

ARTICLE 24:05

SPECIAL EDUCATION

Chapter

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- 24:05:02 Screening and evaluation, Repealed.
- 24:05:03 Placement and program requirements, Repealed.
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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is not retroactive, it does not negate an action that has occurred after the consent was given and before the consent was revoked; and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

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<u>24:05:14:01.04</u>	<u>Use of public benefits or insurance -- Annual notification.</u>
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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~~ 24:05:14:01.06, 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 obtain parental consent consistent with § 24:05:29:13 each time that access to public benefits or insurance is sought~~ Must provide written notification to the student's parents pursuant to § 24:05:14:01.04; and

~~(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~~ Must obtain written parental consent consistent with § 24:05:29:13 before accessing a student's or parent's public benefits or insurance for the first time specifying:

(a) Personally identifiable information, as defined in § 24:05:29:02(12), that may be disclosed (e.g., records or information about the services that may be provided to a particular student);

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

(c) That disclosure will be made to the state Medicaid agency; and

(d) That the 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.

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, before 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, as defined in § 24:05:29:02(1), 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~~ 24:05:14:01.05. **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~~ 24:05:14:01.06. **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.

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.~~

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.

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.

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, 13-37-52.

Law Implemented: SDCL 13-37-1.1, 13-37-52.

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, 13-37-52.

Law Implemented: SDCL 13-37-1.1, 13-37-52.

24:05:27:01.05. IEP team attendance. A member of the IEP team described in subdivisions ~~24:05:27:01.01(1)~~ 24:05:27:01.01(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~~ any individual 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 13-37-1.1, 13-37-31.

Law Implemented: SDCL 13-37-31.

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.

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

COORDINATED EARLY INTERVENING SERVICES FUNDED

THROUGH STATE AID FOR SPECIAL EDUCATION

Section

- 24:05:36:01 Scope of chapter.
- 24:05:36:02 Coordinated early intervening services -- Funds available and students served.
- 24:05:35:03 Application -- Submission.
- 24:05:36:04 Application -- Required components.
- 24:05:36:05 Application -- Approval criteria.
- 24:05:36:06 Annual reporting.
- 24:05:36:07 Eligibility for extraordinary costs -- Availability of funding.

24:05:36:01. Scope of chapter. This chapter addresses coordinated early intervening services funded through State Aid for Special Education under SDCL chapter 13-37. Nothing in this chapter is intended to modify any provision in chapter 24:05:19 regarding the use of IDEA Part B funds for early intervening services.

Source:

General Authority: SDCL 13-37-1.1, 13-37-58.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-36.3, 13-37-40, 13-37-55 to 13-37-59, inclusive.

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

Source:

General Authority: SDCL 13-37-1.1, 13-37-58.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 13-37-55 to 13-37-59, inclusive.

24:05:36:03. Application -- Submission. Applications referenced in SDCL 13-37-56 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 § 24:05:36:05 within sixty days of receipt of the application.

Source:

General Authority: SDCL 13-37-1.1, 13-37-58.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 13-37-55 to 13-37-59, inclusive.

24:05:36:04. Application -- Required components. A school district's application for coordinated early intervening services funds must include the following 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 referenced in chapter 24:05:19 for any fiscal year; and
- (5) A description of the process to be used to identify whether a student who receives coordinated early intervening services qualifies to receive special education or special education and related services within two years.

Source:

General Authority: SDCL 13-37-1.1, 13-37-58.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 13-37-55 to 13-37-59, inclusive.

24:05:36:05. 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 has:

- (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 coordinated early intervening reporting for a previous year or years, if applicable;
- (4) Maintained a FAPE for all students with disabilities; and
- (5) Timely corrected all findings of IDEA Part B noncompliance in the prior two school years.

Source:

General Authority: SDCL 13-37-1.1, 13-37-58.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 13-37-55 to 13-37-59, inclusive.

24:05:36:06. Annual reporting. Each school district must submit the report required by SDCL 13-37-57 by June 30th of each school year on forms provided by the department.

Source:

General Authority: SDCL 13-3-51, 13-37-1.1, 13-37-58.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 13-37-55 to 13-37-59, inclusive.

24:05:36:07. Eligibility for extraordinary costs -- Availability of funding. School districts utilizing state aid for special education funding for the provision of coordinated early intervening services 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, 13-37-58.

Law Implemented: SDCL 13-37-1.1, 13-37-35.1, 13-37-40, 13-37-55 to 13-37-59, inclusive.

ARTICLE 24:10

CAREER AND TECHNICAL EDUCATION

Chapter

24:10:01 to 24:10:29	Repealed.
24:10:30	General provisions, Transferred.
24:10:31	Approval of new programs and program expansions, Transferred.
24:10:32	Renewal of continuing programs, Transferred.
24:10:33	Multidistrict center operation, Transferred.
24:10:34	Postsecondary operation, Transferred.
24:10:35	Fund allocation, Transferred.
24:10:36	Work study, Repealed.
24:10:37	Vocational teacher certification, Transferred.
24:10:38	Associate of applied science degree, Transferred.
24:10:39	General provisions, Repealed.
24:10:40	Multidistrict center operation, Repealed.
24:10:41	Secondary programs, Repealed.
24:10:42	Postsecondary programs.
24:10:43	Associate of applied science degree.
24:10:44	Vocational or technical teacher certification, Repealed.
24:10:45	Postsecondary technical institute credential.
<u>25:10:46</u>	<u>Lease purchase agreements.</u>

24:10:42:26. Tuition. The South Dakota Board of Education shall determine the rate of tuition and state fees charged to students at postsecondary technical institutes annually, and the rate is effective for the fiscal year beginning July 1.

State fees charged to students at postsecondary technical institutes pledged for the payment of lease purchase agreements referenced in SDCL 13-39-66 to 13-39-68, inclusive, may not exceed twenty percent of total tuition and fees.

Source: 8 SDR 150, effective May 16, 1982; 11 SDR 96, 11 SDR 112, effective July 1, 1985; transferred from § 24:10:34:02, 20 SDR 223, effective July 7, 1994; repealed, SL 1995, ch 86, § 6, effective July 1, 1995; readopted, 22 SDR 13, effective August 9, 1995; transferred from § 24:10:42:09, 23 SDR 139, effective March 10, 1997; 35 SDR 306, effective July 1, 2009.

General Authority: SDCL 13-39-37(2), 13-39-38, 1-16A-94.

Law Implemented: SDCL 1-16A-43, 13-39-39, 13-39-39.1.

24:10:42:27. Set-asides. The Office of Career and Technical Education shall set aside facility funds; a minimum of \$1,650,000 before distributing funds through the formula prescribed in § 24:10:42:28. Beginning on July 1, 2014, the set aside shall be an amount that is equal to or greater than fifty percent of the projected state fees charged to students pledged for the payment of lease purchase agreements.

Source: 23 SDR 139, effective March 10, 1997; 32 SDR 117, effective January 5, 2006; 35 SDR 306, effective July 1, 2009.

General Authority: SDCL 13-39-13, 13-39-19, 13-39-37(3), 1-16A-94.

Law Implemented: SDCL 1-16A-43, 13-39-19, 13-39-37 to 13-39-39, 1-16A-96.

CHAPTER 24:10:46

LEASE PURCHASE AGREEMENTS

Section

24:10:46:01. Application for new bonds for lease purchase agreements.

24:10:46:02. Approval of new bonds for lease purchase agreements.

24:10:46:03. Bond amount limited by pledged revenues

24:10:46:04. Projection of contribution from state fees charged to students.

24:10:46:05. Maturity term of bonds issued.

24:10:46:01. Application for new bonds for lease purchase agreements. An application for a new bond for lease purchase agreement for the postsecondary technical institutes must be submitted to the director of the Office of Career and Technical Education. The director of the Office of Career and Technical Education shall convene a meeting of designated representatives of the technical institutes and a representative of the Department of Executive Management referenced in SDCL Chapter 1-33. Technical institutes with new bonds for lease purchase agreement proposals shall present their rationale for issuance. The director of the Office of Career and Technical Education shall review the rationale presented and make a recommendation to the South Dakota Board of Education on all applications which were submitted as to which projects should be considered for approval or disapproval. All proposals for projects must go through this process before they may be considered by the South Dakota Board of Education at its next regularly scheduled meeting.

Source:

General Authority: SDCL 13-39-37(7), 1-16A-94.

Law Implemented: SDCL 13-39-9, 13-39-37, 1-16A-93.

24:10:46:02. Approval of new bonds for lease purchase agreements. The South Dakota Board of Education shall propose the adoption of a resolution for new facility bonds for lease purchase agreements if it considers it necessary and feasible based upon need and capacity for additional bonding. Items that the Board may consider in its deliberations are:

- 1) Identification and description of the purpose of the proposed bonds;
- 2) Availability of local, regional, and other outside support of the project;
- 3) Industry support for the postsecondary technical institute and the program or programs it is expanding as part of the project;
- 4) Projected five-year enrollment growth at the postsecondary technical institute due to the project;
- 5) The estimated increase in state fees charged to students needed for debt coverage;
- 6) Ratio of state fees charged to students for bonding projects to total tuition and fees;
- 7) Physical capacity constraints of current facilities;
- 8) Historical enrollment growth of postsecondary technical institute, particularly as it relates to past expansions;
- 9) Anticipated demand for new and expanded curriculum
- 10) Information on how South Dakota postsecondary technical institutes total tuition and fees, state appropriation, and local taxing authority appropriation compare to those of other regional two-year colleges and technical institutes;

- 11) Graduate placement rates of the postsecondary technical institute considering construction;
- 12) Debt term length and payment structure of all existing bonds and new bonds being considered;
- 13) Debt coverage ratio of all existing bonds and new bonds being considered;
- 14) The term of bond compared to the average useful life of the asset or assets; and
- 15) Capital expenditures of each postsecondary technical institute over the past ten years.

New bonds for lease purchase agreements for postsecondary technical institutes must receive approval by adoption of a resolution from the Board and must be approved by the Legislature before being issued.

Source:

General Authority: SDCL 13-39-37(7), 1-16A-94.

Law Implemented: SDCL 13-39-9, 13-39-21, 13-39-37, 1-16A-93, 1-16A-95.

24:10:46:03. Bond amount limited by pledged revenues. The Board of Education may not approve any revenue bonds for new projects that, when combined with the debt service on outstanding bonds, provide for a coverage ratio less than one hundred and three percent (103%). The goal of the Board of Education is to maintain a one hundred and five percent (105%) coverage for the estimated receipts, rentals, and other payments, including appropriations by the Legislature, student fee payments, or other balances or revenues pledged under the applicable bond indenture.

Source:

General Authority: SDCL 13-39-37.

Law Implemented: SDCL 1-16A-43, 13-39-9, 13-39-37.

24:10:46:04. Projection of contribution from state fees charged to students. For purposes of forecasting anticipated contributions from student tuition and state fees charged to students for bonding projects, the following calculations shall be used:

- 1) Calculate the estimated amount of revenue needed to be raised from state fees charged to students for debt service for the next five fiscal years;
- 2) Estimate the number of full-time equivalent students for the current fiscal year and the subsequent five fiscal years;
- 3) Determine the estimated contributions from student tuition and fees for the next five fiscal years as follows:
 - a) For each fiscal year, multiply the results of subdivision (2) above by 30 credit hours;
 - b) Divide the result of subdivision (1) by the result of subdivision (3)(a) and round up to the nearest whole dollar to calculate the estimated state fees charged to students per credit hour needed for debt service coverage; and
 - c) Multiply the results of subsections (a) and (b) above for each fiscal year to calculate the estimated amount of state fees charged to students pledged for each fiscal year.

Source:

General Authority: SDCL 13-39-37(7), 1-16A-94.

Law Implemented: SDCL 1-16A-43, 13-39-9, 13-39-37, 1-16A-93.

24:10:46:05. Maturity term of bonds issued. When considering approval of new bonds for lease purchase agreement, the Board of Education may set a target maturity term between thirty and forty years. However, the amortization cannot exceed one hundred and twenty percent (120%) of the weighted average useful life of the asset.

Source:

General Authority: SDCL 13-39-37(7), 1-16A-94.

Law Implemented: SDCL 1-16A-39, 1-16A-43, 13-39-9, 13-39-37, 1-16A-93.

24:14:13:03. Development, review, and evaluation of individualized family service plan. Individualized family service plans must be developed, reviewed, and evaluated as follows:

(1) For a child who has been referred to the Part C program and determined to be eligible, a meeting to develop the initial individualized family service plan must be conducted within 45 days after receipt of referral pursuant to chapter 24:14:11;

(2) A review of the individualized family service plan for a child and the child's family must be conducted every six months or more frequently if conditions warrant or if the family requests such a review. The purpose of the periodic review is to determine the degree to which progress toward achieving the results or outcomes identified in the individualized family service plan is being made and whether modification or revision of the results, outcomes or early intervention services identified in the individualized family service plan is necessary;

(3) The review may be carried out by a meeting or by another means that is acceptable to the parents and other participants;

(4) A meeting must be conducted at least annually to evaluate the individualized family service plan for a child and the child's family and, if necessary, to revise its provisions. The results of any current evaluations conducted under this article and other information available from the ongoing assessment of the child and family must be used in determining what early intervention services are needed and will be provided;

(5) Individualized family service plan meetings must be conducted in settings and at times that are convenient to families and in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so;

(6) Meeting arrangements must be made with, and written notice provided to, the family and other participants at least five ~~working~~ days before the meeting date to ensure that they will be able to attend; and

(7) The service coordinator shall fully explain the contents of the individualized family service plan to the parents and obtain informed written consent from the parents before providing early intervention services described in the plan. If the parents do not consent to a particular early intervention service or withdraw consent given previously, that service may not be provided. The early intervention services to which parental consent is obtained must be provided as soon as possible.

Source: 20 SDR 223, effective July 7, 199 4; 23 SDR 179, effective April 29, 1997; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-1-23, 13-14-1, 13-37-1.1.

ARTICLE 24:15
CERTIFICATION

Chapter

- 24:15:01 Definition of terms.
- 24:15:02 Requirements for certification.
- 24:15:03 Applications for certificates.
- 24:15:04 Alternative route to certification.
- 24:15:05 Teach For America route to certification.
- 24:15:06 Requirements for education endorsement programs.
- 24:15:07 National Board for Professional Teaching Standards and National School Counselor certification.
- 24:15:08 Career and technical education alternative route to certification.
- 24:15:09 Military spouse

24:15:01:01. Definitions. Terms used in this article mean:

- (1) "Accredited," having met the standards of the National Council for Accreditation of Teacher Education or one of the six regional accrediting agencies: North Central Association, New England Association, Middle States Association, Southern Association, Northwest Association, and Western Association;
- (2) "Administrator," an individual who has completed an approved program for principals or school superintendents at an accredited institution and has been issued a South Dakota certificate;

- (3) "Advanced certification," certification that is granted to an individual who has obtained a master's, doctorate, specialist degree, or National Board Certification;
- (4) "Alternative certification," a process of completing an approved teacher education program or a professional development plan for alternative certification while employed in a South Dakota school system accredited or approved by the department;
- (5) "Approved education endorsement," a sequence of courses and experiences completed at a minor level or less or verification of a passing score on the approved state certification examination that meets preparation standards in article 24:15;
- (6) "Approved education program," courses and experiences requiring completion of a degree with a major or its equivalent that meets preparation standards of article 24:53 or preparation standards of other states' educational agencies;
- (7) "Authorization," content areas and grade spans designated on a certificate;
- (8) "Certificate," granted by the state of South Dakota that provides official recognition of completion of all necessary preparation requirements and authorizes the holder to perform educational services;
- (9) "Certifying officer," the official from an accredited institution with approved education programs who is authorized to verify completion of preparation requirement and recommend certification;
- (10) "Continuing education contact hour," hour documented by participation in an educational professional development opportunity;

(11) "Credit," credit is equivalent to 15 contact hours;

(12) "Department," South Dakota Department of Education;

(13) "Instructor," an individual who has not completed an approved teacher education program, except for those who are qualified pursuant to subdivision 24:15:03:02(3), and has been issued a South Dakota certificate;

(14) "Lapsed certificate," a certificate that has not been renewed within 90 days of the expiration date;

(15) "Military spouse," an applicant: who holds a valid certificate issued by another state or the District of Columbia, whose spouse is a member of the armed forces of the United States, whose spouse is the subject of a military transfer to South Dakota, and who left employment to accompany the spouse to South Dakota;

~~(15)~~ (16) "School service specialist," an individual who serves as a school counselor, school social worker, school psychologist, school psychological examiner, school speech/language pathologist, school library media specialist, business official, curriculum director, or special education director and has been issued a South Dakota certificate;

~~(16)~~ (17) "Stand-alone certificate," a certificate issued to an individual who is restricted to the area of authorization indicated on the certificate;

~~(17)~~ (18) "State certification exam," an assessment of content and pedagogical knowledge required in articles 24:15 and 24:53 with passing scores established by the Board of Education;

~~(18)~~ (19) "Teacher," an individual who has completed an approved teacher education program at an accredited institution or an alternative certification program and has been issued a South Dakota certificate;

~~(19)~~ (20) "Transcribed credit," credit issued on an accredited college or university transcript.

Source: 24 SDR 160, adopted May 8, 1998, effective September 1, 2000; 28 SDR 43, effective August 23, 2001; SL 2003, ch 113, § 1, effective July 1, 2003; 30 SDR 26, effective September 3, 2003; 31 SDR 43, effective October 3, 2004; 31 SDR 129, effective March 22, 2005; 32 SDR 145, effective March 14, 2006; 33 SDR 55, effective October 2, 2006; 34 SDR 322, effective July 1, 2008; 36 SDR 169, effective May 11, 2010.

General Authority: SDCL 13-1-12.1, 13-42-3.

Law Implemented: SDCL 13-42-1 to 13-42-4, inclusive; 13-42-67 to 13-42-69, inclusive.

CHAPTER 24:15:09

MILITARY SPOUSE

Section

- | | |
|-------------|---------------------------------|
| 24:15:09:01 | Application of military spouse. |
| 24:15:09:02 | Review of complete application. |
| 24:15:09:03 | Temporary certificate. |
| 24:15:09:04 | Secretary's powers unaffected. |

24:15:09:01. Application of military spouse. A military spouse who applies for a certificate pursuant to this article shall identify his or her military spouse status on the application. The department shall provide a method for identification of military spouse status

on the application. The department may require documentation to verify the military spouse status of the applicant. The application shall be considered complete when the department has received all required documentation necessary to process the application and the required application fee.

Source:

General Authority: SDCL 13-1-12.1, 13-42-3.

Law Implemented: SDCL 13-42-1 to 13-42-4, 13-42-67 to 13-42-69, inclusive.

24:15:09:02. Review of complete application. Within thirty days of receipt of a complete application pursuant to § 24:15:09:01, the Secretary shall:

(1) Determine whether the military spouse applicant meets the requirements for the issuance of a certificate in South Dakota and if so, issue the certificate pursuant to this article; or

(2) If subdivision (1) does not apply, then determine whether the requirements for the issuance of a certificate in the state or District of Columbia where the military spouse applicant holds a valid certificate are substantially equivalent to the requirements in South Dakota.

Source:

General Authority: SDCL 13-1-12.1, 13-42-3.

Law Implemented: SDCL 13-42-1 to 13-42-4, 13-42-67 to 13-42-69, inclusive.

24:15:09:03. Temporary certificate. If the Secretary is unable to make the determinations required in § 24:15:09:02 within thirty days of the receipt of the complete

application, or if the Secretary determines that the requirements for the issuance of a certificate in the state or District of Columbia where the military spouse applicant holds a valid certificate are substantially equivalent to the requirements in South Dakota, then the Secretary shall issue a temporary certificate to the military spouse applicant for a period not to exceed six months. The military spouse may only be issued one temporary certificate pursuant to this section. Upon expiration of the temporary certificate, the military spouse must reapply with the department pursuant to this article and meet the requirements for issuance of a certificate in South Dakota. The substantial equivalency provisions of this chapter do not apply to a military spouse who reapplies pursuant to this section.

Source:

General Authority: SDCL 13-1-12.1, 13-42-3.

Law Implemented: SDCL 13-42-1 to 13-42-4, 13-42-67 to 13-42-69, inclusive.

24:15:09:04. Secretary's powers unaffected. Nothing in this chapter limits the Secretary's ability to deny, refuse to renew, suspend, or revoke a certificate for failure to fulfill the requirements of this chapter or pursuant to SDCL 13-42-7 to 13-42-16, inclusive; SDCL 13-43-28.1, or § 24:15:03:04.

Source:

General Authority: SDCL 13-1-12.1, 13-42-3.

Law Implemented: SDCL 13-42-1 to 13-42-4, 13-42-67 to 13-42-69, inclusive.

CHAPTER 24:43:02

STATE ACCREDITATION AND APPROVAL SYSTEM

Section

- 24:43:02:01 Public school districts required to maintain state accreditation.
- 24:43:02:02 State accreditation system defined.
- 24:43:02:03 Eligibility for state accreditation -- Compliance with regulations and district improvement plan.
- 24:43:02:04 Approval of district improvement plan.
- 24:43:02:05 Five-year accreditation cycle.
- 24:43:02:06 ~~Onsite~~ Accreditation review.
- 24:43:02:07 Amended improvement plan.
- 24:43:02:08 Plan of Intent.

24:43:02:06. ~~Onsite~~ Accreditation review. At the conclusion of the five-year cycle, at a time mutually agreed upon, any public school district or nonpublic school that is eligible for continued state accreditation shall ~~host a team of state reviewers who shall conduct~~ undergo a comprehensive ~~site visit~~ review by the Department of Education to:

- 1) Assess progress with the comprehensive improvement plan;
- (2) Review the public school district or nonpublic school's performance during the preceding five years, including the documented academic performance of its students;
- (3) Provide a general assessment of educational practices;
- (4) Make recommendations regarding the review findings for the purpose of improving educational practices beyond the level of minimum compliance to foster practices of continuous improvement; and

(5) Determine that the public school district or nonpublic school, including all related schools and programs, is in compliance with state laws and administrative rules.

Source: 31 SDR 178, adopted May 4, 2005, effective July 1, 2005; 33 SDR 55, effective October 2, 2006.

General Authority: SDCL 13-1-12.1, 13-3-1.4, 13-3-47, 13-13-18.

Law Implemented: SDCL 13-1-12.1.

24:55:01:01. Definitions. Terms used in this article mean:

(1) "Accreditation," certification by the secretary that a school system meets the adopted standards of the state board for a specified school fiscal year;

(2) "Alternative school," programs outside of the traditional setting whereby students receive instruction as an extension of the regular or traditional school environment;

(3) "Attendance, day of," a day in which an enrolled person is present under the guidance and direction of a teacher for the minimum length of time that school is in session;

(4) "Attendance rate," the aggregate days of attendance of all enrolled students divided by the aggregate days of enrollment of all enrolled students,"

(5) "Confidence interval," a group of continuous or discrete adjacent values that is used to estimate a statistical parameter (as a mean or variance) and that tends to include the true value of the parameter a predetermined proportion of the time if the process of finding the group of values is repeated a number of times;

(6) "Department," Department of Education;

(7) "Dropout," a student who:

(a) Was enrolled in school at some time during the school year and was expected to be enrolled the following year but was not enrolled;

(b) Has not graduated from high school or completed a state or district approved educational program; and

(c) Has not met any of the following exclusionary conditions:

(i) Transfer to another public school district, private school, or state or district-approved educational program;

(ii) Temporary school-recognized absence due to suspension or illness; or

(iii) Death;

(8) "Dual enrollment," the enrollment of a student in a kindergarten through twelfth grade program in two or more school systems at the same time;

(9) "Economically disadvantaged," students who qualify for free and reduced lunch status;

(10) "Enrollment," for accountability purposes, the total number of students who are enrolled in a public school for greater than fifty percent of a school day;

(11) "ESEA," the Elementary and Secondary Education Act, 20 U.S.C. 6301 et seq., as in effect on August 23, 2012;

(12) "Grade," that portion of a school program that represents the work of one regular school term, identified by a designation such as kindergarten, grade one, or grade ten;

(13) "Gap group," an aggregate count of student groups ~~in a specific public school~~ that have experienced the most significant achievement gaps over the most recent three years of participation ~~in~~ on the state academic assessment. The gap group must be re-evaluated following the 2014-15 school year, using the most recent three years of state academic assessment data. After the 2014-15 school year, the gap group must be re-evaluated on a six-year cycle. The gap group currently includes the following student groups: Black or African American; American Indian or Alaska Native; Hispanic/Latino; economically disadvantaged; students with disabilities; and limited English proficient;

(14) "Gap group indicator," for student achievement, the percentage of gap group students who scored proficient or advanced on the state academic assessment; for graduation rate, the graduation rate of gap group students; and for student attendance, the student attendance rate of gap group students;

(15) "Graduation rate," the four-year adjusted cohort graduation rate as defined in 34 C.F.R. § 200.19(b)(1) (November 28, 2008);

(16) "High school completion rate," the number of students who, in the most recently completed school year, have attained a regular high school diploma or a General Equivalency Diploma (GED) divided by the total number of students in that same year who dropped out or attained a regular high school diploma or a GED;

(17) "Key indicators," the key indicators of public school performance in §§ 24:55:02:02 to 24:55:02:03, inclusive;

(18) "Limited English proficient," as that term is defined in 20 U.S.C. § 7801 (25) (2002);

(19) "Nongap group," all students in a specific public school who are not included in the gap group;

(20) "Presecondary school level," the elementary, middle, and junior high school levels;

(21) "School district," a public school district as defined in SDCL 13-5-1;

(22) "School, elementary," a school consisting of any combination of grades from kindergarten through eighth grade;

(23) "School, junior high," a school consisting of any combination of two or more consecutive grades that must include grades seven and eight, and may include grade nine;

(24) "School level," the designation of two separate and distinct levels for determining public school performance under the SPI, with those levels being the presecondary school level and the secondary school level;

(25) "School, middle," a school consisting of any combination of two or more consecutive grades, five through eight;

(26) "School, public," a public entity that is approved or accredited by the secretary for the purpose of instructing children of compulsory school age as provided in SDCL 13-27-1;

(27) "School, secondary," a school consisting of any combination of three or more consecutive grades, including ninth grade through twelfth grade;

(28) "School system," all of the schools and supporting services operated by a public school district;

(29) "School term," "school year," the school term as defined in SDCL 13-26-1 and 13-26-2;

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

(31) "SIG," school improvement grant;

(32) "SPI," school performance index;

(33) "SPI key indicator score," the score assigned to each key indicator at each school level;

(34) "SPI ranking," the ranking referenced in § 24:55:03:01;

(35) "State academic assessment," the academic achievement test in reading and mathematics annually administered to all students in grades three to eight, inclusive, and in grade eleven as defined in SDCL 13-3-55;

(36) "Student," an individual for whom instruction is provided in an educational program under the jurisdiction of a public school district;

(37) "Students with disabilities," students having intellectual disabilities, hearing impairment, including deafness, speech or language impairment, visual impairments, including blindness, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, developmental delay, other health impairment, specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, receive special education and related services under the Individuals with Disabilities Education Act (IDEA) according to an Individualized Education Program (IEP), Individualized Family Service Plan (IFSP), or a services plan;

(38) "Teacher, certified," the holder of a valid South Dakota teacher certificate who is assigned to those responsibilities authorized by the certificate;

(39) "Title I, Part A," Title I, Part A, of the ESEA, 20 U.S.C. §§ 6301 to 6339, as in effect August 23, 2012;

(40) "Title I school," "Title I district," a public school or public school district that receives funds under Title I, Part A and 34 C.F.R. Part 200 (July 27, 2012);

(41) "Total SPI score," the sum of all SPI key indicator scores, with a maximum of 100 points allowed at each school level per school year;

(42) "US DOE," the United States Department of Education.

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69.

Law Implemented: SDCL 13-3-62, 13-3-69.

24:55:01:04. Public school accountability system defined. For purposes of this article, the term, accountability system, means a system established by the state to ensure that all public schools make yearly progress in continuously and substantially improving the performance of their students and make yearly progress in increasing the quality of instruction and leadership. The accountability system shall:

(1) Be implemented and administered for all public schools through department policies and procedures consistent with SDCL 13-3-62 to 13-3-69, inclusive, and the requirements of this article;

(2) Be based upon the content standards in reading and mathematics approved by the state board of education;

(3) Include measurements of student achievement in reading and mathematics based on the state academic assessment;

(4) Include four levels of student achievement for reading and mathematics: advanced, proficient, basic, and below basic, as referenced in SDCL 13-3-66, that are based on mastery of the content standards as measured by academic achievement tests, with cut scores for each level established by the department;

(5) Include multiple indicators of public school performance;

(6) Include a process for evaluating and supporting teachers and principals that is designed to improve their effectiveness in maximizing student learning, with the process being based on professional performance standards and multiple measures, and that informs professional growth and development of teachers and principals;

(7) Include a six-year cycle ~~that is coordinated with the school accreditation requirements of article 24:43;~~

(8) Include annual measurements and public reporting based on the data collected pursuant to SDCL 13-3-51;

(9) Include a system of classification, sanctions, rewards, and recognition;

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69.

Law Implemented: SDCL 13-3-62, 13-3-69.

24:55:02:01. Key indicators of public school performance. The accountability system shall include multiple indicators of public school performance in advancing student learning and in improving instruction and school leadership. The department shall calculate SPI key indicator scores for each public school for each school year, with each key indicator assigned a maximum value according to this chapter. The department shall incorporate the use of a confidence interval when ~~calculating~~ reporting each of the SPI key indicator scores. The department also shall calculate a total SPI score for each public school, with one-hundred being the maximum value.

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69.

Law Implemented: SDCL 13-3-62 to 13-3-65, 13-3-69, inclusive.

CHAPTER 24:55:03

PUBLIC SCHOOL RANKINGS AND CLASSIFICATIONS

Section

- 24:55:03:01 School performance index ranking.
- 24:55:03:02 Classifications of public schools.
- 24:55:03:03 Classification of exemplary schools.
- 24:55:03:04 Classification of status schools.
- 24:55:03:05 Classification of progressing schools.
- 24:55:03:06 Classification of non-Title I schools as priority schools.
- 24:55:03:07 Classification of Title I schools as priority schools.
- 24:55:03:07.01 Classification of priority districts.
- 24:55:03:08 Classification of focus schools.
- 24:55:03:09 Transition year classification of Title I priority and focus schools.
- 24:55:03:10 Transition year classification of Title I priority schools at the presecondary school level.
- 24:55:03:11 Transition year classification of Title I priority schools at the secondary school level.
- 24:55:03:12 Transition year classification of focus schools at the presecondary school level.
- 24:55:03:13 Transition year classification of focus schools at the secondary school level.
- 24:55:03:14 SIG priority schools.

24:55:03:07.01. Classification of priority districts. If a public school district has at least one priority school and at least fifty percent of its schools are focus or priority schools, the district is considered a priority district. Only districts with three or more public schools may be identified as priority districts. A district must remain a priority district for a minimum of four years.

Source:

General Authority: SDCL 13-3-69(6).

Law Implemented: SDCL 13-3-67, 13-3-69.

24:55:03:08. Classification of focus schools. The department shall classify a Title I school as a focus school if it meets any of the following criteria:

(1) At the presecondary school level, the gap group indicators for student achievement and attendance are at or below the bottom ten percent of Title I schools; or

(2) At the secondary school level, the gap group indicators for student achievement and graduation rate are at or below the bottom ten percent of Title I schools; or

~~——(3) The school is a Title I high school whose graduation rate is below sixty percent over the last two school years, and the school has not been identified as a priority school~~

(3) At the presecondary or secondary school level, the combined math and reading student proficiency rates on the state academic assessment for any student group are seventy-five percent lower than the combined reading and math proficiency rates for the Gap group.

The department shall incorporate the use of a confidence interval when ~~calculating~~ reporting the gap group indicators pursuant to this section.

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69(6).

Law Implemented: SDCL 13-3-67, 13-3-69.

CHAPTER 24:55:04

SANCTIONS, REWARDS, AND RECOGNITION

Section

- 24:55:04:01 Interventions and rewards.
- 24:55:04:02 Interventions for Title I priority schools.
- 24:55:04:03 ~~Additional interventions~~ Interventions for school priority districts ~~with fifty percent or more of schools classified as Title I priority schools.~~
- 24:55:04:04 Interventions for focus schools.
- 24:55:04:05 Additional interventions for school districts with fifty percent or more of schools classified as focus schools, Repealed.
- 24:55:04:06 Exiting priority school classification.
- 24:55:04:07 Failure of priority school to progress.
- 24:55:04:08 Exiting focus school classification.
- 24:55:04:08.01 Exit criteria for a school classified as a focus school pursuant to §24:55:03:08(1) or (2).
- 24:55:04:08.02 Exit criteria for a school classified as focus schools pursuant to §24:55:03:08(3).
- 24:55:04:09 Failure of focus school to progress.
- 24:55:04:10 Rewards and recognition.

24:55:04:03. ~~Additional interventions~~ Interventions for priority school districts. ~~with fifty percent or more of schools classified as Title I priority schools.~~

~~If fifty percent or more of the Title I schools in a school district are classified as priority schools by the department, the Each priority district shall ~~designate twenty percent of the funds received pursuant to Title I Part A for additional interventions designed to improve school performancee~~ implement the interventions in this section. The interventions referenced in this section must be approved by the department.~~In addition, the department shall appoint a technical advisor to assist the district with operational issues.:~~~~

(1) Form a district leadership team to drive the continuous improvement process and create, implement, and monitor the district turnaround plan;

(2) Participate in the Academy of Pacesetting Districts program referenced on page 56 of the ESEA flexibility request to review and/or develop a district operations manual targeted at supporting all schools in the district, including using the South Dakota Leading Effectively Achieving Progress, referenced as Indistar on pages 56-57 of the ESEA flexibility request, online school improvement planning tool to assess, plan, implement, and monitor district indicators of effective practice;

(3) Provide and support necessary professional development for teachers;

(4) Implement the South Dakota multi-tiered system of support referenced on pages 57 and 58 of the ESEA flexibility request;

(5) Undergo a district performance audit; and

(6) Implement additional supports and interventions that align with the needs of the district's priority schools.

In addition, the department shall conduct an analysis of the priority district data regarding staffing, budgeting, student achievement, and other relevant areas. Based on the results of this analysis, the priority district may be required to set aside up to five percent of the district Title I Part A allocation to fund a technical advisor assigned by the department.

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69(6).

Law Implemented: SDCL 13-3-67, 13-3-69.

Reference: "ESEA Flexibility Request" dated June 25 2012. Letter from US DOE Secretary Arne Duncan to Secretary Dr. Melody Schopp dated June 29, 2012. The materials are available for viewing at the South Dakota Department of Education, 800 Governors Drive, Pierre, South Dakota. Copies may be obtained from <http://www.ed.gov/esea/flexibility/requests> under "South Dakota."

24:55:04:05. Additional interventions for school districts with fifty percent or more of schools classified as Title I focus schools.~~—If fifty percent or more of the Title I schools in a school district are classified as focus schools by the department and fewer than fifty percent of the Title I schools in a district are classified as priority schools, the district shall designate ten percent of the funds received pursuant to Title I Part A for professional development activities approved by the department for the focus schools~~ Repealed.

Source: 39 SDR 51, effective October 3, 2012.

~~**General Authority:** SDCL 13-3-69(6).~~

~~**Law Implemented:** SDCL 13-3-67, 13-3-69.~~

24:55:04:06. Exiting priority school classification. After a school has been classified a priority school for ~~three~~ four years, and has fully implemented interventions aligned to all of the turnaround principles pursuant to § 24:55:04:02 for three complete years, the department shall examine whether the school meets the exit criteria in this section based on the most recent school year data. The department shall remove the priority school classification if the school meets the following criteria:

(1) The school's total SPI score is above the bottom five percent of the SPI ranking;

(2) The gap group and nongap group in the school have met the annual targets in reading and math referenced in § 24:55:05:02 for the last three school years; and

(3) Follow-up program audits show that interventions required by the chapter are being implemented.

In addition to subsections (1) to (3), inclusive, a Title I high school or Title I eligible high school that was classified as a priority school pursuant to § 24:55:03:07(2) must have a graduation rate of 70% or above for the last two school years.

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69(6).

Law Implemented: SDCL 13-3-67, 13-3-69.

24:55:04:08. Exiting focus school classification. After a school has been classified a focus school for one year, the department shall examine whether the school meets the exit criteria in ~~this~~ section §§ 24:55:04:08.01 and 24:55:04:08.02 based on the most recent school year data. The department shall ~~remove the focus school classification if the school meets the following criteria:~~

~~(1) The gap group indicators are above the bottom ten percent of Title I schools:~~

~~———— (a) For student achievement and attendance at the postsecondary school level; and~~

~~———— (b) For student achievement and graduation rate at the secondary school level;~~

~~———— (2) The gap group in the school has met the annual targets in reading and math referenced in § 24:55:05:02; and~~

~~———— (3) Annual monitoring by the department indicates that interventions required by this chapter are being implemented.~~

~~———— In addition to the requirements of subdivisions (1) to (3), inclusive, a Title I high school that was designated as a focus school pursuant to § 24:55:03:08(3) must have a graduation rate at 70% or above for two consecutive years.~~

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69(6).

Law Implemented: SDCL 13-3-67, 13-3-69.

24:55:04:08.01 Exit criteria for a school classified as a focus school pursuant to §24:55:03:08(1) or (2).

For a school classified as a focus school pursuant to § 24:55:03:08(1) or (2), the school must meet the following criteria before it can exit focus school classification:

(1) The gap group indicators are above the bottom ten percent of Title I schools:

(a) For student achievement and attendance at the presecondary school level; and

(b) For student achievement and graduation rate at the secondary school level;

(2) The gap group in the school has met the annual targets in reading and math referenced in § 24:55:05:02; and

(3) Annual monitoring by the department indicates that interventions required by this chapter are being implemented.

Source:

General Authority: SDCL 13-3-69(6).

Law Implemented: SDCL 13-3-67, 13-3-69.

24:55:04:08.02 Exit criteria for schools classified as focus schools pursuant to §24:55:03:08(3).

For a school classified as a focus school pursuant to § 24:55:03:08(3), the school must meet the following criteria before it can exit focus school classification:

(1) The gap group indicators are above the bottom ten percent of Title I schools:

(a) For student achievement and attendance at the presecondary school level; and

(b) For student achievement and graduation rate at the secondary school level;

(2) Annual monitoring by the department indicates that interventions required by this chapter are being implemented; and

(3) The difference between the student group and gap group performance has been cut in half for two consecutive years.

Source:

General Authority: SDCL 13-3-69(6).

Law Implemented: SDCL 13-3-67, 13-3-69.

24:55:05:02. Academic progress goals and targets. For each public school and public school district, the department shall calculate a unique academic progress goal of reducing by half, within each six-year cycle, the percentage of students in each of the student groups referenced in § 24:55:01:05 who score basic or below basic in reading and mathematics. The department shall use the student achievement data from the state academic assessment to set yearly targets in equal increments toward the six-year goal. Goals and targets shall be set separately for reading and mathematics. These targets provide meaningful data for each public school's ongoing efforts to continuously improve student achievement throughout each six-year cycle. The first cycle begins

with the ~~2012-13~~ 2011-2012 school year, which serves as a baseline year for data. Progress goals and targets shall be reset following the 2014-15 school year based on a six-year cycle.

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69(1)(2)(5).

Law Implemented: SDCL 13-3-62 to 13-3-65, 13-3-69, inclusive.

24:55:05:03. Calculation of academic progress goals and yearly targets. The department shall calculate academic progress goals and yearly targets separately for reading and mathematics and for each student group in each public school as follows:

(1) Based on state academic assessment scores from the ~~2012-2013~~ 2011-2012 school year, calculate the percentage of students in the applicable student group who score at the basic or below basic levels combined;

(2) Divide this percentage in half. This is the school's academic progress goal for reducing, within the six-year cycle, the percentage of students in the applicable student group who do not score proficient or advanced;

(3) Subtract this amount from 100 percent. This is the inverse of (2) and represents the school's academic progress goal for the percentage of students scoring at the proficient or advanced levels combined within the six-year cycle;

(4) Divide the amount in subdivision (2) by six, rounding to the nearest hundredth. This is the school's annual target for increasing the percentage of students who score at the proficient or advanced levels combined;

(5) Calculate the percentage of students in the base year who test at the proficient or advanced levels combined;

(6) To determine the academic progress target in year one of the six-year cycle, add the base year percentage of students scoring at the proficient or advanced levels combined to the annual target for increasing the percentage of students who score proficient or advanced; and

(7) To determine the academic progress target in subsequent years of the six-year cycle, add the annual increase to the previous year's academic progress target.

These calculations shall be repeated for each public school for all of its student groups of § 24:55:01:05 and shall be calculated separately for reading and mathematics. The minimum student group size of 10 of § 24:55:07:05 applies for reporting purposes.

An example of this calculation is illustrated in Appendix A at the end of this chapter.

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69(1)(2)(5).

Law Implemented: SDCL 13-3-62 to 13-3-65, 13-3-69, inclusive

CHAPTER 24:55:07

ALL PUBLIC SCHOOLS AND PUBLIC SCHOOL STUDENTS INCLUDED

Section

- 24:55:07:01 All public school students assessed.
- 24:55:07:02 At least 95% assessed.
- 24:55:07:03 Dually enrolled students.
- 24:55:07:04 Student transfers during testing timeframes.
- 24:55:07:05 Student group size.
- 24:55:07:06 Insufficient group size.
- 24:55:07:07 Public schools with no grades assessed.
- 24:55:07:08 Requirements for all public schools.
- 24:55:07:09 Students with disabilities, Repealed.
- 24:55:07:10 Students with disabilities identified after December first, Repealed.
- 24:55:07:11 Participation of students who are limited English proficient.
- 24:55:07:12 Student moves.
- 24:55:07:13 Student moves, full academic year not met.
- 24:55:07:14 Special considerations.

24:55:07:04. Student transfers during testing timeframes. State academic assessment scores of students who transfer from one public school to another public school between October 1 and the end of the testing timeline within the same public school district are counted at the ~~state~~ district level for student achievement SPI key indicator scores. Student achievement scores of students who transfer from one public school district to another public school district between October 1 and the end of the testing timeline are counted at the state level for student achievement SPI key indicator scores.

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-51, 13-3-69.

Law Implemented: SDCL 13-3-51, 13-3-69.

24:55:07:06 Insufficient group size. Accountability determinations for public schools may not be required if the number of students in a group is insufficient to yield statistically reliable information, or the results would reveal personally identifiable information about an individual student. Schools with fewer than 10 students tested must undergo a small school audit process to determine progress towards academic goals.

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-51, 13-3-69.

Law Implemented: SDCL 13-3-51, 13-3-69.

24:55:07:09. Students with disabilities. ~~Students with disabilities shall participate in the state academic assessment as provided in §§ 24:05:14:14 and 24:05:27:01.03(5)~~ Repealed.

Source: 39 SDR 51, effective October 3, 2012.

~~General Authority:~~ SDCL 13-3-55, 13-3-69.

~~Law Implemented:~~ SDCL 13-3-55, 13-3-69.

24:55:07:10. Students with disabilities identified after December first. ~~For accountability purposes, the state academic assessment scores of a student enrolled in a public school for a full academic year but who was not identified as a student with a disability as defined in § 24:05:24.01:01 until after December 1 are counted in the presecondary school level or~~

~~secondary school level for the public school. Academic assessment scores for these students are not counted in the student group of students with disabilities Repealed.~~

Source: 39 SDR 51, effective October 3, 2012.

~~— **General Authority:** SDCL 13-3-51, 13-3-69.~~

~~— **Law Implemented:** SDCL 13-3-51, 13-3-69.~~

24:55:08:01. Public school or district changing grade span or physical status. A public school or public school district that proposes to change its grade span or physical building capacity must submit a request to the department to explain the reasons for the proposed change. The department shall review the request and either approve or deny. Regardless of changes made in student population, a school identified as a priority or focus school is not eligible for new accountability status while in the identified classification.

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69.

Law Implemented: SDCL 13-3-69.

24:55:08:03. Accountability classification determination starts with first year of operation. Accountability classifications for new public schools are made by the department within their first year of operation. ~~However, public schools in the first year of operation are not eligible for the additional five points referenced in § 24:55:02:10.~~

Source: 39 SDR 51, effective October 3, 2012.

General Authority: SDCL 13-3-69.

Law Implemented: SDCL 13-3-69.