

ARTICLE 24:05

SPECIAL EDUCATION

Chapter	
24:05:01	Definitions, Repealed.
24:05:02	Screening and evaluation, Repealed.
24:05:03	Placement and program requirements, Repealed.
24:05:04	District program, Repealed.
24:05:05	Auxiliary services, Repealed.
24:05:06	Fees and payments, Repealed.
24:05:07	General provisions, Repealed.
24:05:08	Child identification, Repealed.
24:05:09	Program alternatives, Repealed.
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24:05:13	Definitions.
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24:05:19	Allocation and use of funds.
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<u>24:05:36</u>	<u>Early learning services.</u>

CHAPTER 24:05:13

DEFINITIONS

Section

24:05:13:01	Definitions.
24:05:13:02	Free appropriate public education (FAPE) defined.
24:05:13:03	Repealed.
24:05:13:04	Parent.

24:05:13:01. Definitions. Terms defined in § 24:43:01:01 and in SDCL 13-37-1 have the same meaning when used in this article. In addition, terms used in this article mean:

- (1) "Adjustment training center," "ATC," a facility as defined in § 46:11:01:01(2);
- (2) "Adult services," services pertaining to independent living, vocational development, preemployment services, or employment services designed for persons 16 years of age or older;
- (3) "Approved program," a written description of a school district's, state agency's, special education school's, or adjustment training center's policies and procedures for implementing its special education program that is found by the department to comply with this article;
- (4) "At no cost," the provision of specially designed instruction without charge to the parent except for incidental fees that are normally charged to students without disabilities or their parents as a part of the regular education program;
- (5) "Braille writer," a person who produces materials in Braille by the use of a manual Braille writer, slate and stylus, or computer;
- (6) "Braille teacher," an individual who assists classroom teachers in the instruction of reading and writing through the use of Braille;
- (7) "Business day," Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day;
- (8) "Consent," as used in this article, the term consent, means:
 - (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, or other mode of communication;
 - (b) The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom;
 - (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime;

(d) If a parent revokes consent, that revocation is not retroactive, it does not negate an action that has occurred after the consent was given and before the consent was revoked; and

(e) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the local education agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent;

(9) "Core academic subjects," English, reading, language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography;

(10) "Day," calendar day unless otherwise indicated as a business day or school day;

(11) "Day school program," a specialized program provided in a facility, a school district, or a cooperative center that a child attends during the day, returning home at night;

(12) "Department," the Department of Education;

(13) "Early childhood special education program," a program specially designed to meet the unique needs of children with disabilities, birth through six years of age, including center-based instruction, home-based instruction, and instruction in hospitals and institutions;

(14) "Elementary and Secondary Education Act," "ESEA," the federal Elementary and Secondary Education Act as codified at 20 U.S.C. 6301 et seq., January 8, 2002, and 34 C.F.R. Part 200, published in the Federal Register on December 2, 2002;

(15) "Eligible student," a person through the age of 21 years who is a resident of the state of South Dakota and who requires special education or special education and related services because of the person's educational needs;

(16) "Homeless children," the term, homeless children and youths, as defined in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq., as amended to January 1, 2009;

(17) "Individuals with Disabilities Education Act," "IDEA," the federal Individuals with Disabilities Education Act as codified at 20 U.S.C. §§ 1411 to 1420, inclusive, December 3, 2004, and 34 C.F.R. Part 300, published in the Federal Register on August 14, 2006, ~~and~~ December 1, 2008, and February 14, 2013;

(18) "Individual educational program," "IEP," a written statement for a specific child with a disability, in accordance with chapter 24:05:27, based on a full and individual evaluation of the child and developed by an IEP team;

(19) "Individualized education program team," "IEP team," as used in this article, the term, individualized education program team, or, IEP team, means the group of individuals described in § 24:05:27:01.01 that is responsible for developing, reviewing, or revising an IEP for a child with a disability;

(20) "Least restrictive environment," a learning environment for a child in need of special education or special education and related services, including a child placed in a public or private

institution or another care facility, that includes to the maximum extent appropriate children who are not in need of special education or special education and related services, as determined through the child's individual educational program;

(21) "Limited English proficient," as the term is defined in section 9101(25) of the ESEA;

(22) "Local education agency," a school district or other public authority under supervision of the department established by state law for the purpose of providing free public education on a regional basis which also provides special education and related services to children with disabilities within the state of South Dakota;

(23) "National Instructional Materials Access Center," "NIMAC," the center established pursuant to section 674(e) of the IDEA;

(24) "National Instructional Materials Accessibility Standard," "NIMAS," as the term is defined in section 674(e)(3)(B) of the IDEA;

(25) "Policy," a rule, regulation, or standard enacted by a school district board;

(26) "Physical education," the development of physical and motor fitness and fundamental motor skills and patterns through individual and group games and sports, including intramural and lifetime sports, special physical education, adapted physical education, movement education, and motor development;

(27) "Related services," services that support the provision of special education, including transportation and those developmental, corrective, and other supportive services determined by an IEP team to be required for an eligible child to benefit from special education;

(28) "Residential school program," an approved specialized program provided in a facility that a child attends 24 hours a day;

(29) "Scientifically based research," as the term is defined in section 9101(37) of the ESEA;

(30) "Secretary," the secretary of the Department of Education;

(31) "Self-contained program," a specialized instructional environment for eligible children in need of special education or special education and related services who require intensive instructional procedures;

(32) "Special education," instruction specially designed to meet the unique needs of a student with disabilities at no cost to parents or guardians, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, and other settings;

(33) "Specially designed instruction," adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction;

(34) "Standard deviation," a statistical measure of variation derived by squaring each deviation in a set of scores, taking the average of these scores, and then taking the square root of the results;

(35) "Travel training," instruction provided, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live and to learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community);

(36) "Vocational education," organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advance degree;

(37) "Universal design," as the term is defined in section 3 of the Assistive Technology Act of 1998, 29 U.S.C. 3002, as amended to January 1, 2009; and

(38) "Ward of the state," a child who, as determined by the state where the child resides, is a foster child, a ward of the state, or in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent in § 24:05:13:04.

Source: 16 SDR 41, effective September 7, 1989; 18 SDR 158, effective March 31, 1992; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 36 SDR 96, effective December 8, 2009.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

CHAPTER 24:05:14

ADMINISTRATION

Section

24:05:14:01	Interagency agreements.
24:05:14:01.01	Coordination of services.
24:05:14:01.02	Obligation of noneducational public agencies.
24:05:14:01.03	Children with disabilities covered by public benefits or insurance.
24:05:14:01.04	<u>Use of public benefits or insurance -- Annual notification.</u>
24:05:14:01.04 05	Children with disabilities covered by private insurance.
24:05:14:01.05 06	Use of Part B funds for insurance costs.
24:05:14:02 to 24:05:14:12	Repealed.
24:05:14:13	Performance goals and indicators.
24:05:14:14	Participation in assessments.
24:05:14:14.01	Alternate assessments.
24:05:14:15	Reports relating to assessments.
24:05:14:15.01	Use of universal design in assessments.
24:05:14:16	Suspension and expulsion rates.
24:05:14:17	Access to instructional materials.

24:05:14:18	State advisory panel -- General.
24:05:14:19	State advisory panel -- Membership.
24:05:14:20	State advisory panel -- Duties.
24:05:14:21	Prohibition on mandatory medication.

24:05:14:01.03. Children with disabilities covered by public benefits or insurance. A public agency may use the Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under this article as permitted under the public benefits or insurance program, except as provided in this section. With regard to services required to provide FAPE to an eligible student under this article the public agency:

(1) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;

(2) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this article, but pursuant to § 24:05:14:01.05 06, may pay the cost that the parent otherwise would be required to pay;

(3) May not use a student's benefits under a public benefits or insurance program if that use would:

(a) Decrease available lifetime coverage or any other insured benefit;

(b) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;

(c) Increase premiums or lead to the discontinuation of benefits or insurance; or

(d) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;

(4) Must provide written notification to the student's parents pursuant to § 24:05:14:01.04; and

~~(4) (5) Must obtain written parental consent consistent with § 24:05:29:13 each time that access to public benefits or insurance is sought; and prior to accessing a student's or parent's public benefits or insurance for the first time specifying the:~~

~~(a) Personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular student);~~

~~(b) Purpose of the disclosure (e.g., billing for services under this article);~~

~~(c) Disclosure will be made to the state Medicaid agency; and~~

~~(d) Parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under this article.~~

~~(5) Must notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.~~

Source: 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:14:01.04. Use of public benefits or insurance--Annual notification. A public agency, prior to accessing a student's or parent's public benefits or insurance for the first time, and annually thereafter, must provide written notification consistent with § 24:05:30:06, to the student's parents that includes a statement:

(1) Of the parental consent and no cost requirements in § 24:05:14:01.03;

(2) That parents have the right under FERPA and Part B of the IDEA to withdraw their consent to disclosure of their student's personally identifiable information to the state Medicaid agency at any time; and

(3) That the withdrawal of consent or refusal to provide consent under FERPA and Part B of the IDEA to disclose personally identifiable information to the state Medicaid agency does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:14:01.04 05. Children with disabilities covered by private insurance. With regard to services required to provide FAPE to an eligible student under this article, a public agency may access a parent's private insurance proceeds only if the parent provides informed consent consistent with this article. Each time the public agency proposes to access the parent's private insurance proceeds, it must:

(1) Obtain parent consent in accordance with this article; and

(2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37.1.1.

Law Implemented: SDCL 13-37.1.1.

24:05:14:01.05 06. Use of part B funds for insurance costs. If a public agency is unable to obtain parental consent to use the parent's private insurance, or public benefits or insurance if the parent would incur a cost for a specified service required under this article, to ensure FAPE, the public agency may use funds obtained through Part B of IDEA to pay for the service.

To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parent would incur a cost, the public agency may use funds obtained through Part B of IDEA to pay the cost the parents otherwise would have to pay to use the parent's benefits or insurance (e.g., the deductible or co-pay amounts).

Proceeds from public benefits or insurance or private insurance may not be treated as program income for purposes of 34 C.F.R. § 80.25.

If a public agency spends reimbursements from federal funds (e.g., Medicaid) for services under this article, those funds are not considered "state or local" funds for purposes of the maintenance of effort provisions in this article.

Source: 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

CHAPTER 24:05:16

PERSONNEL DEVELOPMENT AND STANDARDS

Section

24:05:16:01 to 24:05:16:04	Repealed.
24:05:16:05	Staff development component in school district's comprehensive plan.
24:05:16:06 to 24:05:16:15	Repealed.
24:05:16:16	Personnel qualifications.
24:05:16:16.01	Paraprofessionals and assistants.
24:05:16:16.02	Repealed.
24:05:16:16.03	Requirements for highly qualified special education teachers -- Teaching core academic subjects.
24:05:16:16.04	Requirements for highly qualified special education teachers -- General.
24:05:16:16.05	Requirements for highly qualified special education teachers -- Teaching to alternate achievement standards.
24:05:16:16.06	Requirements for highly qualified special education teachers -- Teaching multiple subjects.
24:05:16:16.07	Right of action.
24:05:16:17 and 24:05:16:18	Repealed.
24:05:16:19	Early childhood special education teacher.
24:05:16:20	Employment and advancement of qualified individuals with disabilities

24:05:16:16.01. Paraprofessionals and assistants. Paraprofessionals and assistants who are appropriately trained and supervised in accordance with this section may be used to assist in the provision of special education and related services to children with disabilities under Part B of the Individuals with Disabilities Education Act. At a minimum, the following standards must be met:

- (1) Paraprofessionals must have a high school diploma or GED;
- (2) Paraprofessionals must work within defined roles and responsibilities as identified by the school district;

(3) Paraprofessionals must work under the supervision of, and be evaluated by, certified staff; and

(4) Each school district must describe the training to be provided paraprofessionals in the staff development component of the district's comprehensive plan under § 24:05:16:05.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

~~**Example:** Health and safety, behavior strategies.~~

CHAPTER 24:05:17

CHILD COUNT

Section

24:05:17:01	State-wide coordination of child find and data collection activities.
24:05:17:02	Federal child count procedures under Part B of the Individuals with Disabilities Education Act.
24:05:17:03	Annual report of children served.
24:05:17:04	Reporting of multiple disabilities.
24:05:17:05	Children included in report.
24:05:17:06 and 24:05:17:07	Repealed.
24:05:17:08	Written notice provided by Office of Data Collection.
24:05:17:09	Return of information.
24:05:17:10	Overidentification and disproportionality.

24:05:17:04. Reporting of multiple disabilities. The department shall report a child with deaf-blindness under the category deaf-blindness unless the child is reported as having a developmental delay. The department shall report a child who has more than one disability, other than deaf-blindness, under the category multiple disabilities.

The department shall include in its report a certification signed by the secretary that the information provided is an accurate and unduplicated count of children with disabilities receiving special education and related services on the dates in question.

Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

Cross-Reference: Definition of "deaf-blindness," 34 C.F.R. § ~~300.7(b)(2)~~ 300.8(c)(2) effective August 14, 2006.

24:05:17:08. Written notice provided by Office of Data Collection. The Office of Data Collection shall provide all local education agencies with written notice of the procedures to be followed in counting the number of eligible children receiving special education and related services under the Individuals with Disabilities Education Act, Part B.

At a minimum, this notice shall include the federal definitions of children with disabilities under the Individuals with Disabilities Education Act, Part B, and the criteria for counting children with disabilities as set out in chapter 24:05:17.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

Cross-Reference: 34 C.F.R. §§ ~~300.7 and 300.753, September 29, 1992~~ 300.8 and 300.645, August 14, 2006.

CHAPTER 24:05:23

REQUIREMENTS FOR CHILD EVALUATORS

Section

24:05:23:01	Educational evaluator.
24:05:23:02	Psychological evaluator.
24:05:23:03	Psychiatric evaluator.
24:05:23:04	Language, speech, or hearing evaluator.
24:05:23:05	Audiological evaluator.
24:05:23:06	Medical evaluator.
24:05:23:07	Occupational therapy evaluator.
24:05:23:08	Physical therapy evaluator.
24:05:23:09	Vision evaluator.

24:05:23:01. Educational evaluator. An educational evaluator must possess a valid teaching certificate and must have training in individual and group tests to be administered.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

Cross-Reference: ~~School accreditation, art 24:03~~ Accreditation and school improvement, art 24:43.

24:05:23:04. Language, speech, or hearing evaluator. A language, speech, or hearing evaluator must have a valid South Dakota certificate as a speech and hearing clinician.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

Cross-Reference: Requirements for school speech and hearing clinician endorsement, ~~§ 24:02:03:22~~ chapter 24:15:06.

24:05:23:05. Audiological evaluator. An audiological evaluator must have a valid South Dakota certificate as a school audiologist.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

Cross-Reference: Requirements for school audiologist endorsement, ~~§ 24:02:03:31~~ chapter 24:15:06.

CHAPTER 24:05:24.01

ELIGIBILITY CRITERIA

Section

- 24:05:24.01:01 Students with disabilities defined.
- 24:05:24.01:02 Screening procedures for autism.
- 24:05:24.01:03 Autism defined.
- 24:05:24.01:04 Diagnostic criteria for autism.
- 24:05:24.01:05 Diagnostic procedures for autism.
- 24:05:24.01:06 Instruments used in diagnosis of autism.
- 24:05:24.01:07 Deaf-blindness defined.
- 24:05:24.01:08 Deafness defined.
- 24:05:24.01:09 Developmental delay defined.
- 24:05:24.01:10 Hearing loss defined.
- 24:05:24.01:11 Cognitive disability defined.
- 24:05:24.01:12 Multiple disabilities defined.
- 24:05:24.01:13 Orthopedic impairment defined.
- 24:05:24.01:14 Other health impaired defined.
- 24:05:24.01:15 Prolonged assistance defined.
- 24:05:24.01:16 Emotional disturbance defined.
- 24:05:24.01:17 Criteria for emotional disturbance.
- 24:05:24.01:18 Specific learning disability defined.
- 24:05:24.01:19 Criteria for specific learning disability.
- 24:05:24.01:20 Speech or language disorder defined.
- 24:05:24.01:21 Articulation disorder defined.
- 24:05:24.01:22 Criteria for articulation disorder.
- 24:05:24.01:23 Fluency disorder defined.
- 24:05:24.01:24 Criteria for fluency disorder.
- 24:05:24.01:25 Voice disorder defined.
- 24:05:24.01:26 Criteria for voice disorder.
- 24:05:24.01:27 Language disorder defined.

24:05:24.01:28 Criteria for language disorder.
24:05:24.01:29 Traumatic brain injury defined.
24:05:24.01:30 Vision loss including blindness defined.
24:05:24.01:31 IEP team override.

24:05:24.01:09. Developmental delay defined. A student three, four, or five years old may be identified as a student with a disability if the student has one of the major disabilities listed in § 24:05:24.01:01 or if the student experiences a severe delay in development and needs special education and related services.

A student with a severe delay in development functions at a developmental level two or more standard deviations below the mean in any one area of development specified in this section or 1.5 standard deviations below the mean in two or more areas of development.

The areas of development are cognitive development, physical development, communication development, social or emotional development, and adaptive development.

~~The student may not be identified as a student with a disability if the student's delay in development is due to factors related to environment, economic disadvantage, or cultural difference.~~

A district is not required to adopt and use the term developmental delay for any students within its jurisdiction. If a district uses the term developmental delay, the district must conform to both the department's definition of the term and to the age range that has been adopted by the department.

A district shall ensure that all of the student's special education and related services needs that have been identified through the evaluation procedures described under chapter 24:05:25 are appropriately addressed.

Source: 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 36 SDR 96, effective December 8, 2009.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:17. Criteria for emotional disturbance. A student may be identified as emotionally disturbed if the following requirements are met:

(1) The student demonstrates serious behavior problems over a long period of time, generally at least six months, with documentation from the school and one or more other sources of the frequency and severity of the targeted behaviors;

(2) The student's performance falls two standard deviations or more below the mean in emotional functions, as measured in school, and home, ~~and~~ or community on nationally normed technically adequate measures; and

(3) An adverse effect on educational performance is verified through the full and individual evaluation procedures as provided in § 24:05:25:04.

A student may not be identified as having an emotional disturbance if common disciplinary problem behaviors, such as truancy, smoking, or breaking school conduct rules, are the sole criteria for determining the existence of an emotional disturbance.

Source: 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 36 SDR 96, effective December 8, 2009.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

CHAPTER 24:05:27

INDIVIDUAL EDUCATIONAL PROGRAM

Section

24:05:27:01	Repealed.
24:05:27:01.01	IEP team.
24:05:27:01.02	Development, review, and revision of individualized education program.
24:05:27:01.03	Content of individualized education program.
24:05:27:01.04	Access to IEP.
24:05:27:01.05	IEP team attendance.
24:05:27:01.06	Initial IEP team meeting for infants and toddlers.
24:05:27:02	IEP team meeting date.
24:05:27:03	IEP team to determine related services.
24:05:27:04	Determination of related services.
24:05:27:04.01	Parental consent for services.
24:05:27:04.02	Parental refusal to consent -- School district obligations.
24:05:27:04.03	Parental withdrawal of consent for services.
24:05:27:05	Hearing aid.
24:05:27:05.01	External components of surgically implanted medical devices.
24:05:27:06	Medical services.
24:05:27:07	Transportation.
24:05:27:08	Yearly review and revision of individual educational programs.
24:05:27:08.01	Agreement to change IEP.
24:05:27:08.02	Amendments to IEP.
24:05:27:08.03	Consolidation of IEP team meetings.
24:05:27:08.04	Alternative means of meeting participation.
24:05:27:09	Repealed.
24:05:27:10	Individual educational programs for students placed in private schools.
24:05:27:11	Repealed.
24:05:27:12	Graduation requirements.
24:05:27:13	Repealed.
24:05:27:13.01	Agency responsibilities for transition services.
24:05:27:13.02	Transition services.
24:05:27:14 and 20:05:27:15	Repealed.

24:05:27:15.01	IEPs for student transfers within state.
24:05:27:15.02	IEPs for student transfers from another state.
24:05:27:15.03	Transmittal of records for student transfers.
24:05:27:16	Related services provided at no cost.
24:05:27:16.01	Rehabilitation counseling services.
24:05:27:16.02	Services applicable to surgically implanted device.
24:05:27:17	Employment of Braille teacher.
24:05:27:18	Assistive technology device.
24:05:27:19	Assistive technology service.
24:05:27:19.01	Universal design.
24:05:27:20	Availability of assistive technology.
24:05:27:21	Transition to preschool program.
24:05:27:22	Occupational therapy defined.
24:05:27:23	Criteria for occupational therapy.
24:05:27:24	Physical therapy defined.
24:05:27:25	Criteria for physical therapy.
24:05:27:26	Incarcerated students in adult prisons.
24:05:27:27	Modifications to IEPs for students in adult prisons.

24:05:27:01.05. IEP team attendance. A member of the IEP team described in subdivisions 24:05:27:01.01(4) (2) to (5), inclusive, is not required to attend an IEP team meeting, in whole or in part, if the parent of a student with a disability and the school district agree in writing that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. A member of the IEP team may be excused from attending, in whole or in part, an IEP team meeting that involves a modification to or discussion of the member's area of the curriculum or related services, if:

- (1) The parent and school district consent in writing to the excusal; and
- (2) The member submits, in writing to the parent and the IEP team, input into the development of the IEP before the meeting.

Source: 32 SDR 41, effective September 11, 2005; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:27:17. Employment of Braille teacher. If an IEP team determines that a student's instruction in reading and writing must be accomplished through the use of Braille, the district shall utilize the services of a certified Braille teacher. By July 1, 1993, all individuals employed as a Braille teacher must be certified pursuant to ~~subdivision 24:02:01:09(27)~~ § 24:15:06:28.

Source: 18 SDR 158, effective March 31, 1992; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-31.

Law Implemented: SDCL 13-37-31.

CHAPTER 24:05:29

CONFIDENTIALITY OF INFORMATION

Section

24:05:29:01	District policies and procedures on confidentiality of information.
24:05:29:02	Definitions.
24:05:29:03	Annual notification of rights.
24:05:29:04	Access rights.
24:05:29:05	Record of access.
24:05:29:06	Records on more than one child.
24:05:29:07	List of types and locations of information.
24:05:29:08	Fees.
24:05:29:09	Amendment of records at parent's request.
24:05:29:10	Opportunity for a hearing.
24:05:29:11	Hearing procedures.
24:05:29:12	Result of hearing.
24:05:29:13	Consent.
24:05:29:14	Safeguards.
24:05:29:15	Destruction of information.
24:05:29:16	Children's rights.
24:05:29:17	Enforcement.
24:05:29:18	Notice to parents.
24:05:29:19	Disciplinary information.
24:05:29:20	U.S. department use of personally identifiable information.

24:05:29:02. Definitions. Terms used in this chapter mean:

(1) "Act," "FERPA," the Family Educational Rights and Privacy Act of 1974, as amended to ~~January 8, 2009~~ July 1, 2013, enacted as section 444 of the General Education Provisions Act, as amended to ~~January 8, 2009~~ July 1, 2013;

(2) "Attendance," includes:

(a) Attendance in person or by paper correspondence, videoconference, satellite, Internet, or other electronic information and telecommunications technologies for students who are not physically present in the classroom; and

(b) The period during which a person is working under a work-study program;

(3) "Biometric record," as used in the definition of personally identifiable information, a record of one or more measurable biological or behavioral characteristics that can be used for automated recognition of an individual. Examples include fingerprints; retina and iris patterns; voiceprints; DNA sequence; facial characteristics; and handwriting;

(4) "Destruction," physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable;

(5) "Directory information," information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed, such as the student's name, address, telephone listing, electronic mail address, photograph, date and place

of birth, major field of study, enrollment status (e.g. full time or part time) participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees, honors, and awards received, and the most recent previous educational agency or institution attended. Directory information does not include a student's social security number or student identification number, except as provided in this subdivision. Directory information includes a student identification number, user identification number, or other unique personal identifier used by the student for purposes of accessing or communicating in electronic systems, but only if the identifier cannot be used to gain access to education records except when used in conjunction with one or more factors that authenticate the user's identity, such as a personal identification number, password, or other factor known or possessed only by the authorized user;

(6) "Disclosure," to permit access to or the release, transfer, or other communication of education records or the personally identifiable information contained in those records to any party, by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record;

(7) "Education records," records directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include the following:

(a) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;

(b) Records of a law enforcement unit of an educational agency or institution, but only if education records maintained by the agency or institution are not disclosed to the unit and the law enforcement records are maintained separately from education records, maintained solely for law enforcement purposes, and disclosed only to law enforcement officials of the same jurisdiction;

(c) Records related to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business, are related exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of the individual's status as a student are educational records and not excepted under this subdivision;

(d) Records on a student who is 18 years of age or older or is attending an institution of postsecondary education that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional capacity or assisting in a paraprofessional capacity; made, maintained, or used only in connection with treatment of the student; and disclosed only to individuals providing the treatment. For the purpose of this section, "treatment" does not include remedial educational activities or activities that are part of the program of instruction at the agency or institution;

(e) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student; and

(f) Grades on peer-graded papers before they are collected and recorded by a teacher;

(8) "Eligible student," a student who has reached 18 years of age or is attending an institution of postsecondary education;

(9) "Institution of postsecondary education," an institution that provides education to students beyond the secondary school level;

(10) "Secondary school level," the educational level, not beyond grade twelve, at which secondary education is provided as determined under state law;

(11) "Participating agency," any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA;

(12) "Personally identifiable information," the term includes:

(a) The student's name;

(b) The name of the student's parent or other family members;

(c) The address of the student or student's family;

(d) A personal identifier, such as the student's social security number, student number, or biometric record;

(e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;

(f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or

(g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates;

(13) "Record," any information recorded in any way, including handwriting, print, video or audio tape, film, microfilm, microfiche, and computer media.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 36 SDR 96, effective December 8, 2009.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:29:18. Notice to parents. The department shall give notice that fully informs parents about the requirements under this chapter, including the following:

(1) A description of the extent to which the notice is given in the native languages of the various population groups in the state;

(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including sources from whom information is gathered, and the uses to be made of the information;

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all the rights of parents and children regarding this information, including the rights under 34 C.F.R. Part 99, Family Educational Rights and Privacy Act, as amended to ~~January 8, 2009~~ July 1, 2013.

Before any major identification, location, or evaluation activity, the notice shall be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity.

Source: 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 36 SDR 96, effective December 8, 2009.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:29:20. U.S. department use of personally identifiable information. If the U.S. Department of Education or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to the Family Educational Rights and Privacy Act of 1974, as amended to ~~January 8, 2009~~ July 1, 2013, the U.S. secretary shall apply the applicable provisions of 5 U.S.C. 552a, as amended to ~~January 8, 2009~~ July 1, 2013, and the regulations implementing those provisions in 34 C.F.R. part 5b, as amended to ~~January 8, 2009~~ July 1, 2013.

Source: 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 36 SDR 96, effective December 8, 2009.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

CHAPTER 24:05:30

PROCEDURAL SAFEGUARDS

Section

- 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 on 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.

24:05:30:11. Appeal of hearing decision -- Civil action. Any party aggrieved by the decision of the hearing officer under this chapter or chapters 24:05:26 and 24:05:26.01 may bring a civil action with respect to a due process complaint notice requesting a due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(2). A civil action may be filed in either state or federal court without regard to the amount in controversy. The party bringing the action has 90 days from the date of a hearing officer's decision to file a civil action. In any action brought under this section, the court:

- (1) Shall review the records of the administrative proceedings;
- (2) Shall hear additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

Nothing in Part B of the Individuals with Disabilities Education Act restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 as amended to ~~January 2, 2007~~ July 1, 2013, Title V of the Rehabilitation Act of 1973 as amended to ~~January 1, 2007~~ July 1, 2013, or other federal laws protecting the rights of children with disabilities. However, before the filing of a civil action under these laws, seeking relief that is also available under section 615 of IDEA, the procedures under this chapter for filing a due process complaint must be exhausted to the same extent as would be required had the action been brought under section 615 of IDEA.

Source: 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

CHAPTER 24:05:36

EARLY LEARNING SERVICES

Section

<u>24:05:36:01</u>	<u>Expenditures for early intervening services.</u>
<u>24:05:36:02</u>	<u>Early intervening services -- Funds available and students served.</u>
<u>24:05:36:03</u>	<u>Early intervening services -- General activities.</u>
<u>24:05:35:04</u>	<u>Application -- Submission.</u>
<u>24:05:36:05</u>	<u>Application -- Required components.</u>
<u>24:05:36:06</u>	<u>Application -- Approval criteria.</u>
<u>24:05:36:07</u>	<u>Annual reporting.</u>
<u>24:05:36:08</u>	<u>Eligibility for extraordinary costs -- Availability of funding.</u>

24:05:36:01. Expenditures for early intervening services. State special education funding under chapter 13-37 may be used for expenditures for early intervening services described in §§ 24:05:36:02 to 24:05:36:08, inclusive.

Source:

General Authority: SDCL 13-37-1.1, 2013 SB 15§ 4.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 2013 SB 15 §§1-5.

24:05:36:02. Early intervening services -- Funds available and students served. A school district may use up to fifteen percent of the local need, as defined in subdivision 13-37-35.1(18), to develop and implement coordinated early intervening services. Students, in kindergarten through grade twelve, who are not currently eligible for special education and related services pursuant to chapter 24:05:24.01 may be provided services. This group of students would need additional academic and behavioral interventions to be successful in general education and to prevent them from being classified as a student with a disability.

Source:

General Authority: SDCL 13-37-1.1, 2013 SB 15 § 4.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 2013 SB 15 §§1-5.

24:05:36:03. Early intervening services -- General activities. In implementing coordinated early intervening services, a school district must address activities that include:

(1) Professional development for school staff to ensure the delivery of scientifically-based academic instruction and behavior interventions, including literacy instruction, and instruction on the use of adaptive and instructional software as appropriate; and

(2) The provision of educational and behavior evaluations, services and supports, including scientifically-based literacy instruction.

Source:

General Authority: SDCL 13-37-1.1, 2013 SB 15 § 4.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 2013 SB 15 §§1-5.

24:05:36:04. Application -- Submission. Applications referenced in 2013 SB 15 § 2 will be accepted by the department at any time during the school year. The department will review the application and make a determination pursuant to § 24:05:35:06.

Source:

General Authority: SDCL 13-37-1.1, 2013 SB 15 § 4.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 2013 SB 15 §§1-5.

24:05:36:05. Application -- Required components. A school district's application for early intervening services funds must include the following required components:

(1) A description of the process used to identify the students to be provided early intervening services;

(2) The scientifically-based activities and services for which funds will be used;

(3) A budget for state and local coordinated early intervening services funds including an accounting system for tracking these state and local funds separate from federal funds;

(4) Assurances that the district will continue to:

(a) Provide a FAPE to all students with disabilities consistent with this article; and

(b) Meet the maintenance of effort requirements pursuant to chapter 24:05:19 for any fiscal year; and

(5) A description of the process to be used to track each student receiving early intervening services.

Source:

General Authority: SDCL 13-37-1.1, 2013 SB 15 § 4.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 2013 SB 15 §§1-5.

24:05:36:06. Application -- Approval criteria. When determining whether to approve a school district's application for early intervening services funding, the department shall consider whether the district:

- (1) Met the maintenance of effort requirement for the prior two fiscal years;
- (2) Requested no more than fifteen percent of local need;
- (3) Complied with previous year coordinated early intervening reporting, if applicable;
- (4) Maintains a FAPE for all students with disabilities; and
- (5) Has timely corrected all findings of noncompliance in the prior two school years.

Source:

General Authority: SDCL 13-37-1.1, 2013 SB 15 § 4.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 2013 SB 15 §§1-5.

24:05:36:07. Annual reporting. Each school district must submit the report required by 2013 SB 15 § 3 by June 30th of each school year on standard forms provided by the department.

Source:

General Authority: SDCL 13-3-51, 13-37-1.1, 2013 SB 15 § 4.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 2013 SB 15 §§1-5.

24:05:36:08. Eligibility for extraordinary costs -- Availability of funding. School districts receiving funding for the provision of early intervening services pursuant to § 24:05:36:01 are not eligible for extraordinary costs under chapter 24:05:33.01 for a period of three years following the expenditure of funds under this chapter.

Source:

General Authority: SDCL 13-37-1.1, 2013 SB 15 § 4.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 2013 SB 15 §§1-5.