

CHAPTER 24:05:24.01
ELIGIBILITY CRITERIA

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24:05:24.01:01. Students with disabilities defined. Students with disabilities are students evaluated in accordance with chapter 24:05:25 and this chapter as having autism spectrum disorder, deaf-blindness, deafness, hearing loss, cognitive disability, multiple disabilities, orthopedic impairment, other health impairments, emotional disturbance, specific learning disabilities, speech or language impairments, traumatic brain injury, or vision loss, including blindness, which adversely affects educational performance, and who, because of those disabilities, need special education or special education and related services. If it is determined through an appropriate evaluation, under chapter 24:05:25, that a student has one of the disabilities identified in this chapter, but only needs a related service and not special education, the student is not a student with a disability under this article. If, consistent with this chapter, the related service

required by the student is considered special education, the student is a student with a disability under this article.

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

General Authority: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

Law Implemented: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-1.2, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

24:05:24.01:01.01 Manual defined. For purposes of §§ 24:05:24.01:03 to 24:05:24.01:05, inclusive, the term, manual, means the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (2013), American Psychiatric Association.

Source:

General Authority: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

Law Implemented: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-1.2, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

Reference: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (2013), American Psychiatric Association. The materials are available for viewing at the South Dakota Department of Education, 800 Governors Drive, Pierre, South Dakota. Copies of portions of the manual referenced in §§ 24:05:24.01:03 to 24:05:24.01:05, inclusive, can be obtained at <http://www.autismspeaks.org/what-autism/diagnosis/dsm-5-diagnostic-criteria>.

24:05:24.01:02. Screening procedures for autism. ~~If a student is suspected of having autism, screening procedures for autism shall include a review of any medical, hearing, and vision~~

~~data on the student; the history of the student's behavior; and the student's current patterns of behavior related to autism~~ Repealed.

Source: 18 SDR 90, effective November 25, 1991; transferred from § 24:05:25:27, 23 SDR 31, effective September 8, 1996.

General Authority: ~~SDCL 13-37-1.1, 13-37-28.~~

Law Implemented: ~~SDCL 13-37-1.1, 13-37-28.~~

24:05:24.01:03. Autism spectrum disorder defined. Autism spectrum disorder is a developmental disability that significantly affects verbal and nonverbal communication and social interaction and results in adverse effects, generally evident before age three, on the child's educational performance.

Other characteristics often associated with autism spectrum disorder are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

The term does not apply if the student's educational performance is adversely affected primarily because the student has an emotional disturbance as defined under ~~Part B of Individuals with Disabilities Education Act~~ § 24:05:24.01:16.

Source: 20 SDR 33, effective September 8, 1993; transferred from § 24:05:25:27.01, 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

Law Implemented: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-1.2, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

24:05:24.01:04. Diagnostic criteria for autism spectrum disorder. The criteria in the manual, section two, pages fifty to fifty-one, inclusive, shall be used for diagnosing autism spectrum disorder. An autistic autism spectrum disorder is present in a student if ~~at least six of the~~

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~~following twelve characteristics are expressed by a student expresses with at least two all three of the characteristics from subdivision (1), ~~one~~ at least two ~~characteristic~~ characteristics from subdivision (2), and ~~one characteristic from subdivision~~ all of the characteristics in subdivisions (3) through (5), inclusive:~~

~~—— (1) Qualitative impairment in social interaction, as manifested by at least two of the following:~~

~~—— (a) Marked impairment in the use of multiple nonverbal behaviors, such as eye to eye gaze, facial expression, body postures, and gestures, to regulate social interaction;~~

~~—— (b) Failure to develop peer relationships appropriate to developmental level;~~

~~—— (c) A lack of spontaneous seeking to share enjoyment, interests, or achievements with other people, such as a lack of showing, bringing, or pointing out objects of interest;~~

~~—— (d) Lack of social or emotional reciprocity;~~

~~—— (2) Qualitative impairment in communication as manifested by at least one of the following:~~

~~—— (a) Delay in, or total lack of, the development of spoken language not accommodated by an attempt to compensate through alternative modes of communication, such as gesture or mime;~~

~~—— (b) In an individual with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others;~~

~~—— (c) Stereotyped and repetitive use of language or idiosyncratic language;~~

~~—— (d) Lack of varied, spontaneous make believe play or social imitative play appropriate to developmental level;~~

~~—— (3) Restricted repetitive and stereotyped patterns of behavior, interests, and activities as manifested by at least one of the following:~~

~~—— (a) Encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;~~

~~—— (b) Apparently inflexible adherence to specific, nonfunctional routines or rituals;~~

~~———— (e) Stereotyped and repetitive motor mannerisms, such as hand or finger flapping or twisting, or complex whole body movements;~~

~~———— (d) Persistent preoccupation with parts of objects.~~

~~———— A student with autism also exhibits delays or abnormal functioning in at least one of the following areas, with onset generally prior to age three: social interaction, language used as a social communication, or symbolic or imaginative play. A student who manifests the characteristics of autism after age three could be diagnosed as having autism if the criteria in this section are satisfied.~~

(1) Persistent deficits in social communication and social interaction across multiple contexts, as manifested by the following:

(a) Deficits in social-emotional reciprocity as referenced in the manual;

(b) Deficits in non-verbal communicative behaviors used for social interaction as referenced in the manual; and

(c) Deficits in developing, maintaining, and understanding relationships as referenced in the manual;

(2) Restricted, repetitive patterns of behavior, interests, or activities, as manifested by the following:

(a) Stereotyped or repetitive motor movements, use of objects, or speech as referenced in the manual;

(b) Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior as referenced in the manual;

(c) Highly restricted, fixated interests that are abnormal in intensity or focus as referenced in the manual; or

(d) Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment as referenced in the manual;

(3) Symptoms must be present in the early developmental period but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life; and

(4) Symptoms cause clinically significant impairment in social, occupational or other important areas of current functioning; and

(5) Symptoms are not primarily caused by a cognitive disability or developmental delay, and in order to make dual diagnoses of autism spectrum disorder and cognitive disability, social communication must be below that expected for the general developmental level.

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

General Authority: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

Law Implemented: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-1.2, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

Reference: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (2013), American Psychiatric Association, section two, pages fifty to fifty-one, inclusive. The materials are available for viewing at the South Dakota Department of Education, 800 Governors Drive, Pierre, South Dakota. Copies of portions of the manual referenced in §§ 24:05:24.01:03 to 24:05:24.01:05, inclusive, can be obtained at <http://www.autismspeaks.org/what-autism/diagnosis/dsm-5-diagnostic-criteria>.

24:05:24.01:04.01 Evaluation report and documentation for autism spectrum disorder. The evaluation report and documentation of eligibility for autism spectrum disorder must:

(1) Be provided to the parent at no cost;

(2) Address each of the criteria referenced in section 24:05:24.01:04; and

(3) For criteria in section 24:05:24.01:04(1) and (2), address the severity level for social communication impairments and restricted, repetitive patterns of behavior as referenced on page fifty-two, table two of the manual.

Source:

General Authority: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

Law Implemented: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-1.2, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

Reference: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (2013), American Psychiatric Association, section two, page fifty-two, table 2. The materials are available for viewing at the South Dakota Department of Education, 800 Governors Drive, Pierre, South Dakota. Copies of portions of the manual referenced in §§ 24:05:24.01:03 to 24:05:24.01:05, inclusive, can be obtained at <http://www.autismspeaks.org/what-autism/diagnosis/dsm-5-diagnostic-criteria>.

24:05:24.01:05. Diagnostic procedures Evaluation team for autism spectrum disorder. ~~School districts shall refer students suspected as having autism for a diagnostic evaluation to an agency specializing in the diagnostic and educational evaluation of autism or to another multidisciplinary team or group of persons who are trained and experienced in the diagnosis and educational evaluation of persons with autism.~~

~~—A student suspected of autism must be evaluated in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.~~

~~— The evaluation shall utilize multiple sources of data, including information from parents and other caretakers, direct observation, performance on standardized tests of language/communication and cognitive functioning and other tests of skills and performance, including specialized instruments specifically developed for the evaluation of students with autism. When evaluating a student for autism spectrum disorder, a school district shall use a multidisciplinary team or group of persons who are trained and experienced in the diagnosis and educational evaluation of persons with autism spectrum disorder.~~

Source: 18 SDR 90, effective November 25, 1991; transferred from § 24:05:25:29, 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

Law Implemented: SDCL 13-1-12.1, 13-37-1, 13-37-1.1, 13-37-1.2, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

24:05:24.01:06. Instruments used in diagnosis of autism. ~~Instruments used in the diagnosis of students suspected of having autism include those which are based on structured interviews with parents and other caregivers, behavior rating scales, and other objective behavior assessment systems.~~

~~— Instruments used in the diagnosis of students with autism must be administered by trained personnel in conformance with the instructions provided by their producer.~~

~~— No single instrument or test may be used in determining diagnosis or educational need. Specific consideration must be given to the following issues in choosing instruments or methods to use in evaluating students who are suspected of having autism:~~

~~— (1) The student's developmental level and possible deviations from normal development across developmental domains;~~

~~— (2) The student's primary mode of communication;~~

~~— (3) The extent to which instruments and methods identify strengths as well as deficits; and~~

~~— (4) The extent that instruments and methods are tailored to assess skills in relationship to everyday activities and settings~~ Repealed.

Source: 18 SDR 90, effective November 25, 1991; transferred from § 24:05:25:30, 23 SDR 31, effective September 8, 1996.

General Authority: ~~SDCL 13-37-1.1, 13-37-28.~~

Law Implemented: ~~SDCL 13-37-1.1, 13-37-28.~~

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 that have experienced the most significant achievement gaps 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 as defined in § 24:05:24.01:01;~~

(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; 40 SDR 40, effective September 11, 2013.

General Authority: SDCL 13-3-69.

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