example, if a school psychology examiner gave a brief intellectual assessment and gave an incorrect diagnosis of specific learning disability as opposed to cognitive disability, it would have an impact on the services that this child would receive as well as less funding for the local school district who would be responsible for ensuring a comprehensive psychological evaluation under IDEA.



South Dakota Association of School Psychologists
An organization that believes that all children can learn.
www.sdasponline.org

Further, as stated in *Standards for Psychological Testing and Assessment (2014)*, "Those who use psychological tests should confine their testing and related assessment activities to their area of competence, as demonstrated through education, training, experience, and appropriate credentials."

This is a very complicated issue as we fully acknowledge that SD has a critical shortage of school psychologist. However, the resolve for this issue is not to have non credentialed professionals conducting work outside of the scope of standards and comprehensive training. We propose that the Department of Education, SDASP, as well as local training programs work together to create mechanisms to recruit, train, and retain high quality school psychologists in the State of South Dakota. Beginning steps that have been taken in order to reach these goals include: applying for federal grants to set up paid and competitive salary internship sites in areas of South Dakota where recruiting and retaining school psychologists has been especially difficult, applying for federal grants in order to hire additional School Psychology professors at the University of South Dakota in order to train more school psychologists, and providing a pathway for our current school psychological examiners to become certified school psychologists. SDASP would be thrilled to partner on helping to address these workforce shortages and look forward to finding ways to ensure that appropriately trained professionals are helping some of our most vulnerable children in schools.

Thank you for your service to our state.

South Dakota Association of School Psychologists

A handwritten signature in black ink that reads "Kali Ahlers".

Kali Ahlers
SDASP President

A handwritten signature in black ink that reads "Julie Rimmereid".

Julie Rimmereid
SDASP Government & Professional Relations

Neutral:

Sarah Heilman – Special Services Director

3/23/22 via email

I was at the CASE meeting last week and the Director's in the room were pretty adamant that Psychological Examiners couldn't administer the WISC. However, we called Pearson and they reassured us that our Psychological Examiner could administer the WISC as long as our School Psychologist oversees her and interprets the results. They told us over and over that it was ok. We have asked for them to send us this in writing. So I'm not sure why there is this misinformation going around. But I am completely comfortable with ours continuing. She is a former School Counselor and has the proper education and training to administer the assessment. She will be forced to retire in 2 years when her certification expires and at that time we will hire another School Psychologist since the state is eliminating the certification for Psychological Examiners.

Opponent:

Name: Dr. Kimberly Kludt

Date: 4/5/2022

Comment: I am the Superintendent, Special Education Director, and 7-12 Principal at Deubrook Area School District. Our district has had the pleasure of working with a Psychological Examiner for several years. I speak for Administration and SPED Teachers in saying we appreciated their professionalism and knowledgeable assistance. At all times, they worked under the supervision of a Licensed School Psychologist. They only completed work they were legally able to do. I welcome the opportunity to work with them in the future if possible. Thank you for your time, Dr. Kimberly Kludt

Andrea Powell - Northeast Educational Services Cooperative, Director

3/29/22 & 3/21/22 via email in follow up to phone conversation 3/21/22 and in person conversation 3/16/22 regarding opposition to the proposed changes to the evaluator ARSD proposal:

"Per 24:05:23:02, thank you for the clarity as well that if the protocol that is selected by the team is used for the purpose it was intended, and is identified by the team as one that meets the need, qualifications by that protocol will dictate what level of professional can administer it.

Looking additionally at the initial and final sentence stating: " A psychological evaluator must be a school psychologist certified by the department" and "Written evaluation reports must be completed and signed by a certified school psychologist"- we are wondering if there would be an ability to reword this as well."

"Specifically, under evaluation regulations, IDEA defines the language exactly, I think, to what we had talked about all wanting it to. I think that it clearly states that all those administering the testing must be adequately trained to do so. When we have spoken on this topic, I heard you say multiple times that your intent is just for those who are trained to be the ones giving the assessment, and I agree."

"I have no issue with your intent on the rule, I just read it differently than what your intent is. I believe by either taking out "possess a valid certification or licensure" completely, you are meeting your goal of ensuring that each evaluator is qualified for the measure they are giving per the protocol. The end language then would read: "24:05:23:01 Educational evaluator. An educational evaluator must be qualified and trained in the administration, scoring, and interpretation of the individual and/or group assessments to be administered.""

Name: Tim Frewing

Date: 4/5/2022

Comment: The user qualification requirements for ability tests commonly speak to one set of requirements for administering an assessment and another, stricter set of requirements for interpretation. That distinction in use is what led to development of the school psychological examiner program. Examiners extend the impact a school psychologist can have through one person helping to interpret another's results. School psychologists are great, but there aren't enough of them. It's a difficult education, and it's not for everyone. The recent resurgence in interest for school psych examiner speaks to the great and unmet need for school psychologists. I wish the Board of Education would continue to support the psych examiner program. The Department could update their minimal requirements, require continuing education, and would have solid grounds for monitoring the practice, including whatever is deemed necessary for signatures and supervision. In situations where someone's practice is professionally unsatisfactory, the Department would have better grounds to intercede. All this would be good for the field. If school psych examiners today are in relative disrepute, it isn't because their concept has evolved or because this latest generation of ability tests is harder to administer. Rather, it's because of widespread misinformation, combined with lobbying by those who favor the practice of school psychologists. If the Board of Education would support the school psych examiner program at this point in time, that would mean a lot for those individuals and for the agencies employing them. Instead of shaming them, it would be time for South Dakota to reembrace them. It would be nice to have a future where, instead of seeking to abolish an endorsement because too many people are asking about it, we could help those individuals and those agencies.

Tim Frewing - Northeast Educational Services Cooperative

3/20/22 via emails and follow up to phone conversation 3/21/22:

It's not eliminating the endorsement that's creating the problem. Rather, it's the imposition of additional restrictions upon evaluators.

This is extremely problematic for a number of reasons. If you want to modernize and remove the psych examiner endorsement, then a better way to do it would be to strike 24:05:23:01 and 24:05:23:02 entirely. Then South Dakota would be like other states, and this problem NESC keeps raising would go away.

Tim Frewing - Northeast Educational Services Cooperative

3/16/22 via email:

We do believe our psych examiner providers would still meet the requirements to administer such ability tests, according to what is presented in the test manuals themselves, and in accordance with the general evaluation procedures (ARSD 24:05:25:04, sub 1B). However, part of what was proposed for 24:25:23:02 restricts all ability and behavior testing (e.g. behavior rating scales) to school psychologists. This does not enforce what any manual currently indicates. Instead, it would restrict practice much further, enforcing what some individuals from the school psych lobby may wish such manuals had indicated.

A psychological evaluation includes, but is not limited to, formally assessing an individual's behavior, personality, psychological or cognitive abilities.

I agree the authority does not come from the psych endorsement itself but from our providers' individual qualifications, along with a general freedom to practice thus far enjoyed by our state.

Meanwhile, in what was proposed for 24:25:23:01, our psych examiners would be effectively prohibited from conducting achievement testing. (On the one hand DOE removes the endorsement. On the other hand DOE requires "educational" evaluators to hold active certification or licensure.)

An educational evaluator must possess a valid ~~teaching certificate~~ certification or licensure and ~~must have training in individual and group tests to be administered~~ be qualified and trained in the administration, scoring, and interpretation of the individual and/or group tests to be administered.

So we are facing a situation in which, with the stroke of a pen, DOE has sought to forbid all meaningful practice of individuals currently licensed as psych examiners (for administering ability, achievement, and even behavior rating scales).

Name: Amy Westrum

Date: 3/8/22

Comment: Good morning, I am the Special Education Director for a small school district in SE South Dakota. I am in charge of hiring and coordinating services for our district. My concern is the removal of the school psychological examiner endorsement. It is EXTREMELY difficult to find and afford a full-time school psychologist for schools of our size. We have a school counselor who is more than qualified to assist in educational planning for our students and willing to take classes for the assessment portion of the school psychologist position. USD has made it impossible for her to do this and actually they were quite rude when she called to inquire about the program as soon as she mentioned this endorsement. I believe the only people supporting removal of this endorsement are those who benefit financially from the education of school psychologists. South Dakota is in trouble as far as education and shortages of professionals. I believe removing this endorsement just sets us back even further. If anything, the SD public universities should have to change their programs to allow the training for this endorsement. It is already hard enough to fill vacant jobs in education, this is just going to make it worse.

Response to public comment: Based on public comment, legal consult, and continued review of alignment to federal rules the following changes are proposed:

- Repeal 24:05:23 (evaluators are not separately defined under IDEA, all evaluation requirements from IDEA 300.304 including specifically that evaluators are trained and qualified on the evaluations administered based on the instructions of the producer are included in 24:05:25:02; 24:05:25:02.01; 24:05:25:03.01; 24:05:25:04; 24:05:25:05)
- Add related services as defined that are in IDEA 300.34 but not in current ARSD. This addresses an omission and includes qualification requirements that were in the evaluator requirements being repealed:
 - 24:05:27:07 added what transportation includes
 - 24:05:27:22 & 24:05:27:24 added provided by a qualified person as required in IDEA 300.34
 - Added 24:05:27:28 – 24:05:27:38

Comments related to age range for Developmental Delay proposal

Proponent:

Name: Mercedes Borgen

Date: 3/25/22

Comment: As a school psychologist in the state of SD, the change for developmental delay is imperative. Currently, we have a wait to fail model. We wait until our children have failed enough in order to meet criteria for a disability. Research indicates that early childhood goes through age 8, so why wouldn't our DD criteria match that?

Name: Kayla Ederveen, Ed.S

Date: 3/25/22

Comment: It is my professional opinion, as a School Psychologist, that we should raise the age for developmental delay. Many states have already increased their age for developmental delay, therefore, South Dakota is behind current events. With our developmental delay eligibility being up to age 6, we are risking misdiagnosing many students. At age 6, most students are just starting first grade. In order to appropriately give an educational diagnosis, we need to allow the child time to get acclimated to a new environment (school, where there are lots of rules and expectations, versus home where it is less structured). In order to give an appropriate diagnosis, we need to give the child more time in their new environment. ED- I believe we need to change the word "disturbance" in emotional disturbance to disability. The word disturbance is a very negative word that can give a horrible label to a child, not only in school but at home We need to get rid of the title "Psychological Examiner". This is misleading to the general public

Name: Chrissy Peterson

Date: 3/8/22

Comment: Expanding the age range for developmental delay is a "win" for younger students that need special education support but answer a few correct answers on the ability and achievement tests to NOT qualify for special education services. I am in full support of increasing the age range as it is good for kids!

Name: Dr. Kari Oyen

Date: 3/8/2022

Full testimony posted under evaluator comments

Kali Ahlers on behalf of the SD Association of School Psychologists

3/01/22 via email

Full testimony posted under evaluator comments

Response to public comment: No changes are proposed.

Comments related to changing name and criteria for Emotional Disturbance proposal

Name: Mercedes Borgen

Date: 3/25/22

Comment: As a school psychologist in SD, I agree with changing the name of Emotional Disturbance. No child is truly disturbed. This title, currently, creates a stigma. It should be called Emotional Disability or Emotional Impairment.

Name: Kayla Ederveen, Ed.S

Date: 3/25/22

Full testimony posted under Developmental Delay comments

Name: Chrissy Peterson

Date: 3/17/22

Comment: I am commenting on the title change of emotional behavior disability. I kindly suggest that the word, behavior, is struck from the proposed change. This word can have so many different meanings that it would add confusion to our families and IEP teams. For example, the word, behavior, is often linked to students with oppositional defiant disorder which is not a recognized disability in South Dakota.

Name: Dr. Kari Oyen

Date: 3/8/2022

Full testimony posted under evaluator comments

Kali Ahlers on behalf of the SD Association of School Psychologists

3/01/22 via email

Full testimony posted under evaluator comments

Response to public comment: Based on public comment the following change is proposed: Change Emotional Disturbance to Emotional Disability (not Emotional Behavioral Disability). This was a consideration in preparation, however there was not strong consensus to including or excluding Behavioral. Based on further discussion and comment, it was determined that including Behavioral could encompass some behavioral disorders, such as Conduct Disorder or Oppositional Defiant Disorder, which would not generally qualify a student for special education services as they fall under social maladjustment and not emotional disturbance. All parties support the change from disturbance to disability.

ARSD 24:28 (Ed Cert) 24:53 (Ed Prep) Public Hearing Comments and Response (Received from posting 2/23/2022 to 4/1/2022)

Andrea Powell - Northeast Educational Services Cooperative, Director

4/6/22 via email

I wasn't sure if you had seen the NASP 2020 Professional Standards or not, but in the standards, it states other levels of credentialing that can be implemented. I know the rationale for canceling the School Psych Examiner licensure is that there are no parameters around the coursework required, but thought that this might help provide guidance, and open communication between DOE and USD(I know things are already being discussed) to help the lack of workforce for School Psychs. I realize you had mentioned that schools were calling DOE to get guidance on the parameters for individuals to get their School Psych. Examiner endorsement, which created a climate of nullifying it. Would that not have been a strong indication for the need to think outside the box and potentially open new paths in South Dakota? I would not have wanted to suggest something that was unethical or unprofessional, and so in my research for what it would take to certify, I came across and reference back to you the NASP 2020 Professional Standards.

I have attached the Professional Standards, but would additionally draw your attention, and the committee's attention, to pages 27-37 of the document. These pages line out what certification paths are available, and additionally what is recommended on each path. The language development that reflects IDEA and ensures that all individuals administering tests are adequately trained to do so is appropriate, and I appreciate the re-wording work that was done multiple times to reflect the current language. The language speaks to the necessity of legal and ethical practices, which all would agree are vital.

Additionally, I would encourage the state to look further into what NASP APPROVED avenues are available to help our great state meet the needs of our students. I am taking calls from schools around our cooperative that are in dire need of School Psych services- we are in a crisis-level of need both across our state, and across our nation. How will we meet the needs of students if we cannot fill these positions? Is it the right time for DOE to consider shutting down an alternate path, or would it be more appropriate for us to study and hone in on the necessary supports required to ensure alternative paths are put in place according to NASP approved programming recommendations.

All remaining public comment received also applied to associated rule revision in ARSD 24:05 (Special Education) under proposal for evaluator revisions.

Full testimony posted under evaluator comments