

**AMENDMENT TO
MINNESOTA-SOUTH DAKOTA TUITION RECIPROCITY AGREEMENT
of April 1, 2009**

The Minnesota-South Dakota Tuition Reciprocity Agreement of April 1, 2009, is hereby amended by adding the underlined language to the Miscellaneous Provision on Page 6 of the Agreement:

9. Miscellaneous Provisions

a. Exceptions.

This agreement does not apply to:

- 1) Students in grades 7 – 12 residing in ISD 404, Lake Benton, MN and enrolled in Elkton School District 05-3 under a tuition agreement between the two school districts, and
- 2) Students residing in the portion of Milbank School District 25-4, SD, previously included in District 25-1, Big Stone City, SD, and enrolled in ISD 62, Ortonville, MN, under a tuition agreement between the two school districts.

This agreement does apply to:

- 1) Students residing in South Dakota and enrolled in grades 7-12 in ISD 403 Ivanhoe, MN, during the 2010-2011 school year, until they graduate from ISD 403 Ivanhoe or withdraw from ISD 403 Ivanhoe, whichever occurs first.
- b. Application of other Laws. Minnesota Statutes §§ 124D.04 and 124D.05, regarding receiving tuition and reciprocity, do not apply to students participating in cross-border attendance under this Agreement.
- c. Merger. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement.
- d. Severability. If any term or provision of this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms and provisions shall not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term or provision.
- e. Spoliation. Each party shall promptly notify the other party of all potential claims that arise from or result from this Agreement. Each party shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the other party the opportunity to review and inspect the evidence, including the scene of an accident.

- f. Indemnity. Minnesota and South Dakota each agrees to assume its own liability for any claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.
- g. Alternative Dispute Resolution - Jury Trial. Neither South Dakota nor Minnesota agrees to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to legal action to enforce available remedies. Neither South Dakota nor Minnesota waives any right to a jury trial that either State may have under applicable law.
- h. Data practices and handling of records. Records in the possession of Minnesota, including records received from South Dakota, are Minnesota government data and will be handled by Minnesota in accordance with the Minnesota Government Data Practices Act, Minn. Stat. § 13.03 et seq. Records in the possession of South Dakota, including records received from Minnesota, are South Dakota government data will be handled by South Dakota in accordance with the South Dakota open records law. See SDCL ch. 1-27. The records may also include education records, and all educational agencies are bound by the Federal Family Educational Rights and Privacy Act (FERPA), (20 U.S.C. § 1232g; 34 CFR Part 99 and the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et, seq.
- i. Contract Term. The term of this agreement is one (1) year, beginning July 1, 2009 and ending July 1, 2010. The agreement shall be automatically renewed for successive term of one (1) year each without action by either party unless one of the parties gives written notice of its intention to terminate the parties' agreement at least sixty (60) days in advance of the renewal date hereof. Such notice of termination must be mailed to either the South Dakota Secretary of Education or the Minnesota Commissioner of Education, as the case may be, by certified mail, return receipt requested, and postmarked at least 60 days prior to the next renewal of this contract. In absence of such notice, the agreement shall be automatically renewed in accordance with this paragraph.
- j. Funding Out. This agreement depends upon continued availability of appropriated funds and expenditure authority from the South Dakota Legislature and the Minnesota Legislature for this purpose. If, for any reason, the legislature of either South Dakota or Minnesota fails to appropriate funds or grant expenditure authority, or funds become unavailable to either State by operation of law or federal funds reductions, this Agreement will be terminated by a State if that State does not have authorized appropriations and expenditure authority to carry out the Agreement. Termination for any of these reasons by a State is not a default by that State, nor does it give rise to any claim against that State, nor against any of that State's agencies, agents, officers, contractors or employees.

k. State Audit. All records, regardless of physical form, and the accounting practices and procedures of either party relevant to this Agreement are subject to examination by the appropriate state auditing agency of either state. Both parties will maintain all such records for at least three years following completion of this Agreement.

l. Effective Date. This Agreement is not effective until fully executed by both parties.

All other language in the Agreement of April 1, 2009 and the Amendment of December 4, 2009 remain in effect.

STATE OF MINNESOTA

Brenda Cassellius
Commissioner of Education



Signature

9-19-11
Date

STATE OF SOUTH DAKOTA

Dr. Melody Schopp
Cabinet Secretary of Department of Education



Signature

9-26-11
Date