

SOUTH DAKOTA BOARD OF REGENTS

Academic and Student Affairs
Consent

AGENDA ITEM: 5 – A
DATE: December 13-14, 2023

SUBJECT

Joint Powers Agreement – SDDOE & SDBOR – High School Dual Credit Program

CONTROLLING STATUTE, RULE, OR POLICY

[AAC Guideline 2.2.1.6.A](#) – Dual / Concurrent Credit Administration Guidelines

BACKGROUND / DISCUSSION

Every two years, a Joint Powers Agreement (JPA) is signed between SDBOR and the South Dakota Department of Education (SDDOE) to facilitate the administration of the high school dual credit program.

IMPACT AND RECOMMENDATION

The JPA (Attachment I) runs through July 1, 2023 and ends on June 30, 2025, and outlines the exchange of both data and tuition dollars as required to make the HSDC program function. The agreement would be signed by the Executive Director upon approval by the Board.

Board staff recommends approval.

ATTACHMENTS

Attachment I – Joint Powers Agreement – SDDOE & SDBOR

DRAFT MOTION 20231213_5-A:

I move to approve the Joint Powers Agreement between the South Dakota Department of Education and the South Dakota Board of Regents, as presented.

**JOINT POWERS AGREEMENT BETWEEN
THE SOUTH DAKOTA DEPARTMENT OF EDUCATION
AND
THE SOUTH DAKOTA BOARD OF REGENTS**

This Joint Powers Agreement (JPA) is entered into between the South Dakota Department of Education (DOE), 800 Governors Drive, Pierre, SD 57501, and the South Dakota Board of Regents (BOR), 306 East Capitol Avenue, Suite 200, Pierre, SD 57501, pursuant to the authority provided in SDCL Chapter 1-24.

1. TERM AND TERMINATION

- A. The term of this JPA shall commence upon July 1, 2023 and shall end on June 30, 2025 unless otherwise extended or terminated as provided in this JPA.
- B. This Agreement may be terminated by either party upon thirty (30) days written notice to the other agency.
- C. Upon termination, each agency shall retain control of the agency's property as provided in this JPA.

2. PURPOSE

The purpose of this JPA is to provide for joint action between the agencies to provide dual credit opportunities to high school and homeschool students across the State of South Dakota who wish to take dual credit courses from public postsecondary institutions under the control of the BOR ("BOR Institution"). Both agencies concur that it is a more efficient use of state resources to enter into this joint undertaking.

3. FINANCING

- A. Except as specifically provided in this JPA, each agency shall be responsible for the costs of the equipment, personnel, and services it provides in the course of joint action under this agreement. The agencies shall also be responsible for the costs of their officers, employees, and agents participating in the coordination and management of joint actions under this agreement.
- B. Payment under this agreement will be made from state funds. BOR is responsible for compliance with all state requirements imposed on these funds and accepts full financial responsibility for any requirements imposed by BOR's failure to comply with state requirements incorporated into this Agreement as Attachment A.
- C. DOE will make payment to BOR in the amount of per credit hour as dictated by SDCL § 13-28-37.1 for each student enrolled in a dual credit course at a BOR Institution on BOR's last academic Census Date. If current appropriations may be inadequate to fund all participants, DOE will cover student credit hour costs, as permitted under SDCL § 4-8-4, and will request such additional appropriations or other funds as may be necessary.

- D. BOR will submit itemized invoices three times yearly to the DOE Director of Career & Technical Education.

4. FUNDING REQUIREMENT

This JPA depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for the purposes contemplated herein. DOE intends to include, within its budget for all the fiscal years this JPA is in effect, an amount sufficient to cover the services required by this JPA. If sufficient funds or expenditure authority are not available, whether through the lack of appropriations by the State Legislature or otherwise, DOE may immediately terminate this JPA. Termination pursuant to this paragraph is not a default by DOE nor does it give rise to a claim against DOE.

5. CONTROL OF PROPERTY AND PERSONNEL

Personnel and property utilized in joint action under this JPA shall be controlled by the agencies in the following manner:

- A. Each agency shall retain title, ownership, and control of all property deployed in joint action under this agreement. Each party shall also remain responsible for any loss or damage of its property deployed in joint action under this JPA.
- B. Any officer, employee, or agent deployed on joint action under this agreement shall remain an employee with their agency during participation in joint action under this agreement. Each agency shall retain exclusive responsibility for its officers, employees, and agents while they are deployed in joint action under this agreement, including but not limited to regular and overtime wages and salaries, unemployment benefits, worker's compensation coverage, health insurance or other benefits, and liability coverage and indemnity except as otherwise specifically provided in this agreement.
- C. Each agency shall retain authority to recall property or personnel previously deployed in joint action if the agency deems it reasonably necessary to meet their own service provision requirements.

6. OWNERSHIP OF REPORTS

Reports and supporting materials submitted by the BOR to DOE pursuant to this JPA will be the property of the DOE. Original records and related materials used by the BOR to generate such reports and supporting materials will remain the property of BOR.

7. CONFIDENTIAL INFORMATION AND DATA PROTECTION

- A. Upon request, BOR will disclose the following information to DOE for dual credit program participants: student name, course enrollment data, and grade received.
- B. For purposes of this JPA, BOR designates DOE as an authorized representative in connection with the audit or evaluation of state or federal supported educational programs.
- C. DOE will use the information for the sole purposes of fulfilling its responsibilities in administering the dual credit program and evaluating the effectiveness of the dual credit program.

- D. The parties shall comply with all state and federal laws protecting the privacy of the data. Nothing in this JPA may be construed to allow any party to maintain, use, disclose or share data in a manner not allowed by state or federal law.
- E. Each party shall be responsible for designating an individual or individuals who shall be responsible for processing and responding to data requests from the other party.
- F. Transmission of all data must be by secure electronic systems/networks. DOE agrees that all data processed, stored, and/or transmitted under the provisions of this JPA shall be maintained in a secure manner that prevents further disclosure. DOE agrees to restrict access of data to DOE personnel who are authorized to have access for the purposes of administering the dual credit program and evaluating the effectiveness of this program.
- G. If either party learns that the confidentiality of any student data is breached or potentially breached, the party shall report this information in detail to the other party immediately upon discovery.
- H. The ability to access or maintain data under this JPA shall not under any circumstances transfer from or be assigned to any other individual, institution, organization, government or entity unless otherwise provided by this JPA.
- I. DOE will protect the data from further disclosure. DOE may redisclose the data only if all identifying information has been removed in accordance with 34 C.F.R. § 99.31(b).

8. GENERAL OBLIGATIONS

- A. **As part of the services to be performed pursuant to this JPA, BOR agrees to:**
 - i. Provide dual credit courses listed in Board Policy 2:7, Undergraduate General Education Curriculum Requirements and those agreed to by BOR policy and in consultation with the DOE, to high school students or homeschool students, who meet admissions standards in accordance with the BOR Institution's policies and processes for admissions, registration, billing and grade reporting.
 - ii. Provide the courses referenced in paragraph 8.A.i at the rate per hour established by SDCL § 13-28-37.1 and charge each 11th or 12th grade South Dakota resident at the rate per credit hour established by SDCL § 13-28-37.1, payment for which shall be the responsibility of the student.
 - iii. Bill DOE for the remaining of the agreed upon per credit hour rate in accordance with paragraph 3 of this JPA.
 - iv. Provide postsecondary credit for each student who obtains the minimum grade necessary for course credit according to BOR policy.
 - v. Identify a single point of contact to coordinate student registrations, grade reports, and student/school district inquiries related to the dual credit program.
 - vi. Work with the point of contact at each high school participating in the dual credit program and provide technical assistance as needed to enroll students in the program.
 - vii. Identify courses which qualify for the reduced rate dual credit program. Post courses to the DOE online storefront.

- viii. Provide the information referenced in paragraph 7.A. to DOE as required within two weeks after the BOR Institution's deadline for submitting final semester grades.
- ix. Provide information about course offerings and reports of enrollments to the DOE as required within two weeks after the completion of each semester. Data will be provided according to the specifications outlined by the DOE. If provided data does not meet the identified data specifications, payment will be withheld until data is provided to match specifications.
- x. Provide grade reports for each student enrolled in the dual credit course to the local school district within two weeks after the completion of each semester.
- xi. In accordance with SDCL 13-28-37.1, If a student receives a failing grade in any course or withdraws from a course after the deadline and does not receive credit for the course, the student may no longer participate in the program. BOR or Board of Technical Education may reinstate a student who is prohibited from participating in the dual credit program if the student demonstrates good cause for failing a course or withdrawing from a course, or if at the student's expense the student retakes and passes the course that the student withdrew from or failed. The dual credit program may not be used for remedial courses.

B. As part of the services to be performed pursuant to this JPA, DOE agrees to:

- i. Provide an online storefront that lists all reduced dual credit opportunities and related institutional registration information.
- ii. Provide dual credit program support materials to school districts.
- iii. Provide data specifications for course offering and student enrollment reports.
- iv. Provide an online list of schools that have submitted a MOU to DOE, agreeing to the requirements of the dual credit program.
- v. Upon completion of grading for those students enrolled as of Census Date, BOR will submit a roster to DOE, and DOE will make payment to BOR upon receipt.

9. ADMINISTRATION

Any joint activity conducted under this JPA shall be administered by the official in command of the joint activity as designated by the requesting agency. Property deployed in joint actions under this agreement shall be held and disposed in the manner described in paragraph 5 above.

10. GENERAL PROVISIONS

- A. This JPA, or any part thereof, or benefits to be received hereunder, shall not be assigned, transferred or otherwise disposed of to any person, firm, corporation or other entity. This JPA may not be modified or amended except in writing, which writing shall be expressly identified as part of this JPA, and which writing shall be signed by the official who executed this JPA or their authorized designees.

- B. This JPA shall be governed and construed in accordance with SDCL Chapter 1-24 and other applicable South Dakota law.
- C. The participating agencies declare that no specific entity as contemplated in SDCL 1-24-4(2) is being created to implement this JPA, and that the cooperative undertaking herein described shall be administered by DOE, through the Director of Career and Technical Education, and BOR, through the Authorized Representative signing below, or authorized designees as contemplated in SDCL 1-24-5.
- D. Any notice or other communication required under this JPA shall be in writing. Notices shall be given by and to Tracia Rentsch on behalf of DOE, and Janice Minder on behalf of BOR, or such authorized designees as either party may from time to time designate in writing.
- E. This JPA and the covenants herein contained shall inure to the benefit of and be obligatory upon the legal representatives, agents, employees, successors in interests and assigns to the respective parties hereto.
- F. In the event that any provision of this JPA shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision herein.
- G. All other prior discussions, communications and representations concerning the subject matter of this JPA are superseded by the terms of this JPA, and except as specifically provided herein, this JPA constitutes the entire agreement with respect to the subject matter hereof. This JPA is intended to supersede and replace any existing agreement between the parties.
- H. This JPA is intended only to govern the rights and interest 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.
- I. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- J. The participating agencies acknowledge that a true and correct copy of this JPA will be filed by DOE with the Office of Attorney General and the Legislative Research Council within 14 days of its final execution pursuant to SDCL 1-24-6.1.
- K. By the signature of their representative below, each agency certifies that approval of this JPA by ordinance, resolution or other appropriate means has been obtained by that agency's governing body or officer pursuant to SDCL 1-24-3 and 1-24-6 and that the representative is authorized to sign on the agency's behalf.

In witness hereto the parties signify their agreement by signature affixed below:

Program Staff Signature (Date)

Authorized Representative (Date)
South Dakota Board of Regents

Authorized State Representative (Date)
Department of Education