



# Discipline in Detail

## Information and Thanks

The following student discipline information is taken from selected South Dakota codified laws and the South Dakota Administrative Rules pertaining to appropriate use of discipline in the public schools as of January 2021.

This document is designed as a guide for school administrators, parents, and advocates in South Dakota to use as a resource for discipline procedures for students with disabilities who violate a school district's code of student conduct.

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## Acronym Guide

BIP –	Behavioral intervention plan
IAES –	Interim alternative educational setting
IDEA –	Individuals with Disabilities Education Act
IEP –	Individualized education program
ISS –	In school suspension
FBA –	Functional behavioral assessment
LEA –	Local education agency
MD –	Manifestation determination
OSS –	Out of school suspension
SEA –	State education agency

## Background

States, districts, and communities are understandably very concerned with school safety. Providing safe environments in which children can learn, free of drugs and violence, is a top priority for educators. In keeping with that concern, the Individuals with Disabilities Education Act (IDEA) includes provisions that address the discipline of children with disabilities in school settings and at school functions.

IDEA’s discipline provisions were first introduced in the 1997 amendments and were streamlined in the 2006 regulations. Even so, they remain complex, spelling out the authority of school personnel to take disciplinary action when a child with a disability violates the school district’s code of conduct. Under certain conditions, the actions schools can take include removing children with disabilities from their current placement, placing them in an interim setting or, if appropriate, suspending or expelling them. This authority may be exercised only in specific circumstances, which will be discussed here.

## Addressing Behavior

In addition to including discipline procedures as a means of addressing the behavior of children with disabilities in certain situations, IDEA includes several vehicles for proactively addressing the needs of children who exhibit behavior challenges. The most prominent of these vehicles is the individualized education program (IEP). For a “child whose behavior impedes the child’s learning or that of others,” the child’s IEP team must consider “the use of positive behavioral interventions and supports, and other strategies, to address that behavior,” [§300.324(a)(2)(i)]. Functional behavioral assessments (FBAs) and BIPs are possible tools an IEP Team may consider when determining how to address inappropriate behavior. These elements become mandatory in certain disciplinary situations if the IEP Team determines them to be appropriate for the child.

## General Authority of School Personnel

When a child with a disability has violated a code of student conduct, the question many school systems, families, and advocates ask is: *What authority do school personnel have to discipline the child?* The answer begins with the general authority of school personnel under §300.530(b)(1). IDEA and South Dakota state:

### §300.530(b)(1): Authority of School Personnel

(b) General. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).

### S.D. 13-32-1: Disciplinary Authority over Students on School Premises

Superintendents, principals, supervisors, and teachers have disciplinary authority over all students while the students are in school or participating in or attending school sponsored activities whether on or off school premises. Superintendents and principals may also discipline students for aggressive or violent behavior that disrupts school or that affects a health or safety factor of the school or its programs.

The IDEA's discipline regulations and South Dakota's Codified Law provides the foundational layer for school personnel's authority to take disciplinary action and to remove a child with a disability from the current setting to another setting for disciplinary infractions.

### First Time Violation

School personnel may remove a child to an appropriate interim alternative educational setting (IAES), another setting, or suspension for no more than 10 school days in a row—to the extent those alternatives are applied to children without disabilities.

- Q.** When a child is removed, in what setting do school personnel have the authority to place the child?
- A.** An appropriate IAES, another setting, or suspension.
- Q.** What does “another setting” mean?



- A. A setting that is different from the child’s current placement.
- Q. For how long may a child be removed from their current placement?
- A. Not more than 10 consecutive school days, to the extent those alternatives are applied to children without disabilities.
- Q. Is the 10th day of removal counted in that length of time?
- A. Yes, the 10th day of removal is counted in that length of time.
- Q. How does disciplining children without disabilities relate to this provision?
- A. The alternatives mentioned by IDEA (i.e., IAES, another setting, or suspension) may only be applied to children with disabilities to the extent those disciplinary actions are also applied to children without disabilities.
- Q. Does the child continue to receive special education services during their time of removal?
- A. Although it is not stated in the provision above, it is important to know that schools do not have to provide special education services to children with disabilities during a removal of up to 10 school days in one school year—as long as they also do not provide educational services to children without disabilities who are similarly removed [§300.530(d)(3)].

### ***10-Day-Rule***

The 10-day-rule is the requirement stating that by the 11th day of a child’s removal, the school district must provide services to the child. Removals of more than 10 cumulative days in a school year could be considered a change in placement depending on the factors considered by the school district, such as proximity of each removal. It is not a category of action. The actions are suspension, expulsion, IEP change in placement, or removal to an IAES.

### **Additional Violations**

What if the child violates a student code of conduct more than one time in the same school year? Can school personnel remove that child again for up to, and including, 10 school days in a row?

Yes—and for each separate incident of student misconduct—with two associated conditions. Those conditions are:

- Additional removals of no more than 10 consecutive school days in a school year from the current educational placement may occur so long as those removals do not constitute a “change of placement” in the disciplinary context under §300.536 [§300.530(b)(1)].
- Beginning with the 11th cumulative day in a school year that a student is removed, the school system must provide services to “allow the student to

continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals set out in the student’s IEP,” as required in §300.530(d). [§300.530(b)(2) and (d)(4)-(5)]

## **What Happens to a Student on the 11th Cumulative Day of Removal?**

The school system must provide services to the student to the extent required under §300.530(d), which clarifies the child must continue to receive educational services so the child can continue to participate in the general education curriculum (although in another setting) and progress toward meeting the goals in his or her IEP.

## **Change of Placement**

A change of placement occurs when a student is removed from their regular educational placement or from where their regular educational services are provided. School personnel have the authority to make additional removals of a student with a disability for no more than 10 consecutive school days in the same school year for separate incidents of misconduct—as long as those removals do not constitute a change of placement under §300.536.

A change of placement occurs if:

- The removal is for more than 10 consecutive school days.  
or
- The student has been subjected to a series of removals that constitute a pattern.

What factors are to be considered in determining whether the series of removals constitutes a pattern? IDEA states in §300.536 that a pattern would exist:

- When the series of removals total more than 10 cumulative school days in a school year.
- When the student’s behavior is substantially similar to the student’s behavior in previous incidents that resulted in the series of removals.  
and
- When additional factors exist such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

The school system determines, on a case-by-case basis, whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings. Consider the two cases below.



## *Case #1*

Jenna, a student with a disability, is suspended from school for 6 days in November, another 3 days in February, and then 1 day in April. Do those removals constitute a pattern of removals that amount to a change of placement for Jenna?

Answer: No, that's only 10 school days of removal total. IDEA states that a pattern is "a series of removals that total more than 10 school days in a school year," [§300.536(a)(2)(i)].

## *Case #2*

Review the following example about Robert, a student with a disability.

September – Robert threw food at students in the cafeteria, so he received a one-day suspension. In October, Robert threw food at students in the cafeteria again, receiving another one-day suspension.

October – Robert pulled the fire alarm, resulting in a five-day suspension.

November – Robert was found fighting in class, which resulted in two days of removal.

December – Robert set off the sprinkler system in the school with a lighter, and he was removed for two days.

Could the school system determine that Robert's removals constitute a pattern and, thus, a change of placement?

Answer: Yes. According to §300.536(a)(2)(i), a pattern is "a series of removals that total more than 10 school days in a school year." In this case, Robert has been removed from his current placement for a total of 11 school days. School systems cannot use repeated short-term removals as a way of avoiding the change in placement provisions in IDEA. Therefore, the school system would need to consider whether this series of removals constitutes a pattern and, thus, a change of placement, including considering (a) whether Robert's behavior was substantially similar to that of previous incidents, and (b) any additional factors or relevant information regarding Robert's behaviors, including, where appropriate, any information in his IEP.

The Department of Education acknowledged in response to a public comment:

...what constitutes 'substantially similar behavior' is a subjective determination. However, we believe that when the child's behaviors,

taken cumulatively, are objectively reviewed in the context of all the criteria in paragraph (a)(2)...for determining whether the series of behaviors constitutes a change in placement, the public agency will be able to make a reasonable determination as to whether a change in placement has occurred. Of course, if the parent disagrees with the determination by the public agency, the parent may request a due process hearing pursuant to §300.532 (71 Fed. Reg. 46729).

### ***In School Suspension (ISS)***

When a student receives ISS, the district is responsible for the following:

- The student must be afforded the opportunity to continue to appropriately participate in the general curriculum;
- The student must continue to receive the services specified in the IEP; and
- The student must continue to participate with nondisabled peers to the greatest extent possible as they would have in their current regular placement.

## **Counting Days**

Questions naturally arise about what counts as a day of removal. The following are two specific circumstances: ISS and bus suspensions.

### **Does ISS Count as Days of Removal?**

The Department of Education provided clarification about whether to count an in-school suspension as part of the 10-day removal period and whether it was required to provide services to a student with a disability during an in-school suspension. The Department explained:

It has been the Department's long term policy that an in-school suspension would not be considered a part of the days of suspension addressed in §300.530 as long as the child is afforded the opportunity to continue to appropriately participate in the general curriculum, continue to receive the services specified on the child's IEP, and continue to participate with nondisabled children to the extent they would have in their current placement. This continues to be our policy. Portions of a school day that a child had been suspended may be considered as a removal in regard to determining whether there is a pattern of removals as defined in §300.536 (71 Fed. Reg. 46715).

## Bus Suspension

Riding the school bus is the primary means by which large numbers of students get to and from school. A disciplinary violation on a school bus may well result in being suspended from using the bus service for some period of time. In the Analysis of Comments and Changes, the Department addressed this concern as follows:

Whether a bus suspension would count as a day of suspension would depend on whether the bus transportation is a part of the child's IEP. If the bus transportation were a part of the child's IEP, a bus suspension would be treated as a suspension under §300.530 unless the public agency provides the bus service in some other way, because that transportation is necessary for the child to obtain access to the location where services will be delivered. If the bus transportation is not a part of the child's IEP, a bus suspension is not a suspension under §300.530. In those cases, the child and the child's parent have the same obligations to get the child to and from school as a nondisabled child who has been suspended from the bus. However, public agencies should consider whether the behavior on the bus is similar to behavior in a classroom that is addressed in an IEP and whether the child's behavior on the bus should be addressed in the IEP or a behavioral intervention plan for the child.

## What is Considered a Day?

What should a district be counting as a full school day? For example: if a student is sent home for the last hour of the day, does this need to be counted as a full day of removal? Or should the district count it as a partial day?

The definition of a "school day" is any day, including a partial day, that students are attending school for instructional purposes. Partial days can be counted for purposes of record keeping.

- Early out days count as a full school day.
- If kids have a late start or early out for weather, it counts as a full school day.

Suspensions that start at noon.

- Look at how you take attendance for all students and proceed to count a day as you would for all students.
- Count as a partial day if it has been determined that missing class has constituted a pattern.

**Q.** What is a disciplinary removal?

**A.** Any time a student is removed due to a violation of code of conduct (behavior).

- Q.** What are some examples of disciplinary removals?
- A.** Disciplinary removals include calling the parent to come get the student from school, ISS, OSS, sending a student to the timeout room, and sending a student to the principal's office. These disciplinary removals are counted as suspensions.
- Q.** What should be counted as a disciplinary removal?
- A.** Any time a student is removed from class due to a violation of code of conduct, which includes the above removals (i.e., calling the parent to come get the student, ISS, OSS, timeout room, and sending a student to the principal's office).

## **Case-by-Case Determination & Special Circumstances**

Under the IDEA (2004), school personnel may consider whether a change in placement that is otherwise permitted under the disciplinary procedures is appropriate and should occur. At first glance, this provision may appear to give school personnel the authority to unilaterally determine a change of placement for a child, but this is not so. School personnel must exercise this authority on a case-by-case basis, and they can only use this authority if the removal would otherwise be consistent with the other provisions in §§300.530-300.536. In other words, school authorities may only exercise their discretion on a case-by-case basis to allow removals for unique circumstances if the other disciplinary procedures have been satisfied.

If school personnel now have the authority to take any unique circumstances or factors into consideration as part of change-of-placement decision making, what kind of circumstances might they consider?

According to the Department:

Factors such as a child's disciplinary history, ability to understand consequences, expression of remorse, and supports provided to a child with a disability prior to the violation of a school code [of student conduct] could all be unique circumstances considered by school personnel when determining whether a disciplinary change in placement is appropriate for a child with a disability (71 Fed. Reg. 46714).

### **Is the IEP team involved in a case-by-case determination?**

According to the Department of Education:

[W]e do not believe it is appropriate to define a role for the IEP Team in this paragraph. There is nothing, however, in the Act or these regulations that would preclude school personnel from involving parents or the IEP Team when making this determination (71 Fed. Reg. 46714).

## **Which school personnel are involved?**

IDEA's regulations do not specify an answer to this question. The Department explains that "...such decisions are best made at the local school or district level and based on the circumstances of each disciplinary case," (71 Fed. Reg. 46714).

## **Parent Notification**

Parent notification is a very important aspect of implementing discipline procedures as outlined in IDEA. On the date the decision is made to make a removal that constitutes a change of placement for a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision and provide the parents the procedural safeguards notice described in §300.504 [§300.530(h)].

## **What Happens Next?**

If a decision is made to change a child's placement because of a violation of a code of student conduct, then a manifestation determination must be conducted within 10 school days of that decision [§300.530(e)]. The purpose of the manifestation determination is to determine whether or not the child's violation of the student code of conduct is substantially linked to his or her disability.

## **School Authority in Special Circumstances**

In addition to the general authority of school personnel to remove a student with disabilities from his or her current placement in disciplinary situations, school personnel also have the authority to remove a student with disabilities for what is known as "special circumstances." These circumstances apply to a child with a disability:

- Who carries a weapon to or possesses a weapon at school, on school premises, or at a school function;
- Who knowingly possesses or uses illegal drugs, sells illegal drugs, or solicits the sale of a controlled substance at school, on school premises, or at a school function;
- or
- Who has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. [§300.530(g)]

In any of these circumstances, school personnel may remove a student to an IAES for no more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability.

## Definition of Key Terms

"Dangerous weapon" is defined in 18 U.S.C. 930(g)(2) as follows:

[T]he term dangerous weapon means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 ½ inches in length (71 Fed. Reg. 46723).

Note that the child does not have to use the weapon; he or she may merely possess it. It is also enough for a child with a disability to knowingly possess an illegal drug; he or she does not have to be caught using the drug. In contrast, for drug violations involving controlled substances, IDEA means the child must sell or solicit the sale of a controlled substance.

Clearly, a difference exists between illegal drug and controlled substance. IDEA defines what a controlled substance is and what an illegal drug is at §300.530(i)(1) and (2).

**(1)** Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act [21 U.S.C. 812(c)].

**(2)** Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

The definition of serious bodily injury is in response to a public comment asking for more clarification. The Department of Education provided the following definition of that term from 18 U.S.C. 1365(h)(3):

The term serious bodily injury means bodily injury that involves:

1. A substantial risk of death;
2. Extreme physical pain;
3. Protracted and obvious disfigurement;
- or
4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (71 Fed. Reg. 46723)



## Consequences Involving Special Circumstances

When a student with a disability has committed a weapons or drug violation, or has inflicted serious bodily injury on another person, school personnel may remove that child to an IAES for no more than 45 school days without regard to whether the violating behavior is determined to be a manifestation of the child's disability, [§300.530(g)].

Other provisions of IDEA's discipline procedures apply under special circumstances—for example:

- Conducting the manifestation determination under §300.530(e);
- Notifying parents under §300.530(h);
- and
- Determining the extent of services that must be provided to the child under §300.530(d)(1).

## Manifestation Determination

At specific times, and for certain violations of the student code of conduct, IDEA's discipline procedures require school systems to conduct what is known as a "manifestation determination review." The purpose of the MD review is to determine whether or not the child's behavior that led to the disciplinary consequence is linked to his or her disability.

### When is a Manifestation Determination Review Necessary?

Under §300.530(e), a MD must occur within 10 days of any decision to change the child's placement because of a violation of a code of student conduct.

### Who is Involved in the Manifestation Determination Review?

The LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA) are involved in conducting the review. Their purpose is to determine:

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability.
- or
- If the conduct in question was the direct result of the LEA's failure to implement the IEP, [§300.530(e)(1)-(2)].

To make these determinations, the group will review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents.

The link between the child’s conduct violation and his or her disability is important. As the Department notes:

We believe the Act recognizes that a child with a disability may display disruptive behaviors characteristic of the child’s disability and the child should not be punished for behaviors that are a result of the child’s disability (71 Fed. Reg. 46720).

The relationship between the child’s behavior and disability, however, is not the only factor to be considered in a MD. A MD must also consider if the child’s violating conduct was the direct result of the LEA’s failure to implement the IEP [§300.530(e)(1(ii))]. If such a finding is made, regulations require the LEA to take immediate steps to remedy those deficiencies [§300.530(e)(3)].

**Q.** Under what circumstances must a MD be conducted?

**A.** Whenever a decision is made to change the placement of a child with a disability because he/she/they violated a code of student conduct.

**Q.** What is the timeframe for conducting a MD?

**A.** The manifestation determination must occur within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct.

**Q.** Who is involved in conducting a MD?

**A.** The LEA, the child’s parent(s), and relevant members of the child’s IEP team.

**Q.** Who decides who is a relevant member of the IEP team?

**A.** The child’s parent(s) and the LEA.

## **Scope of the Review**

IDEA states the LEA, the parent(s), and relevant members of the child’s IEP team must review “all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents,” as part of conducting a MD [§300.530(e)(1)]. According to the Department of Education; other relevant information in the child’s file; including placement appropriateness, supplementary aids and services, and if the behavior intervention strategies were appropriate and consistent with the IEP; can be included in the review (71 Fed. Reg. 46719).

Consider this excerpt from the U.S. House of Representatives Conference Report pages 108-779. It clarifies both the scope of the manifestation review and the intent behind it.

[T]he Conferees intend to assure that the manifestation determination is done carefully and thoroughly with consideration of any rare or extraordinary circumstances presented.” The Conferees further intended that “if a change in placement is proposed, the manifestation determination will analyze the child’s behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability (71 Fed. Reg. 46720).

Suppose the group has met, reviewed all relevant information in the child’s file, considered the child’s violating conduct in light of his or her disability, considered the LEA’s implementation of the IEP, and come to a determination. What happens if that determination is yes or no? Each answer leads to specific outcomes.

### **If the Determination is Yes**

Two scenarios exist under which the MD would be “yes.” These scenarios are when the conduct:

- Had a direct and substantial relationship to the child’s disability;  
or
- Was the direct result of the LEA’s failure to implement the child’s IEP.

If either condition is met, the student’s violating conduct must be determined to be a manifestation of his or her disability [§300.530(e)(2)-(3) and (f)]. In other words, the manifestation determination is “yes.”

But it matters which of the two conditions was the basis for the determination of “yes.” If the group determines the child’s violating conduct was the direct result of the LEA’s failure to implement the child’s IEP, the “LEA must take immediate steps to remedy those deficiencies.” As the Department explains, if such a determination is made:

[T]he LEA has an affirmative obligation to take immediate steps to ensure that all services set forth in the child’s IEP are provided, consistent with the child’s needs as identified in the IEP (71 Fed. Reg. 46721).

### **What About Placement?**

Unless the behavior involved one of the special circumstances—weapons, drugs, or serious bodily injury—the child would be returned to the placement from which he or she was removed as part of the disciplinary action. However, the parent(s) and LEA can agree to a change of placement as part of the modification of the behavioral intervention plan (BIP) [§300.530(f)(2)].

If the group finds the child's misconduct had a direct and substantial relationship to his or her disability, then the group must also reach a manifestation determination of "yes." The following two pieces of documentation are required whenever the child's violating behavior is determined to be a manifestation of the disability:

- FBA – Has the child had one? Does one need to be conducted?
- BIP – Does the child have one? If so, does it need to be reviewed and revised? Or if the child does not have one, does one need to be written? [§300.530(f)]

Thus, if a child's misconduct has been found to have a direct and substantial relationship to his or her disability, the IEP team will need to immediately conduct an FBA of the child unless one has already been conducted.

An FBA focuses on identifying the function or purpose behind a child's violating behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental, etc). Knowing why a child exhibits a problematic behavior is directly helpful to the IEP Team in developing a BIP that will change the behavior.

In addition to conducting an FBA (if necessary), the IEP team must also write a BIP for the student unless one already exists. If the latter is the case, the IEP team will need to review the plan and modify it, as necessary, to address the problem behavior.

The IEP team must also address a child's misbehavior via the IEP process as well.

The Department of Education explains:

When the behavior is related to the child's disability, proper development of the child's IEP should include development of strategies, including positive behavioral interventions, supports, and other strategies to address that behavior... When the behavior is determined to be a manifestation of a child's disability but has not previously been addressed in the child's IEP, the IEP Team must review and revise the child's IEP so that the child will receive services appropriate to his or her needs. Implementation of the behavioral strategies identified in a child's IEP, including strategies designed to correct behavior by imposing disciplinary consequences, is appropriate... even if the behavior is a manifestation of the child's disability (71 Fed. Reg. 46720-21).

The child must be returned to the placement from which he or she was removed as part of the disciplinary action, with two exceptions:

- If the behavioral violation involved special circumstances of weapons, drugs, or serious bodily injury;  
or
- If the parents and LEA agree to change the child's placement as part of the modification of the BIP.

If either of these exceptions applies, the child need not necessarily return to the same placement they were in before.

### **If the Determination is No**

A MD of “no” means either that:

- The child’s violating behavior was not caused by or did not have a direct and substantial relationship to the child’s disability;
- or
- The child’s violating behavior was not the direct result of the LEA’s failure to implement the IEP.

In either case of “no,” school personnel have the authority to apply the relevant disciplinary procedures to a child with a disability in the same manner, and for the same duration, as the procedures would be applied to a child without a disability, except—and this is very important—for whatever special education and related services the school system is required to provide the child with a disability under §300.530(d).

### **Are Services Provided During Disciplinary Removals?**

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, the school system must provide services to the student during any subsequent days of removal to allow the child to participate in the general curriculum required under §300.530(d).

### **Which Services, Under Which Circumstances, and Who Decides?**

The services that a school system must provide to a student with a disability under disciplinary removal, and the extent to which any services need to be provided, will depend on many factors and sometimes a combination of factors, including but not limited to:

- Whether the child’s behavior infraction was determined to be a manifestation of his or her disability;
- Whether educational services are provided to children without disabilities who are removed for the first 10 days or less in one school year;
- How long the disciplinary removal is supposed to last;
- How many days of removal the child has already been subject to in this school year as part of other disciplinary actions;
- and
- The nature of the child’s infraction (e.g., did it involve a weapon, drugs, or serious bodily injury?).

The “extent of services” question can have many possible answers. These possibilities are reflected in the provisions at §300.530(d), which can be characterized by their “if-this, then-that” nature. Perhaps the easiest way to understand the extent to which services must be provided to a child with a disability under disciplinary removal is by looking at the clear-cut, straightforward cases first.

### **When Removals Total No More Than 10 School Days in a School Year**

When the total number of days a child with a disability has been removed from his or her current placement is 10 school days or less in one school year, the school system is only required to provide services to that child if it also provides services to children without disabilities who are similarly removed [§300.530(d)(3)].

Once a child’s cumulative days of removal in a school year exceed 10 school days, the school system must provide services beginning with the 11th cumulative day of removal and during any subsequent days of removal. The school system must also provide services in keeping with §300.530(d).

For children whose MD is “No,” and for violations involving special circumstances, a student with a disability must continue to receive educational services when his or her disciplinary removal is for either:

- Behavior determined not to be a manifestation of his or her disability;  
or
- Offenses involving weapons, drugs, or serious bodily injury.

This includes children who are either suspended or expelled for behavior determined not to be a manifestation of their disability and children who have been placed in an IAES because of violations involving “special circumstances” (i.e., drugs, weapons, or serious bodily injury).

Since these removals are a disciplinary change of placement, the IEP team determines what services will be provided to the child, if they will be provided in an IAES, and, if so, what that IAES will be [§300.530(d)(1) and (5) and §300.531]. The IEP team must keep in mind that the services are to enable the child to continue to participate in the general education curriculum, although in another setting, and to enable the child to progress toward meeting the goals set out in their IEP [§300.530(d)(1)(i)].

Note that the school system is not required to replicate in another setting the exact services included in the IEP.

In addition, a student whose removal corresponds to either circumstance (a “no” manifestation or because of “special circumstances”) must receive, as appropriate, a functional behavioral analysis (FBA), behavioral intervention services, and modifications designed to address the behavior violation so it does not recur. See §300.530(d)(1)(ii).



## **When Removal is Considered a Change of Placement**

When a child's removal for disciplinary reasons is considered a change of placement under §300.536, the child's IEP team determines what services the child will receive. Again, these services are to enable the child to continue participating in the general curriculum, although in another setting, and to continue to progress toward meeting IEP goals [§300.530(d)(5)]. The IEP team also determines if the child will be placed in an IAES to receive those services and what the IAES will be.

## **Combining Factors**

The most complicated circumstance in §300.530(d) is found at (d)(4). This provision combines the total number of removals, the current removal time, and the qualifier that this removal is not considered a change of placement. It reads:

After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP [§300.530(d)(4)].

The provision addresses the extent to which schools must provide services when a child's removal is:

- For a short period of time;
- and
- Not a change in placement.

Services are not always required when a child has accumulated more than 10 removal days in a school year but is now to be removed for just a few days in a row (no more than 10).

## **Who determines if the child needs services during a short removal?**

This decision is made by appropriate school personnel in consultation with at least one of the child's teachers.

## **On what basis is the determination made?**

The Department of Education states:

We believe the extent to which educational services need to be provided and the type of instruction to be provided would depend on the length of the removal, the extent to which the child has been removed previously, and the child's needs and educational goals.

For example, a child with a disability who is removed for only a few days and is performing near grade level would not likely need the same level of educational services as a child with a disability who has significant learning difficulties and is performing well below grade level. The Act is clear that the public agency must provide services to the extent necessary to enable the child to appropriately participate in the general curriculum and appropriately advance toward achieving the goals in the child's IEP," (71 Fed. Reg. 46717-18).

An important aspect in decision making regarding "extent of services" can be found in the last line of the Department's discussion and in §300.530(d)(4) itself: "services must be provided to the extent necessary to enable the child to appropriately participate in the general curriculum and appropriately advance toward achieving the goals in the child's IEP."

### **When Services Are Provided to Children Removed for Disciplinary Reasons**

Section 300.530(d) broadly addresses the provision of services to children with disabilities under disciplinary action. But what types of services are we talking about? A replica of the special educational program described in a child's IEP, including all the related services and supplementary aids and supports?

According to the Department, no. The Department states it would generally not be feasible for a school district to provide a child removed for disciplinary reasons with every aspect of the services that would be given in his or her chemistry or auto mechanics classroom, as "these classes generally are taught using a hands-on component or specialized equipment or facilities," (71 Fed. Reg. 46716).

The amount of time a child is removed from his or her regular placement for disciplinary reasons may also affect the nature and extent of services provided during the time of removal.

For example:

...a child who is removed for a short period of time and who is performing at grade level may not need the same kind and amount of services to meet this standard as a child who is removed from his or her regular placement for 45 days under §300.530(g) or §300.532 and not performing at grade level (Id.).

### **What of children who have been suspended or expelled from school?**

If they are removed for more than 10 school days in a school year for disciplinary reasons, they must continue to receive FAPE which includes services.

However, an LEA is not required to provide children, who are suspended for more than 10 school days in a school year for disciplinary reasons, exactly the same services in exactly the same settings as they were receiving prior to the imposition of disciplinary removal. However, the special education and related services the child does receive must enable the child to continue to participate in the general curriculum and progress toward meeting the goals set out in the child's IEP (71 Fed. Reg. 46716).

## **Basis of Knowledge**

Can IDEA's discipline protections be applied to, or claimed by, children not previously determined to be eligible for special education and related services under IDEA?

- Q.** If a student who has not yet been found to be a "child with a disability" under IDEA has violated a code of student conduct, and the school system has taken disciplinary action according to its policies, can the student assert that, in fact, he or she is a "child with a disability" as IDEA defines that term and that the protections under IDEA must guide the discipline policies that are applied?
- A.** The answer is "sometimes" and "under certain circumstances." The pivot point is whether or not the school system had knowledge that the child was a "child with a disability" when the child violated the code of student conduct. This is called "Basis of Knowledge."

### **Criteria for Basis of Knowledge**

IDEA is quite specific about what qualifies as "basis of knowledge." It states at §300.534(b) that the school system can be deemed to have such knowledge if, before the behavior occurred:

- 1.** The parent of the child expressed concern in writing to supervisory or administrative personnel at the appropriate educational agency, or to a teacher of the child, that the child is in need of special education and related services.
- 2.** The parent of the child requested an evaluation of the child.  
or
- 3.** The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the special education director of the agency or to other supervisory personnel of the agency.

### **Implications of These Criteria**

These criteria have direct relevance to teachers, administrators, and parents alike. Each can play a potential role in the chain of events we have described and whether or not the child in

question can legitimately assert the protections of IDEA. Consider the following situations and whether or not an LEA could be deemed to have “basis of knowledge”.

- The child’s parent said something to the child’s teacher about the child maybe needing special education. (No, the parent’s concern must be expressed in writing.)
- The child’s teacher was talking to another teacher in the lounge about the child’s behavior. (No, the teacher’s concern must be expressed directly to someone filling a supervisory role in the local education agency.)
- An employee of the LEA is worried about a child’s behavior and thinks the child needs special education and related services. To whom would the employee express these concerns? (To the director of special education or to other supervisory personnel at the LEA.)

### **The Child Find Mechanism**

These provisions have a presumption that, if involved individuals express concerns to other involved individuals (especially those in supervisory positions within the school system) about a child’s behavior or possible need for special education and related services, the school has an affirmative obligation to act upon those concerns and investigate the child’s need for special education and related services.

As the Department explained:

...the child find and special education referral system is an important function of schools, LEAs, and States. School personnel should refer children for evaluation through the agency’s child or special education referral system when the child’s behavior or performance indicates that they may have a disability covered under the Act. Having the teacher of a child (or other personnel) express his or her concerns regarding a child in accordance with the agency’s established child find or referral system helps ensure that the concerns expressed are specific, rather than casual comments, regarding the behaviors demonstrated by the child and indicate that the child may be a child with a disability under the Act (71 Fed. Reg. 46727).

However, as the Department also noted, not all child find systems and referral processes in States and LEAs have policies in place that meet the requirements described in IDEA’s “basis of knowledge” provisions—specifically that:

...[a] teacher of the child, or other personnel of the LEA,”...must express specific concerns about a pattern of behavior demonstrated by the child “directly to the special education director of such agency or to other supervisory personnel of the agency (Id.).

Recognizing that child find and special education referral policies in the States vary, the Department cautioned:

For these reasons, we would encourage those States and LEAs whose child find or referral processes do not permit teachers to express specific concerns directly to the special education director of such agency or to other supervisory personnel of the agency, to change these processes to meet this requirement (Id.).

In South Dakota, ARSD 24:05:24:01 addresses referral. Referral includes any written request which brings a student to the attention of a school district administrator (building principal, superintendent, or special education director) who may be in need of special education. A referral made by a parent may be submitted verbally, but it must be documented by a district administrator. Other sources of referrals include the following:

1. Referral through screening;
2. Referral by classroom teacher;
3. Referral by other district personnel;
4. Referral by other public or private agencies;  
and
5. Referral by private schools including religious schools.

### **Exceptions to Basis of Knowledge**

IDEA also includes several exceptions to the “basis of knowledge” criteria, wherein a school system would not be deemed to have the knowledge that a child was a “child with a disability” before the child’s behavior occurred. These provisions appear at §300.534(c), and they apply if:

- The parent of the child has not allowed an evaluation of the child pursuant to §§300.300 through 300.311;
- Has refused services under this part;  
or
- The child has been evaluated in accordance with §§300.300 through 300.311 and determined to not be a child with a disability under this part.

### **Children Receiving Coordinated Early Intervening Services (CEIS)**

An issue not mentioned in either “basis of knowledge” or the “exception” provisions just explained is whether or not a school system would be deemed to have “knowledge” if the child in question is receiving coordinated early intervening services (CEIS). (Note that we are not saying “early intervention services” here—those are for babies and toddlers with disabilities.) Coordinated early intervening services are provided to children:

...in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade three) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment [§300.226(a)].

So if a student receiving coordinated early intervening services breaks the student code of conduct, can he or she assert that the school had “basis of knowledge” beforehand, because it had been worried enough about that student to identify them as needing early intervening services?

The answer is: No. A school is not considered to have “basis of knowledge” merely because a child receives coordinated early intervening services. However, if a child’s parent or teacher expresses a concern, in writing, to appropriate school personnel, that the child may need special education and related services, then the school would be deemed to have knowledge that the child is a child with a disability under IDEA (71 Fed. Reg. 46727).

### **What Happens if There is No “Basis of Knowledge?”**

The final portion of §300.534 describes the conditions that apply if the school is deemed not to have a “basis of knowledge” that the child was a “child with a disability” before taking disciplinary action against the child. If this is the case, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors. If an evaluation of the child is requested during the time the child is subjected to these disciplinary measures, the evaluation must be conducted in an expedited manner and, until the evaluation is completed, the child remains in the educational placement determined by school authorities—which can include suspension or expulsion without educational services.

If the child is found to be a “child with a disability,” the school must then provide special education and related services to the child. This includes the requirements of §§300.530 through 300.536—IDEA’s discipline procedures—especially those related to “extent of services.”

## **Reporting Crimes**

Do IDEA’s discipline procedures allow school systems to report crimes that are committed by children with disabilities?

Yes they do, and that is the focus of this next section, which looks at the section of IDEA’s disciplinary procedures called “referral to and action by law enforcement and judicial authorities,” found at §300.535.

### **Discussion**

IDEA makes clear that schools are not prohibited from reporting a crime committed by a child with a disability to appropriate authorities. Similarly, the law does not prevent State law enforcement and judicial authorities from exercising their responsibilities. The agency reporting the crime must ensure that copies of the special education and disciplinary records of the student who committed the crime are transmitted for consideration by the appropriate authorities. However, these records should only be transmitted to the extent that the



transmission is permitted by the Family Educational Rights and Privacy Act (FERPA), a Federal law that protects the privacy of children’s education records.

As the Department explains:

Under FERPA, personally identifiable information (such as the child’s status as a special education child) can only be released with parental consent, except in certain very limited circumstances. Therefore, the transmission of a child’s special education and disciplinary records...without parental consent is permissible only to the extent that such transmission is permitted under FERPA (71 Fed. Reg. 46728).

## **Putting it All Together: Case Study Examples**

Given the complexity of IDEA’s discipline procedures, you may find it helpful to look at a case study of a student subject to disciplinary action. This example is drawn from NICHCY’s Building the Legacy training package on IDEA 2004—specifically, Module 19, Key Issues in Discipline.

### **Case Study #1**

Charlie is a 5th grader who receives special education services for a learning disability. Charlie is on grade level in math and two years below grade level in reading. He receives services in a resource setting for one hour each day. Charlie has no history of behavior problems.

Charlie was caught stealing software from the computer lab at his school. His teacher referred him to the assistant principal who issued a three-day suspension and required him to return the stolen software materials.

After receiving the three-day suspension, Charlie returned to the classroom to gather his belongings, and he confronted his teacher. He called her names, threatened to come back to school with a knife to “cut her,” and pretended to swing his fists toward her.

Charlie’s teacher called the principal, who, in accordance with the student code of conduct at the school, issued an additional 10-day suspension for Charlie, bringing his total days of suspension to 13.

### **What Happens to Charlie?**

Because the 13-day suspension is more than 10 days in one school year, it is considered a change in placement. Therefore, Charlie must be placed in an interim alternative educational setting (IAES) until a manifestation determination is made. The decision of where the IAES will take place is made by Charlie’s IEP team.

### **What Services are Provided to Charlie During His Removal to an IAES?**

Charlie's IEP team must determine appropriate services. Charlie must continue to receive educational services as provided in FAPE requirements to enable him to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals in his IEP.

### **Who Needs to be Contacted?**

Charlie's parents must be notified that he has been removed from the classroom and that this action constitutes a change in placement. The LEA is responsible for notifying Charlie's parents and providing them with the procedural safeguards notice on the date the LEA decides to make this removal constituting a change of placement.

As required by IDEA, a manifestation determination review is held for Charlie, and it's determined that his behavior was not a manifestation of his disability. The next set of decisions can now be made.

### **What Disciplinary Actions are Permissible?**

Since the behavior is not a manifestation of his disability, Charlie can be disciplined in the same manner, and for the same amount of time, as a child who does not have a disability. That decision is left up to the LEA.

### **What Services Will be Provided to Charlie During the Duration of his Disciplinary Action?**

Charlie must continue to receive educational services as provided under FAPE requirements, to enable him to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals in his IEP.

### **What Happens if Charlie's Parents Appeal the Manifestation Determination?**

If Charlie's parents request a hearing, the SEA or LEA is responsible for arranging an expedited due process hearing, which must occur within 20 school days of the date the due process complaint was filed.

The hearing officer must make a determination within 10 school days after the hearing. If this happens, Charlie will remain in the IAES pending the decision of the hearing officer.

### **Case Study #2**

Edward is a 10th grader who receives special education services for a behavior disability and Other Health Impairment (OHI), due to his ADHD.

Because Edward has trouble concentrating and tends to act out, he is failing most of his academic subjects. He receives services in an inclusion setting at his high school. Edward's record includes an FBA and a BIP in addition to his IEP.

Edward's high school has a zero-tolerance policy for weapons and drugs. Edward brought a gun to school, which he showed to a friend between classes and made a threat about using to shoot another child. A teacher discovered the gun and reported Edward to the school administration. The school had Edward immediately removed for 45 school days to an IAES.

### **What Services, If Any, are Provided to Edward During This Time?**

Edward must continue to receive educational services as provided under FAPE requirements to enable him to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals in his IEP.

### **Who Needs to be Contacted?**

Edward's parents must be notified that he has been removed from the classroom and that this action constitutes a change in placement. The LEA is responsible for notifying his parents and providing them with the procedural safeguards notice on the date the LEA decides to make this removal constituting a change of placement.

A manifestation determination review is held for Edward. This review determines his behavior was not a manifestation of his disability. Edward's parents appeal this decision.

### **In What Setting Will Edward be Placed During the Appeal?**

Charlie will remain in the IAES that was determined by his IEP Team, pending the decision of the hearing officer, until the expiration of the time period for him to remain in the IAES, whichever occurs first, unless the parents and the LEA agree otherwise.

### **What, If Any, Services Will Be Provided to Him?**

Edward must continue to receive educational services as provided under FAPE requirements to enable him to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals in his IEP.

### **What is the Role of the LEA?**

The SEA is responsible for arranging the expedited due process hearing. The LEA must also continue to provide appropriate educational services as specified in Edward's IEP while he is placed in the IAES.

### **What is the Role of the Hearing Officer?**

The hearing officer hears and makes a determination regarding an appeal in an impartial due process hearing. In making the determination the hearing officer may:

- Return the child with a disability (in this case, Edward) to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child’s behavior was a manifestation of the child’s disability.  
or
- Order a change in placement of the child with a disability to an appropriate IAES for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

**What is the timeline for the due process hearing?**

- The hearing must occur within 20 school days of the date the complaint is filed requesting the hearing. Unless the parents and LEA agree in writing to waive the resolution meeting or agree to use the mediation process, a resolution meeting must occur within seven days of receiving notice of the due process complaint.  
and
- The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

**Case Study #3**

Liz is a 7th grader who receives special education services for an emotional disability. She has poor impulse control and has been removed from her home on more than one occasion for abuse. Liz spends 50% of her day in a self-contained special education class. She has a BIP that was written last year based on an FBA conducted while she was in 5th grade.

In the cafeteria, two other girls began teasing Liz about her clothing and about her family. The girls came right up to Liz and provoked her. She began to fight with them. This was the third physical fight Liz had been involved in during the past three weeks.

After this fight, Liz was referred to the principal who gave her a 12-day suspension and a removal to an IAES.

**What Services, If Any, are Provided to Liz During This Time of Removal?**

Liz must continue to receive educational services as provided under FAPE requirements to enable her to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals in her IEP.

**Who Needs to be Contacted?**

Liz’s parents must be notified that she has been removed from the classroom and that it constitutes a change in placement. The LEA is responsible for notifying her parents and

providing them with the procedural safeguards notice on the date the LEA decides to make this removal constituting a change in placement.

A manifestation determination review is held for Liz, and the review determines Liz's behavior was a manifestation of her emotional disability.

**What Will Happen to Liz Immediately?**

She will return to the placement from which she was removed, unless the parents and LEA agree to a change of placement as part of the modification of the BIP.

**What Are the Next Steps for the LEA?**

The LEA, along with the parents and relevant members of the IEP Team, must conduct an FBA unless the LEA had already conducted an FBA before the behavior that resulted in the change of placement occurred (as is the case with Liz).

This group of individuals must also develop a BIP for the child or, if a BIP has already been developed (as is the case with Liz), review the existing BIP and modify it as necessary to address the behavior.

**SOUTH DAKOTA CODIFIED LAWS**  
**S.D. LAW CHAPTER 13-32**  
**SUPERVISION OF STUDENTS AND CONDUCT OF SCHOOL**

- 13-32-1 Disciplinary authority over students on school premises.
- 13-32-2 Physical force authorized when reasonable and necessary--Attendance at school functions away from premises--Authority of bus drivers.
- 13-32-3 Reference for psychiatric treatment prohibited without parents' consent.
- 13-32-4 School board to assist in discipline--Suspension and expulsion of pupils--Report to local authorities--Hearings--Alternative settings.
- 13-32-4.1 Attendance policy--Adoption by school board--Suspension and expulsion power unaffected.
- 13-32-4.2 Procedure for suspension--Appeal--Hearing.
- 13-32-4.3 Effect of student's suspension or expulsion on enrollment.
- 13-32-4.4 Early reinstatement of expelled student.
- 13-32-4.5 Conditions for early reinstatement.
- 13-32-4.6 Return to school upon fulfillment of conditions – Revocation of early reinstatement.
- 13-32-4.7 Due process procedures – Promulgation of early reinstatement rules.
- 13-32-5 Injury to school property as ground for suspension or expulsion.
- 13-32-6 Disturbance of school as misdemeanor.
- 13-32-7 Possession of firearms on elementary or secondary school premises or vehicle as misdemeanor--Exceptions.
- 13-32-8 School safety patrols--Insurance coverage.
- 13-32-9 Suspension from extracurricular activities for controlled substance violation--Notice to South Dakota High School Activities Association.
- 13-32-10 Definition of terms regarding self-administration of medication.
- 13-32-11 Student self-administration of prescription asthma and anaphylaxis medication.
- 13-32-12 Disciplinary action regarding self-administration of medication.
- 13-32-13 Applicability of provisions regarding self-administration of medication.

**SOUTH DAKOTA ADMINISTRATIVE RULES**  
**ARTICLE 24:07**  
**STUDENT DUE PROCESS**

- 24:07:01      General Provisions.
- 24:07:02      Short-Term Suspension Procedure.
- 24:07:03      Long-Term Suspension Procedure.
- 24:07:04      Expulsion Procedure.

**SOUTH DAKOTA SPECIAL EDUCATION RULES**  
**CHAPTER 24:05:26**  
**SUSPENSION**

24:05:26:01	Suspension from school.
24:05:26:01.01	Suspension from school -- Definitions.
24:05:26:01.02	Case-by-case determination.
24:05:26:02	Short-term suspension procedure.
24:05:26:02.01	Change of placement for disciplinary removals.
24:05:26:02.02	Removals -- Ten school days or less.
24:05:26:02.03	Required services -- No change of placement.
24:05:26:03	Written report required.
24:05:26:04	Right to request hearing -- Notice of hearing.
24:05:26:05	Right of waiver.
24:05:26:06	Hearing procedure.
24:05:26:07	Right of appeal.
24:05:26:08	Attendance policies.
24:05:26:08.01	Authority of school personnel -- Weapons, drugs, and serious bodily injury.
24:05:26:08.02	Authority of hearing officer.
24:05:26:08.03	Parental notification.
24:05:26:09	Referral to IEP team for long-term suspension of pupils.
24:05:26:09.01	Repealed.
24:05:26:09.02	Determination of interim alternative educational setting.
24:05:26:09.03	Manifestation determination review requirement.
24:05:26:09.04	Determination that behavior was a manifestation.
24:05:26:09.05	Determination that behavior was not manifestation of disability -- Additional authority of school personnel.
24:05:26:09.06	Appeal.
24:05:26:09.07	Placement during appeals.
24:05:26:09.08	Expedited hearing -- Procedures.
24:05:26:10	Repealed.
24:05:26:11	Repealed.
24:05:26:12	Repealed.
24:05:26:13	Repealed.
24:05:26:14	Protections for students not yet eligible.
24:05:26:15	Referral to and action by law enforcement and judicial authorities.



**SOUTH DAKOTA SPECIAL EDUCATION RULES**  
**CHAPTER 24:05:26.01**  
**EXPULSION**

24:05:26.01:01	Expulsion from school.
24:05:26.01:01.01	Case-by-case determination.
24:05:26.01:02	Written report required.
24:05:26.01:03	Request and notice of hearing.
24:05:26.01:04	Right of waiver.
24:05:26.01:05	Hearing procedure.
24:05:26.01:06	Right of appeal.
24:05:26.01:07	Attendance policies.
24:05:26.01:07.01	Authority of school personnel -- Weapons, drugs, and serious bodily injury.
24:05:26.01:07.02	Authority of hearing officer.
24:05:26.01:07.03	Parental notification.
24:05:26.01:08	Referral to IEP team for expulsion of students.
24:05:26.01:08.01	Applicability of suspension procedures.
24:05:26.01:09	Repealed.
24:05:26.01:10	Repealed.
24:05:26.01:11	Repealed.
24:05:26.01:12	Repealed.
24:05:26.01:13	Protections for students not yet eligible.
24:05:26.01:14	Referral to and action by law enforcement and judicial authorities.

**SOUTH DAKOTA SPECIAL EDUCATION RULES**  
**CHAPTER 24:05:30**  
**PROCEDURAL SAFEGUARDS**

24:05:30:01	General responsibility of school district.
24:05:30:02	Opportunity to examine records.
24:05:30:02.01	Parent participation in meetings.
24:05:30:02.02	Meetings defined.
24:05:30:03	Independent educational evaluation.
24:05:30:04	Prior notice.
24:05:30:05	Content of notice.
24:05:30:06	Form of notice.
24:05:30:06.01	Procedural safeguards notice – Availability.
24:05:30:06.02	Procedural safeguards notice – Contents.
24:05:30:06.03	Electronic mail.
24:05:30:07	Repealed.
24:05:30:07.01	Filing a due process complaint.
24:05:30:07.02	Timeline for filing a due process complaint.
24:05:30:08	Free or low-cost services to parent.
24:05:30:08.01	Due process complaint notice.
24:05:30:08.02	Content of due process complaint notice.
24:05:30:08.03	Sufficiency of complaint.
24:05:30:08.04.	Decision of sufficiency of complaint.
24:05:30:08.05	Amendment to due process complaint.
24:05:30:08.06	District response to due process complaint.
24:05:30:08.07	Other party response to due process complaint.
24:05:30:08.08	Model forms.
24:05:30:08.09	Resolution meeting – Participants.
24:05:30:08.10	Resolution meeting – Purpose.
24:05:30:08.11	Resolution meeting -- Waive or mediate.
24:05:30:08.12	Resolution period – General.
24:05:30:08.13	Dismissal of complaint or initiation of hearing.
24:05:30:08.14	Adjustments to 30-day resolution period.
24:05:30:08.15	Written settlement agreement.
24:05:30:09	Mediation.
24:05:30:09.01	Mediator – Qualified and impartial.
24:05:30:09.02	Meeting to encourage mediation.
24:05:30:09.03	Mediation agreement.
24:05:30:09.04	Impartial due process hearing.
24:05:30:09.05	Subject matter of due process hearings.

24:05:30:09.06	Timeline for requesting a due process hearing.
24:05:30:10	Impartial hearing officer.
24:05:30:10.01	Decision of hearing officer.
24:05:30:11	Appeal of hearing decision -- Civil action.
24:05:30:11.01	Reasonable attorneys' fees.
24:05:30:12	Hearing rights.
24:05:30:12.01	Additional disclosure of information.
24:05:30:13	Time limit for and convenience of hearings.
24:05:30:14	Child's status during proceedings.
24:05:30:15	Surrogate parents.
24:05:30:16	Repealed.
24:05:30:16.01	Transfer of parental rights.
24:05:30:17	Repealed.

**SOUTH DAKOTA SPECIAL EDUCATION RULES**  
**CHAPTER 24:05:29**  
**CONFIDENTIALITY OF INFORMATION**

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