

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

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

***These comments were received before the scheduled hearing on April 7. At that meeting, it was determined that the public comment period for 24:05 (SpEd) would be extended and action would be taken at the May 6 Board meeting. The Board also recommended postponing the repeal of the School Psych Examiner endorsement which was up for hearing and action under 24:28 (Ed Cert) and 24:53 (Ed Prep). A new draft of the 24:05 was posted on April 12 which included a repeal of all evaluator requirements as Evaluation procedures (24:05:25:04) covers the requirement for evaluators to be qualified on the instruments administered. The repeal of these rules does not eliminate School Psychological Examiner endorsement which is duplicated and still included under 24:28:27:05, therefore any comments during this time related to School Psychological Examiner may not be applicable to the current draft set for hearing on May 6. Comments submitted that only addressed the repeal of the School Psychological Examiner endorsement are not included.*

DOE received 8 comments from four individuals (two individuals submitted separate comments in different rules) and two organizations submitted through Rules.SD.gov. In addition to the formal comments, input was received 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.

Comments by Date Received:

Name: Kali Ahlers on behalf of the SD Association of School Psychologists

Date: 3/01/22



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.



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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 cursive script that reads "Kali Ahlers".

Kali Ahlers
SDASP President

A handwritten signature in cursive script that reads "Julie Rimmereid".

Julie Rimmereid
SDASP Government & Professional Relations

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 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.

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!

And:

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: 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?

And:

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

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: Sean Hegyi - On behalf of Disability Rights South Dakota

Date: 4/5/22

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.

DOE Response to public comment received from posting 2/23/2022 to 4/6/2022:

Based on public comment, legal consult, and continued review of alignment to federal rules the following changes were made and included in the reposted rules :

- 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
- 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.

(Received from 4/7/2022 to 5/4/2022)

DOE received three comments from three individuals and two organizations through Rules.SD.gov. In general, there is overall support for the proposed rules.

Name: Respectfully submitted on behalf of the South Dakota Advisory Panel for Children with Disabilities, Erin Schons, Chairperson

Date: 4/11/22

The SD Advisory Panel for Children with Disabilities heard and discussed the proposed changes to the Administrative Rules. A general support of the proposed changes was shared by the panel.

The panel's discussion focused on the specific changes to the definition of Developmental Delay and the change of the eligibility criteria category of Emotional Disturbance to Emotional Disability. The panel feels that increasing the age for eligibility under the Developmental Delay category to include children ages three to nine will benefit the students of South Dakota. This age increase for eligibility will allow more students to continue receiving services without a gap in those services resulting due to age requirements. The panel also feels that the change from Emotional Disturbance to Emotional Disability will be more widely and positively accepted by parents and guardians when their child is identified as having a disability due to behavior.

Name: Sarah Carlson

Date: 4/19/22

As it relates to rule change to ARSD 24:05:14:14.01. Alternate assessments., I would simply request that SD DOE continue it's trainings with school districts to clarify the difference between modification and accommodations. With the removal of the word modification, I don't see a significant impact, but would like to make sure that the removal of the word "modification" does not change the understanding of school districts and their requirements for children requiring a modification in their education.

As it relates to rule change to ARSD 24:05:24.01:13. Orthopedic impairment defined., I would like to say I appreciate the minor change as I believe it will lead to more students receiving those services.

As it relates to rule change to ARSD 24:05:24.01:17. Criteria for emotional behavioral disability., the plain reading of the rule change seems to suggest that more students would qualify for IEPs by removing the standard deviation requirement (and adding "Symptoms cause clinically significant impairment in social, emotional, behavioral, occupational, or other areas"). However, this change MIGHT mean that students would have to receive a medical diagnosis from a doctor regarding social, emotional, behavioral, occupational, or other areas that are impacted by behavior. While, in theory, this change could lead to more students receiving IEP services, this could be a barrier for minority communities or low SES communities that do not have easy access to medical professionals or cannot cover the costs of medical care/doctor visits. I would request a clarification whether this rule change would require medical diagnosis and the possible impact of that requirement.

Thank you for your time and attention to my notes as provided above.

Name: Tamara Merrill

Date: 4/20/22

Changing the age for developmental delay is a long time coming in the state of South Dakota. This law change would change the unnecessary confusion to parents when a child is initially identified as DD, re-evaluated at age 6 to be told they do not qualify for services anymore but then the student is identified with concerns a few years down the road. Identifying a young student at a young age with a learning disability or other category while still in kindergarten and first grade is unnecessary and unfair to the student and family.

Name: Sean Hegyi - On behalf of Disability Rights South Dakota

Date: 5/3/22

- ARSD 24:05:13:01(15) – English Learner It would make more sense and be easier for the reader if the definition of English Learner was actually included in the rules, rather than defining it “as the term is defined in ESSA.”
- ARSD 24:05:13:01(36) – School Day We agree with adding the definition of School Day into the rules and with the definition of School Day.
- ARSD 24:05:13:01(44) – Supplementary Aids and Services We agree with adding the definition of Supplementary Aids and Services into the rules and with the definition provided.
- ARSD 24:05:22:04.02 – Services to children age three to twenty-one, inclusive. We agree with the changes and additions to this section. However, the additions state “through the completion of the fiscal year that the student becomes 21 years of age...” The rules mention the fiscal year, but that may be confusing to a lot of

parents. It is not clear in these rules when the fiscal year starts/ends and whether the fiscal year is different than the school year. This could cause confusion between school districts and parents regarding when students have completed their education after turning 21.

- ARSD 24:05:24.01:16 – Emotional Disability We agree with and appreciate the change from Emotional Disturbance to Emotional Disability. We believe there is less of a negative connotation with Emotional Disability that there was to Emotional Disturbance.
- ARSD 24:05:24.01:17 – Criteria for Emotional Disability We agree with the changes to have more than one source of the frequency and severity of behaviors – and that the sources could be other places than the school district. In our experience, we have worked with many families where the child shows signs of serious behavioral problems in a multitude of settings but might not show it at school. This has led to students that require additional supports for behavioral trends not being identified early and getting the necessary intervention supports at school. This change should help get children the services that they need from school districts and should help students earlier in their lives. However, it is unclear what the State means when they changes (2) to: “The Student’s symptoms cause clinically significant impairment in social, emotional, behavioral, occupational, or other areas.” Clinically significant is not defined anywhere in the regulations. It is confusing – are IEP teams to define what clinically significant means – or are students required to get a doctor’s note that states the child’s behaviors are clinically significant.
- ARSD 24:05:24.01:25 – Voice Disorder Defined We agree with the changes to Voice Disorder.
- ARSD 24:05:27:07 – Transportation We do not agree with this definition for transportation. Based on this limited definition of “transportation”, a school district may not be required to provide transportation to a child to a counselor’s office if it is written in the IEP. Likewise, it is unclear whether “schools” in this definition would include separate day schools or PRTFs that might be written in a child’s IEP. Adding the definition to “transportation” will likely make discussions around transportation in an IEP even more confusing between school districts and parents.
- ARSD 24:05:27:12.01 – Summary of Performance We agree with the addition of this rule. The summary of performance could be a very useful tool for students after graduation to help provide guidance on skills and other areas that the student thrives in. It may also be helpful for students entering the services of Voc Rehab.
- ARSD 24:05:27:33 – Parental Counseling and Training Defined We agree with the addition of this definition into the rules. We believe this will lead to more informed parents and consistency between the child’s life at school and at home.

Name: Julie Remmereid

Date: 5/4/22

Greetings, I am a school psychologist in South Dakota and am writing in support of the proposed changes for Developmental Delay and Emotional Disturbance. Early intervention is critical for helping children be successful in the classroom, not only with

academics but also with communication, social skills, and other areas of development. Because of our current rule only allowing Developmental Delay to apply up to age six, many preschool and kindergarten children are dismissed from needed eligibility and services right at a time when these continuing supports are needed. Changing the rules to allow Developmental Delay through age nine will allow schools to help support and, hopefully, fade these supports as children gain needed skills rather than stopping them too soon. I am also in support of changing the label Emotional Disturbance to Emotional Disability. The word disturbance automatically carries a negative connotation and further stigmatizes our students with some of our greater mental health needs. Emotional disability does not change the needs of our students but does help begin to normalize their struggles. Thank you

Response to public comment received from posting 4/7/2022 to 5/4/2022

Based on public comment and recommendation from LRC form and style review it was determined there is not a clear definition of clinically significant to correspond to the emotional disability criteria. This is largely based on the evaluation instrument used and the scoring criteria set out by the publisher. It is not intended that a medical diagnosis would be required. Based on this it is proposed the criteria be reworded to demonstrate significant impairment to social, emotional, behavioral, occupational, or other areas.

Regarding the recommendation for transportation, this language comes directly from IDEA. As a related service transportation includes those areas identified, but would not be limited to them should the IEP indicate other transportation needs. No change recommended.

Regarding services to students through the end of the fiscal year they turn 21, we have made sure this is referenced accurately throughout. Fiscal year runs from July 1 to June 30 of the next year. Using fiscal year ensures services can be provided outside of the school year calendar. No change recommended.

Additional revisions were made to form and style based on review and comments submitted from LRC.