

ARTICLE 24:14

EARLY INTERVENTION PROGRAM

Chapter

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CHAPTER 24:14:01

DEFINITIONS

Section

24:14:01:01	Definitions.
24:14:01:02	Repealed.
24:14:01:03	Parent.

24:14:01:01. Definitions. Terms used in this article mean:

(1) "Contractor," a public or private nonprofit agency, organization, institution, Indian tribal organization, or private individual, who has been awarded a department contract for the provision of service coordination and early intervention services pursuant to chapters 24:14:08 and 24:14:09;

(2) "Days," calendar days unless otherwise indicated;

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

(4) "Department secretaries," the secretary of each of the following departments: Education, Health, Human Services, and Social Services;

(5) "Early intervention program," the total effort in the state that is directed at meeting the needs of children eligible under this article and their families;

(6) "Early intervention services," the services listed in chapter 24:14:08;

(7) "Evaluation," the procedure used by qualified personnel to determine a child's initial and continuing eligibility pursuant to this article, consistent with the definition of infants and toddlers with disabilities in § 24:14:07:02, including determining the status of the child in each of the developmental areas listed in § 24:14:07:03;

(8) "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, 2008;

(9) "~~Individual~~ Individualized family service plan team," "IFSP team," as used in the article, the term, ~~individual individualized~~ family service plan team, or, IFSP team, means the group of individuals described in § 24:14:13:06;

(10) "~~Individual~~ Individualized family service plan," "IFSP," a written plan for providing early intervention services to a child and to the child's family pursuant to chapter 24:14:13;

(11) "Individuals with Disabilities Education Act," "IDEA," the federal Individuals with Disabilities Education Act as codified at 20 U.S.C. §§ ~~1411~~ 1401 to ~~1420~~ 1444, inclusive, December 3, 2004, ~~and~~ 34 C.F.R. Part 300 published in the Federal Register on August 14, 2006, and 34 C.F.R. Part 303 published in the Federal Register on September 28, 2011;

(12) "Multidisciplinary," the involvement of two or more separate disciplines or professions ~~in the provision of integrated and coordinated services, including evaluation and assessment activities and the development of the individual family service plan and with respect to:~~

(a) Evaluation and assessments of the child and family pursuant to chapter 24:14:12, may include one individual who is qualified in more than one discipline or profession; and

(b) The individualized family service plan team shall include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals shall be the service coordinator pursuant to chapter 24:14:13;

(13) "Native language," when used with reference to persons of limited English proficiency, ~~the language or mode of communication normally used by the parent of a child eligible under this article is:~~

(a) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in this subsection; and

(b) For evaluations and assessments conducted pursuant to chapter 24:14:12, the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment;

(14) "Natural environment," settings that are natural or ~~normal~~ typical for the child's age peers who have no disability a same-aged infant or toddler without a disability, may include the home or community settings, pursuant to § 24:14:13:04.01;

(15) "Nonpublic agency service provider," a private agency or individual involved in the provision of early intervention services;

(16) "Part B," Part B of the Individuals with Disabilities Education Act, which establishes the special education program for children with disabilities aged 3 to 21, inclusive;

(17) "Part C," Part C of the Individuals with Disabilities Education Act, which establishes the early intervention program for infants and toddlers with disabilities;

(18) "Personally identifiable information," information that includes, but is not limited to, the following:

(a) The name of the child, the child's parent, or other family members;

(b) The address of the child or child's family;

(c) A personal identifier, such as the child's or parent's social security number, child number, or biometric record; ~~or~~

~~(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty;~~

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

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

(f) Information requested by a person who the contractor reasonably believes knows the identity of the child to whom the early intervention record relates.

(19) "Public agency," the department or another political subdivision of the state that is responsible for providing early intervention services to children eligible under this chapter and to their families;

(20) "Qualified personnel," persons who have met state-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person provides early intervention services or conducts evaluations or assessments;

(21) "Unit," a 15-minute measurement of time; and

(22) "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 § 24:14:01:03.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:01:03. Parent. For the purposes of this article, the term, parent, means:

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child, but not the state if the child is a ward of the state;

(4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with chapter 24:14:14.

Except as provided below, the biological or adoptive parent, if attempting to act as the parent under this article and if more than one party is qualified under this section to act as a parent, is presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational or early intervention service decisions for the child.

If a judicial decree or order identifies a specific person or persons under subdivisions 1 to 4, inclusive, of this section to act as the parent of a child or to make educational or early intervention service decisions on behalf of a child, then the person or persons are deemed to be the parent for purposes of this section, except that if a contractor provides any services to a child or any family member of the child, that contractor may not act as the parent for that child.

Source: 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:02

GENERAL ADMINISTRATION

Section

24:14:02:01 Applicability.

24:14:02:02 Entitlement to services — ~~Payment for services.~~

- 24:14:02:03 Program administration.
- 24:14:02:04 Program supervision.
- 24:14:02:05 Monitoring of program.
- 24:14:02:05.01 State monitoring -- Primary focus.
- 24:14:02:05.02 State monitoring -- Quantifiable indicators and priority areas.
- 24:14:02:05.03 State performance plan -- General.
- 24:14:02:05.04 State performance plan -- Data collection.
- 24:14:02:05.05 State use of targets and reporting.
- 24:14:02:05.06 State enforcement -- Determinations
- 24:14:02:06 Repealed.
- 24:14:02:07 Central directory of information.
- 24:14:02:08 ~~Central directory requirements~~ Repealed.
- 24:14:02:09 Public awareness program.
- 24:14:02:10 Program requirements.
- 24:14:02:11 Contracting or arranging for services.
- 24:14:02:12 Coordination with early learning programs.

24:14:02:01. Applicability. The provisions of this article apply to all public agencies and nonpublic service providers in the state involved in the provision of early intervention services, regardless of whether such agencies or providers receive Part C funds and all children referred to the Part C program, including children determined to be eligible under this article and their families.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:02:02. Entitlement to services -- ~~Payment for services.~~ Eligible children and their families, including ~~Indian~~ Native American children with disabilities and their families residing on an Indian reservation geographically located in the state, homeless children with disabilities and their families, ~~and~~ children with disabilities who are wards of the state, minority, low-income, and rural families, are entitled to appropriate early intervention services based on scientifically-based research, to the extent practicable, in accordance with an ~~individual~~ individualized family service plan. ~~Payment for services is as set out in chapter 24:14:04.~~ The department involves these family groups in planning and implementing the requirements in this article including providing access to culturally competent services within their local geographical areas.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:02:03. Program administration. The Department of Education is the lead agency for the program, receives funds under Part C, and is responsible for the administration of this article.

Source: 20 SDR 223, effective July 7, 1994; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:02:05. Monitoring of program. In meeting the requirements of this article, the department shall use the following methods of administering the program:

(1) Monitoring agencies, institutions, early intervention service providers, and organizations used by the state to carry out the provisions of this article;

(2) Enforcing any obligations imposed on those agencies, institutions, early intervention service providers, and organizations under the Individuals with Disabilities Education Act, Part C, and this article;

(3) Providing technical assistance, if necessary, to those agencies, institutions, early intervention service providers, and organizations; and

(4) Correcting ~~deficiencies that are~~ any noncompliance identified through monitoring as soon as possible and in no case later than one year after the department's identification of noncompliance.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:02:07. Central directory of information. The department shall develop a central directory that is accessible to the general public through the department's website and other appropriate means pursuant to § 24:14:02:08 and includes accurate up-to-date information about the following:

(1) Public and private early intervention services, resources, and experts available in South Dakota;

(2) Research and demonstration projects being conducted in South Dakota relating to infants and toddlers with disabilities; and

(3) Professional and other groups, including parent support groups, training and information centers such as those funded under Part C, and advocate associations, that provide assistance to children eligible under this chapter and their families.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:02:08. Central directory requirements. ~~The central directory must be in sufficient detail to ensure that the general public can determine the nature and scope of the services and assistance available from each of the sources listed in the directory and enable the parent of a child eligible under this article to contact, by telephone or letter, any of the sources listed in the directory.~~

~~The central directory must be updated at least annually and accessible to the general public. Copies of the central directory must be available in each geographic region of South Dakota, including rural areas, and in places and a manner that ensure accessibility by persons who are disabled~~ Repealed.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:02:09. Public awareness program. The department shall develop a public awareness program that focuses on early ~~intervention for children~~ identification of infants and toddlers with disabilities. The program shall include the preparation and dissemination to all primary referral sources, especially hospitals and physicians, of materials for parents on the availability of early intervention services in this article and article 24:05. The materials shall emphasize the need to inform parents with premature infants, or infants with other physical risk factors associated with learning or developmental complications. The department shall develop procedures for assisting primary referral sources in disseminating information to parents. The public awareness program shall provide information about the following:

- (1) The state's Part C program;
- (2) The child find system established pursuant to § 24:14:10:01, including:
 - (a) The purpose and scope of the system;
 - (b) How to make referrals for children under the age of three; and
 - (c) How to gain access to a comprehensive, multidisciplinary evaluation and other early intervention services; and
- (3) The central directory established pursuant to § 24:14:02:07.

The department shall also inform parents of toddlers with disabilities of the availability of services pursuant to article 24:05 not fewer than 90 days prior to the toddler's third birthday.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:02:11. Contracting or arranging for services. In contracting or arranging for early intervention services with public or private individuals or agency service providers, the department shall require:

- (1) All early intervention services meet state standards pursuant to this article;
- (2) Be consistent with the Education Department General Administrative Regulations in 34 C.F.R. Part 80.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:02:12. Coordination with early learning programs. The department shall describe state efforts to promote collaboration among Head Start and Early Head Start programs under the Head Start Act (42 U.S.C. 9801, et seq. as amended), early education and child care programs, and services under Part C.

The department shall participate, consistent with section 642B(b)(1)(C)(viii) of the Head Start Act, on the State Advisory Council on Early Childhood Education and Care established under the Head Start Act.

Source:

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:03

PROCEDURES FOR RESOLVING COMPLAINTS

Section

24:14:03:01	Repealed.
24:14:03:01.01	Complaint.
24:14:03:01.02	Remedies.
24:14:03:02	Agencies subject to complaints.
24:14:03:03	Repealed.
24:14:03:04	Procedures for resolving complaints.
24:14:03:05	Time limits.
24:14:03:06 and 24:14:03:07	Repealed.
24:14:03:08	Information about complaint procedures.
24:14:03:09	Complaints and due process hearings.

24:14:03:01.02. Remedies. In resolving a complaint in which it has found a failure to provide appropriate services, the department, pursuant to its general supervisory authority under Part C of the IDEA, must address:

(1) The failure to provide appropriate services including corrective action appropriate to address the needs of the infant or toddler with a disability and the infant's or toddler's family who is the subject of the complaint such as compensatory or monetary reimbursement; and

(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

Source: 26 SDR 153, effective May 22, 2000; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:03:05. Time limits. All complaints must be resolved within 60 days after receipt of the complaint by the state director of the Part C program except as stated in this section. The time limit of 60 days may be extended only under exceptional circumstances with reference to a particular complaint as determined by the state director of the Part C program, such as the need for additional time to provide necessary information. Under these circumstances, an extension of time may not exceed 30 days in any one instance.

In addition, the 60-day time limit may be extended, if the parent, individual, or organization and the department, a public agency, or a nonpublic service provider involved in the complaint agree to engage in mediation in order to attempt to resolve the issues specified in the complaint.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:03:09. Complaints and due process hearings. If a written complaint is received that is also the subject of a due process hearing under this article or contains multiple issues, of which one or more are part of that hearing, the department must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in this chapter.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding on that issue and the department must inform the complainant to that effect. A complaint alleging a public agency's or a nonpublic service provider's failure to implement a due process decision must be resolved by the department.

Source: 26 SDR153, effective May 22, 2000; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:04

FINANCIAL MATTERS

Section

24:14:04:01 Services provided at no cost.

24:14:04:02 ~~Services subject to payment~~ Repealed.

24:14:04:03 ~~Fees~~ Repealed.

24:14:04:04 Entitled services.

24:14:04:04.01 Use of public benefits or insurance - - Enrollment.

24:14:04:04.02 Use of public benefits or insurance - - Parental consent required.

24:14:04:04.03 Use of public benefits or insurance - - Parental refusal to consent.

24:14:04:04.04 Use of public benefits or insurance - - Parental notification.

24:14:04:04.05 Use of private insurance - - Parental consent required.

24:14:04:04.06 Use of private insurance - - Parental refusal to consent.

- 24:14:04:04.07 Use of private insurance - - Copy of system of payments.
- 24:14:04:05 Identification and coordination of resources.
- 24:14:04:06 Federal funding source.
- 24:14:04:06.01 Proceeds from public insurance and benefits or private insurance.
- 24:14:04:07 Interagency agreements.
- 24:14:04:08 Agency resolution of disputes.
- 24:14:04:09 Interagency dispute resolution procedures.
- 24:14:04:10 Payer of last resort.
- 24:14:04:11 Service provision during pendency of dispute.
- 24:14:04:12 Payment for provision of early intervention services.
- 24:14:04:12.01 Reimbursement if travel is necessary solely to provide early intervention service.
- 24:14:04:12.02 Reimbursement for travel to place of other employment.
- 24:14:04:13 Reimbursement for travel time.
- 24:14:04:14 Mileage reimbursement.
- 24:14:04:15 Services provided by paraeducators.
- 24:14:04:16 Services provided by assistants.
- 24:14:04:17 Submission of bills.
- 24:14:04:18 State payment as payment in full.
- 24:14:04:19 Payment above established rate.
- 24:14:04:20 More than one service provided during the same unit of time.
- 24:14:04:21 More than one child receiving service at the same time.
- 24:14:04:22 Claim requirements.

24:14:04:01. Services provided at no cost. The department shall provide or purchase the following services at no cost to parents:

- (1) The child find requirements in chapter 24:14:11;
- (2) Evaluation and assessment, including the functions related to evaluation and assessment;
- (3) Service coordination functions and activities; and
- (4) Administrative and coordinative activities related to the following:

(a) The development, review, and evaluation of ~~individual~~ individualized family service plans including interim individualized family service plans pursuant to chapter 24:14:13; and

(b) Implementation of the procedural safeguards and other components of the statewide program of early intervention services.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:04:02. Services subject to payment. ~~Services subject to payment include the following:~~

- ~~(1) Audiology services;~~
- ~~(2) Family training, counseling, and home visits;~~
- ~~(3) Health services necessary to enable the child to benefit from the other early intervention services;~~

- ~~(4) Nursing services;~~
- ~~(5) Nutrition services;~~
- ~~(6) Occupational therapy;~~
- ~~(7) Physical therapy;~~
- ~~(8) Psychological services;~~
- ~~(9) Social work services;~~
- ~~(10) Special instruction;~~
- ~~(11) Speech and language pathology, sign language, and cued language services;~~
- ~~(12) Transportation and related costs necessary to enable the child or the child's family to receive another early intervention service;~~
- ~~(13) Vision services; and~~
- ~~(14) Assistive technology devices and services Repealed.~~

Source: 20 SDR 223, effective July 7, 1994; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:04:03. Fees. ~~The payment system that will be used for services subject to payment, including the basis and amount of payments, are those of the Departments of Health, Social Services, and Human Services for like services Repealed.~~

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

Cross-References: ~~Medical services, art 67:16; Children's special health services, art 44:06.~~

24:14:04:04. Entitled services. The department may not charge fees for the services that a child is otherwise entitled to receive at no cost to parents. Agency jurisdictional disputes ~~or the inability of the parents of an eligible child to pay for services~~ may not result in the denial of services to the child or the child's family.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:04:04.01. Use of public benefits or insurance - - Enrollment. Parents will not be required to sign-up for or enroll in a public benefits or insurance program if that child or parent is not already enrolled in such a program as a condition of receiving early intervention services from the Part C program.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:04:04.02. Use of public benefits or insurance - - Parental consent required. The department shall obtain written consent to use a child's or parent's public benefits or insurance to pay for Part C services if that use would:

(1) Decrease available lifetime coverage or any other insured benefit for that child or parent under that program;

(2) Result in the child's parents paying for services that would otherwise be covered by the public benefits or insurance program;

(3) Result in any increase in premiums or discontinuation of public benefits or insurance for that child or that child's parents; or

(4) Risk loss of eligibility for the child or that child's parents for home and community-based waivers based on aggregate health-related expenditures.

If a parent consents in writing to have their or their child's public benefits or insurance billed for early intervention services, the parent provides personally identifiable information to the service providers for billing purposes.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:04:04.03. Use of public benefits or insurance - - Parental refusal to consent. If a parent does not provide consent to access these public benefits or insurance to pay for Part C services, the Part C program shall still make available early intervention services on the individualized family service plan to which the parent has provided consent.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:04:04.04. Use of public benefits or insurance - - Parental notification. The department shall provide written notification to the child's parents prior to using a child's or parent's public benefits or insurance to pay for Part C services pursuant to the department's system of payments.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:04:04.05. Use of private insurance - - Parental consent required. The department shall not use the private insurance of a parent of an infant or toddler with a disability to pay for Part C services unless the parent provides parental consent, consistent with this article, to use private insurance to pay for Part C services for his or her child. This includes the use of private insurance when such use is a prerequisite for the use of public benefits or insurance.

Parental consent must be obtained:

(1) When Birth to Three Connections seeks to use the parent's private insurance or benefits to pay for the initial provision of an early intervention service in the individualized family service plan; and

(2) Each time consent for services is required due to an increase, in frequency, length, duration, or intensity, in the provision of services in the child's individualized family service plan.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:04:04.06. Use of private insurance - - Parental refusal to consent. Early intervention services, as specified in the child's individualized family service plan and to which the parent has consented, cannot be denied due to a parent's refusal to allow their private insurance to be billed for such services. Parents have the right to refuse to allow providers to bill their or their child's private insurance if they are concerned about the potential impact on their private health insurance, such as an increase in premiums or the lifetime cap.

If a parent refuses access to their or their child's private insurance, the Part C program shall still provide early intervention services to the child as specified on the individualized family service plan.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:04:04.07. Use of private insurance - - Copy of system of payments. When obtaining parental consent required by § 24:14:04:04.05 or initially using benefits under a child or parent's private insurance policy to pay for an early intervention service, the department shall provide the parent a copy of the state's system of payments. The system of payments must identify the potential costs that the parent may incur when their private insurance is used to pay for early intervention services under Part C, such as premiums or other long-term costs such as the loss of benefits because of annual or lifetime health insurance coverage caps under the insurance policy. The department shall pay co-pays and deductibles up to the cost of the early intervention service.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:04:06. Federal funding sources. The federal funding sources that may be used for services listed in § 24:14:04:02chapter 24:14:08 include the following, all as in effect on January 1, 20082012:

- (1) Title V of the Social Security Act;
- (2) Title XIX of the Social Security Act;

- (3) The Head Start Act;
- (4) Individuals with Disabilities Education Act, Parts B and C;
- (5) The Developmental Disabilities Assistance and Bill of Rights Act, Pub. L. No. 94-103;
- (6) Department of Human Services, DD Block Grant, Division of Mental Health, and Pub. L. No. 102-231; and
- (7) Other federal programs.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:04:06.01. Proceeds from public insurance and benefits or private insurance. Proceeds from public insurance and benefits or private insurance are not treated as program income for purposes of 34 C.F.R. 80.25, as amended to January 1, ~~2008~~ 2012. If a public agency spends reimbursements from federal funds, such as Medicaid, for services under this article, those funds are not considered state or local funds for purposes of the maintenance of effort provisions of this article.

Source: 26 SDR 153, effective May 22, 2000; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:04:07. Interagency agreements. The department shall enter into formal interagency agreements with other state level agencies involved in the Part C program. These agreements, at a minimum, must address financial responsibility for paying for services, permissive use of funds, and procedures for resolving disputes on matters pertaining to the statewide program.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:04:08. Agency resolution of disputes. The department shall ensure a timely resolution of individual disputes in accordance with the procedures in this chapter. This includes intra- and interagency disputes about payments for a given service or disputes about other matters related to the state's system of coordinated interagency services.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:04:10. Payer of last resort. Except as provided in § 24:14:04:11, funds under this article may not be used to satisfy a financial commitment for services that would otherwise have been paid for from another public or private source, including any medical program administered by the Secretary of Defense. Funds under this article may be used only for early intervention

services that an ~~eligible child~~ infant or toddler with a disability needs but is not currently entitled to under any other federal, state, local, or private source pursuant to chapter 24:14:04.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

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

24:14:04:11. Service provision during pendency of dispute. During the pendency of a dispute, if necessary to prevent a delay in the timely provision of services to an eligible child or the child's family, the department may use funds from this program to pay the provider of services, pending reimbursement from the agency or entity that has ultimate responsibility for the payment.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:05

REPORTING REQUIREMENTS

Section

24:14:05:01	Data collection.
24:14:05:02	Contents of client information report.
24:14:05:03 to 24:14:05:06	Repealed.
24:14:05:07	Information repository.

24:14:05:02. Contents of client information report. The contractor shall submit to the department the following information on each child found eligible for services under this program for whom a current ~~individual~~ individualized family service plan is in effect on December 1 of that calendar year:

- (1) Date of birth;
- (2) Criteria on which eligibility for the Individuals with Disabilities Education Act, Part C program was determined;
- (3) Types of services provided to the child and the child's family through the Part C program;
- (4) The primary setting in which early intervention services are provided;
- (5) Data on the number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons;
- (6) The number and percentage of infants and toddlers with disabilities by ~~Race~~ race, gender, and ethnicity who are receiving early intervention services, including any children reported to the contractor by tribe, tribal organizations, and consortia; and
- (7) Other information required by the United States secretary of education under § 1418 of the Individuals with Disabilities Education Act 2004.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:07

DEVELOPMENTAL DELAY

Section

- 24:14:07:01 Informed clinical opinion.
- 24:14:07:02 Children eligible for services.
- 24:14:07:03 Areas manifesting developmental delay.
- 24:14:07:04 Eligibility verification.

24:14:07:03. Areas manifesting developmental delay. Developmental delay may be manifested in one or more of the following areas:

- (1) Cognitive development;
- (2) Communication development - receptive or expressive, or both;
- (3) Social or emotional development;
- (4) Adaptive development; and
- (5) Physical development, including fine motor or gross motor, or both, vision and hearing.

Source: 20 SDR 223, effective July 7, 1994; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:07:04. Eligibility verification. The verification of eligibility for early intervention services is obtained through a multidisciplinary evaluation pursuant to chapter 24:14:12 which utilizes the infant's or toddler's history which has been obtained from parental input, pertinent records related to the child's educational, current health status and medical history, and a standardized infant development process in conjunction with at least two of the following:

- (1) Observations;
- (2) A developmental inventory;
- (3) A behavioral checklist; or
- (4) An adaptive behavior measure.

This information must be documented by qualified personnel.

Informed clinical opinion shall be determined by qualified personnel and shall also be used in determining a child's eligibility under this section, especially if there are no standardized measures or the standardized procedures are not appropriate for a given age or developmental area.

The informed clinical opinion must be documented by the source providing the information and shall be used, pursuant to chapter 24:14:12, as one factor in determining eligibility.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:08

EARLY INTERVENTION SERVICES

Section

24:14:08:01	General requirements for early intervention services.
24:14:08:02	Natural environments.
24:14:08:03	General role of service providers.
24:14:08:04	Types of early intervention services.
24:14:08:05	Audiology services.
24:14:08:06	Service coordination.
24:14:08:07	Family training, counseling, and home visits.
24:14:08:08	Medical services for diagnosis or evaluation.
24:14:08:09	Nursing services.
24:14:08:10	Nutrition services.
24:14:08:11	Occupational therapy.
24:14:08:12	Physical therapy.
24:14:08:13	Psychological services.
<u>24:14:08:13.01</u>	<u>Sign language and cued language services.</u>
24:14:08:14	Social work services.
24:14:08:15	Special instruction.
24:14:08:16	Speech-language pathology.
24:14:08:17	Transportation and related costs.
24:14:08:18	Vision services.
24:14:08:19	Assistive technology devices and services.
24:14:08:20	Health services.
24:14:08:21	Other services.

24:14:08:01. General requirements for early intervention services. Early intervention services are developmental services that meet the following requirements:

(1) Are designed to meet the developmental needs of each child eligible under this article and the needs of the family related to enhancing the child's development as identified by the individualized family service plan team in any one or more of the developmental areas listed in § 24:14:12:02;

(2) Are selected in collaboration with the parents;

(3) Are provided under public supervision by qualified personnel in conformity with an ~~individual~~ individualized family service plan pursuant to chapter 24:14:13 at no cost to parents; ~~except as specified in §§ 24:14:04:02 and 24:14:04:03.~~

(4) Meet the service standards in this article; and

(5) To the maximum extent appropriate, are provided in the natural environment pursuant to § 24:14:08:02.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:08:02. Natural environments. To the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including the home and community settings in which children without disabilities participate pursuant to § 24:14:13:04.01.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

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

24:14:08:03. General role of service providers. To the extent applicable, service providers in each area of early intervention services are responsible for the following:

(1) Consulting with parents, other service providers, and representatives of community agencies to ensure the effective provision of services in that area;

(2) Training parents and others regarding the provision of those services; ~~or~~

(3) ~~Participating in a the multidisciplinary assessment of a child and the child's family and in the development of integrated goals and outcomes for the individual family service plan.~~ individualized family service plan team's ongoing assessment of an infant or toddler with a disability and a family-directed assessment of the resources, priorities, and concerns of the infant's or toddler's family, as related to the needs of the infant or toddler, in the development of integrated goals and outcomes for the IFSP; and

(4) Providing early intervention services in accordance with the IFSP of the infant or toddler with a disability.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:08:04. Types of early intervention services. The types of services included under early intervention services are specified in §§ 24:14:08:05 to 24:14:08:20, inclusive do not comprise exhaustive lists of the types of services that may constitute early intervention services.

Nothing in this section prohibits the identification in the IFSP of another type of service as an early intervention service provided that the service meets the criteria identified in § 24:14:08:01.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:08:05. Audiology services. Audiology services include the following:

(1) Identification of children with auditory impairment, using at-risk criteria and appropriate audiological screening techniques;

(2) Determination of the range, nature, and degree of hearing loss and communication functions by use of audiological evaluation procedures;

(3) Referral for medical and other services necessary for the habilitation or rehabilitation of ~~children~~ an infant or toddler with a disability who has an ~~with~~ auditory impairment;

(4) Provision of auditory training, aural rehabilitation, speech, reading and listening device, orientation, and training and other services;

(5) Provision of services for prevention of hearing loss; and

(6) Determination of the child's ~~need for~~ individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices and evaluating the effectiveness of those devices.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:08:07. Family training, counseling, and home visits. Family training, counseling, and home visits are services provided by social workers, psychologists, and other qualified personnel to assist the family of a child eligible under this article in understanding the special needs of the child and enhancing the child's development. ~~Other family services that do not meet this definition, but which families may need and can benefit from, are neither required nor covered under Part C of IDEA. These services shall be listed under "other services" on the individual family service plan pursuant to § 24:14:08:21. The service coordinator shall assist the family in obtaining such services.~~

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

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

24:14:08:13.01. Sign language and cued language services. Sign language and cued language services include teaching sign language, cued language, and auditory/oral language, providing oral transliteration services, such as amplification, and providing sign and cued language interpretation.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:08:15. Special instruction. Special instruction includes the following:

(1) The design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(2) The planning of curriculum, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's ~~individual~~ individualized family service plan;

(3) Providing families with information, skills, and support related to enhancing the skill development of the child- ; and

(4) Working with the infant or toddler with a disability to enhance the child's development.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:08:16. Speech-language pathology. Speech-language pathology services includes the following:

(1) Identification of a child with ~~communicative~~ communication or ~~oral-pharyngeal language disorders~~ and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(2) Referral for medical or other professional services necessary for the habilitation or rehabilitation of children with ~~communicative~~ communication or ~~oral-pharyngeal language disorders~~ and delays in development of communication skills and;

(3) Provision of services for the habilitation, rehabilitation, or prevention of ~~communicative~~ communication or ~~oral-pharyngeal language disorders~~ and delays in development of communication skills; and .

~~(4) Provision of sign language and cued language services.~~

Source: 20 SDR 223, effective July 7, 1994; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:08:17. Transportation and related costs. Transportation and related costs include the cost of travel, ~~including mileage or travel by taxi, common carrier, or other means and the related tolls and parking expenses~~ and other costs that are necessary to enable a child eligible under this article and the child's family to receive early intervention services.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:08:18. Vision services. Vision services include the evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development; referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders, or both; and communication skills training, orientation and mobility training for all environments, visual training, ~~independent living skills training~~, and additional training necessary to activate visual motor abilities.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:08:19. Assistive technology devices and services. An assistive technology device, notwithstanding §§ 24:05:27:18 and 24:05:27:19, is any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, including cochlear implants, or the optimization (e.g., mapping) or the maintenance or replacement of that device.

Assistive technology services directly assist a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include the evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for a child with disabilities or, if appropriate, that child's family; and training or technical assistance for professionals, including individuals providing education or rehabilitation services, or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

Source: 20 SDR 223, effective July 7, 1994; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:08:20. Health services. As used in this article, the term "health services" means services necessary to enable a an otherwise eligible child to benefit from the other early intervention services under this article during the time that the child is eligible to receive early intervention services.

The term includes such services as clean intermittent catheterization, tracheotomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services and consultation by physicians with other service providers concerning the special health care needs of

eligible children that will need to be addressed in the course of providing other early intervention services.

The term does not include services that are surgical in nature, such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus, or purely medical in nature, such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose, ~~devices necessary to control or treat a medical condition, or medical health services, such as immunizations and regular well-baby care, that are routinely recommended for all children, or related to the implementation, optimization, for example, mapping, maintenance, or replacement of a medical device that is surgically implanted, including a cochlear implant.~~

Nothing in this article limits the right of an infant or toddler with a disability with a surgically implanted device, for example, cochlear implant, to receive the early intervention services that are identified in the child's IFSP as being needed to meet the child's developmental outcomes.

Nothing in this article prevents the contractor from routinely checking that either the hearing aid or the external components of a surgically implanted device, for example, cochlear implant, of an infant or toddler with a disability are functioning properly.

The term also does not include devices, such as heart monitors, respirators and oxygen, and gastrointestinal feeding tubes and pumps, necessary to control or treat a medical condition; and medical-health services, such as immunizations and regular "well-baby" care, that are routinely recommended for all children.

~~The definition in this section distinguishes between the health services that are required under Part C of IDEA and other medical health services that are not required. The individual family service plan requirements provide that, to the extent applicable, other medical health services are to be included in the individual family service plan, along with the funding sources to be used in paying for the services or the steps that will be taken to secure the services through public or private sources. Identifying these services in the individual family service plan does not impose an obligation to provide the services if they are otherwise not required to be provided under this article.~~

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

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

24:14:08:21. Other services. ~~The individual individualized family service plan for the child must include where possible medical, prevention, and other services that the child and family needs but that are not required under this article and, if necessary, the steps that will be taken to secure those services through public and private sources. This requirement does not apply to routine medical services, including immunizations and well-baby care, that are routinely recommended for all children unless a child needs those services and the services are not otherwise available or being provided. , to the extent appropriate, must:~~

(1) Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under this article; and

(2) If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services.

~~These services which do not address the developmental needs of the infant or toddler with a disability are neither required nor covered under this article. These services are to be listed under "other services" on the plan created for each child. The service coordinator may assist the family in obtaining such services.~~

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:09

EARLY INTERVENTION SERVICE COORDINATION

Section

- 24:14:09:01 Responsibilities of service coordinator.
24:14:09:02 Activities of service coordinator.
24:14:09:03 Qualifications of service coordinator.

24:14:09:01. Responsibilities of service coordinator. Each child eligible under this article and the child's family shall have available one service coordinator selected pursuant to § 24:14:10:03 who is responsible for the following:

(1) Assisting parents of eligible children in gaining access to the early intervention services and other services identified in the ~~individual~~ individualized family service plan including making referrals to providers for needed services and scheduling appointments for children and families;

(2) Coordinating the provision of early intervention services and other services, such as educational, social, and medical services for other than diagnostic and evaluation purposes, that the child needs or is being provided;

(3) Facilitating the timely delivery of available services including coordinating all services required under this article across agency lines;

(4) Continuously seeking the appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility; and

(5) Serving as the single point of contact in helping clients to obtain service and assistance.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:09:02. Activities of service coordinator. Specific service coordination activities include the following:

- (1) Coordinating the performance of evaluations and assessments;
- (2) Facilitating and participating in the development, review, and evaluation of ~~individual~~ individualized family service plans;
- (3) ~~Assisting~~ Conducting referral and other activities to assist families in identifying available service providers;
- (4) Coordinating, facilitating, and monitoring the delivery of available services to ensure that services are providing in a timely manner;
- (5) Informing families of their rights and procedural safeguards in this article and related resources including the availability of advocacy services;
- (6) Coordinating with medical and health providers; ~~and~~
- (7) Facilitating the development of a transition plan to preschool, school, or to other services, if applicable;
- (8) Coordinating the funding sources for services required under this article; and
- (9) Conducting follow-up activities to determine that appropriate Part C services are being provided.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:10

COMPREHENSIVE CHILD FIND SYSTEM

Section

24:14:10:01	Comprehensive child find system.
<u>24:14:10:01.01</u>	<u>Scope of child find.</u>
24:14:10:02 and 24:14:10:03	Repealed.
24:14:10:04	Coordination with state agencies.
24:14:10:05	Repealed.
24:14:10:06	Primary referral sources.

24:14:10:01. Comprehensive child find system. The department, with the advice and assistance of the State Interagency Coordinating Council, shall implement a child find system that

locates, identifies, and evaluates all infants and toddlers with disabilities pursuant to chapters 24:14:11 and 24:14:12.

The comprehensive child find system:

(1) Is consistent with Part B of IDEA;

(2) Includes a system for making referrals to the department or contractors under Part C that includes timelines, and provides for participation by the primary referral sources pursuant to this chapter;

(3) Ensures rigorous standards for appropriately identifying infants and toddlers with disabilities for early intervention services under Part C that will reduce the need for future services; and

(4) Meets the requirements in this article.

The contractor shall develop and implement a comprehensive local child find system for infants and toddlers, aged birth through two, within their geographic boundaries. The local child find system must be consistent with this article concerning location, identification, and screening of all infants and toddlers eligible for services under chapter 24:14:07. The contractor shall assist with the identification of children who are receiving needed early intervention services.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:10:01.01. Scope of child find. The department, as part of the child find system, shall ensure that:

(1) All infants and toddlers with disabilities in the state who are eligible for early intervention services under Part C are identified, located, and evaluated, including:

(a) Native American infants and toddlers with disabilities residing on an Indian reservation geographically located in South Dakota, including coordination, as necessary, with tribes, tribal organizations, and consortia to identify infants and toddlers with disabilities in South Dakota, in part, on the information provided by them to the department;

(b) Infants and toddlers with disabilities who are homeless, in foster care, and wards of South Dakota; and

(c) Infants and toddlers with disabilities that are referenced in § 24:14:11:09; and

(2) An effective method is developed and implemented to identify children who are in need of early intervention services.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:10:04. Coordination with state agencies. The department, with the assistance of the state interagency coordinating council, shall coordinate the child find system under this chapter with all other major efforts to locate and identify children conducted by other state agencies responsible for administering the various education, health, and social services programs relevant to this chapter including Native American tribes that receive payments under Part C and other Native American tribes, as appropriate, and including is coordinated with efforts in the following:

~~(1) Assistance to the state program under Part B of the Individuals with Disabilities Education Act;~~

~~(2) Maternal and child health program under Title V of the Social Security Act as amended to January 1, 2008;~~

~~(3) Medicaid's early periodic screening, diagnosis, and treatment program under Title XIX of the Social Security Act as amended to January 1, 2008;~~

~~(4) Developmental disabilities assistance and Bill of Rights Act as amended to January 1, 2008;~~

~~(5) Head Start Act, including Early Head Start programs, as amended to January 1, 2008;~~

~~(6) Supplemental security income program under Title XVI of the Social Security Act as amended to January 1, 2008;~~

~~(7) Child protection programs, including programs administered by, and services provided through, the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act as amended to January 1, 2008; and~~

~~(8) Child care program in the state.~~

(1) Program authorized under Part B of IDEA;

(2) Maternal and Child Health program, including the Maternal, Infant, and Early Childhood Home Visiting Program, under Title V of the Social Security Act, as amended, (MCHB or Title V) (42 U.S.C. 701(a));

(C) Early Periodic Screening, Diagnosis, and Treatment (EPSDT) under Title XIX of the Social Security Act (42 U.S.C. 1396(a)(43) and 1396(a)(4)(B));

(D) Programs under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.);

(E) Head Start Act (including Early Head Start programs under section 645A of the Head Start Act) (42 U.S.C. 9801 et seq.);

(F) Supplemental Security Income program under Title XVI of the Social Security Act (42 U.S.C. 1381);

(G) Child protection and child welfare programs, including programs administered by, and services provided through, the foster care agency and the state agency responsible for administering the Child Abuse Prevention and Treatment Act (CAPTA) (42 U.S.C. 5106(a));

(H) Child care programs in the state;

(I) The programs that provide services under the Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.);

(J) Early Hearing Detection and Intervention (EHDI) systems (42 U.S.C. 280g-1) administered by the Centers for Disease Control (CDC); and

(K) Children's Health Insurance Program (CHIP) authorized under Title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

The department shall enter into interagency agreements to implement this provision. In addition, the department shall monitor Part C programs for compliance with the requirements of this chapter.

The department, with the advice and assistance of the state interagency coordinating council, shall develop interagency agreements to ensure that there is no unnecessary duplication of efforts by the various agencies involved in the state's child find system under this article and that the state makes use of the resources available through each public agency and contractor in the state to implement the child find system in an effective manner.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

Cross-References:

Services for children less than three years of age, § 24:05:22:04.

Children's special health services, art 44:06.

Early and periodic screening, ch 67:16:11.

24:14:10:06. Primary referral sources. Each contractor shall develop a communication system with other primary referral sources and public agencies to report its child find information.

Primary referral sources include hospitals, including prenatal and postnatal care facilities, physicians, parents including parents of infants and toddlers, day child care programs and early learning programs, local education agencies and schools, community public health facilities, social service agencies, mental health providers, ~~and~~ other licensed health care providers and clinics, public agencies and staff in the child welfare system, including child protective service and foster care, homeless family shelters, and domestic violence shelters and agencies.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:11

SCREENING AND REFERRAL

Section

24:14:11:01 Repealed.

24:14:11:01.01 Screening procedures – General.

24:14:11:01.02 Conditions.

24:14:11:01.03 Screening procedures – Parental notice and consent.

24:14:11:02 Settings for screenings.

24:14:11:03 ~~Initial screening procedure~~ Repealed.

24:14:11:04 Areas to be screened -- Screening instruments.

24:14:11:04.01 Post-referral timeline.

24:14:11:04.02 Post-referral timeline -- Exceptions.

24:14:11:04.03 Post-referral timeline – Documentation.

24:14:11:05 ~~Results of screening~~ Repealed.

24:14:11:06 Repealed.

24:14:11:07 Primary referral sources.

24:14:11:08 Repealed.

24:14:11:09 Referral of specific at-risk infants and toddlers.

24:14:11:01.01. Screening procedures - - General. Screening procedures are activities in this chapter that are carried out by, or under the supervision of, the department or early intervention service provider to identify, at the earliest possible age, infants and toddlers suspected of having a disability and in need of early intervention services, and includes the administration of appropriate instruments by personnel trained to administer those instruments.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:11:01:02. Conditions. For every child under the age of three who is referred to the Part C program or screened in accordance with this chapter, the department is not required to:

(1) Provide an evaluation of the child unless the child is suspected of having a disability or the parent requests an evaluation; or

(2) Make early intervention services available under Part C to the child unless a determination is made that the child meets the state’s definition of infant or toddler with a disability under this article.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:11:01.03. Screening procedures - - Parental notice and consent. The department, consistent with the requirements in this chapter, screens children under the age of three who have been referred to the Part C program to determine whether they are suspected of having a disability under Part C.

If the department or early intervention service provider proposes to screen a child, it must:

(1) Provide the parent notice under this article of its intent to screen the child to identify whether the child is suspected of having a disability and include in that notice a description of the parent's right to request an evaluation at any time during the screening process; and

(2) Obtain parental consent as required in this article before conducting the screening procedures.

If the parent consents to the screening and the screening or other available information indicates that the child is:

(1) Suspected of having a disability, after notice is provided, and once parental consent is obtained, an evaluation and assessment of the child must be conducted; or

(2) Not suspected of having a disability, the department or early intervention service provider must ensure that notice of that determination is provided to the parent, and that the notice describes the parent's right to request an evaluation.

If the parent of the child requests and consents to an evaluation at any time during the screening process, evaluation of the child must be conducted, even if the department or early intervention service provider has determined that the child is not suspected of having a disability.

Source:

General Authority: SDCL 13-37-1.1.

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

~~**24:14:11:03. Initial screening procedures.** Upon the receipt of a request or a referral for a screening, the agency receiving the referral shall contact the service coordinator serving that community to complete the intake form. The agency receiving the referral or the service coordinator shall contact the family. The initial service coordinator and parent shall decide which of the following options is appropriate:~~

~~(1) Screening;~~

~~(2) A multidisciplinary evaluation and assessment; or~~

~~(3) Other resources Repealed.~~

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

Cross-Reference: ~~Single point of contact, subdivision 24:14:06:03(4).~~

24:14:11:04. Areas to be screened -- Screening instruments. The following areas may be screened:

- (1) Cognitive development;
- (2) Physical development, including fine motor or gross motor, or both, and vision and hearing;
- (3) Communication development including receptive or expressive, or both;
- (4) Social or emotional development; and
- (5) Adaptive development.

Screening instruments must be culturally sensitive and administered in the native language or mode of communication of the family unless it is clearly not feasible to do so.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:11:04.01. Post-referral timeline. Except as provided in § 24:14:11:04.02, any screening, initial evaluation, initial assessments of the child and family, and the initial IFSP meeting must be completed within 45 days from the date the department or early intervention service provider receives the referral of the child.

The initial family assessment must be conducted within the 45-day timeline if the parent concurs and even if other family members are unavailable.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:11:04.02. Post-referral timeline -- Exceptions. Subject to § 24:14:11:04.03, the 45-day timeline does not apply for any period when:

(1) The child or parent is unavailable to complete the screening, if applicable, the initial evaluation, the initial assessments of the child and family, or the initial IFSP meeting due to exceptional family circumstances that are documented in the child's early intervention records; or

(2) The parent has not provided consent for the screening, if applicable, the initial evaluation, or the initial assessment of the child, despite documented, repeated attempts by the department or early intervention service provider to obtain parental consent.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:11:04.03. Post-referral timeline - - Documentation. The department shall ensure, that in the event the circumstances described in § 24:14:11:04.02 exist, the department or early intervention service provider must:

(1) Document in the child's early intervention records the exceptional family circumstances or repeated attempts to obtain parental consent;

(2) Complete the screening, if applicable, the initial evaluation, the initial assessments of the child and family, and the initial IFSP meeting as soon as possible after the documented exceptional family circumstances described in § 24:14:11:04.02 no longer exist or parental consent is obtained for the screening, if applicable, the initial evaluation, and the initial assessment of the child; and

(3) Develop and implement an interim IFSP, to the extent appropriate and pursuant to chapter 24:14:13.

Source:

General Authority: SDCL 13-37-1.1.

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

~~**24:14:11:05. Results of screening.** The screening results must be reviewed by the parent or guardian, the screener, and the initial service coordinator. This review may be conducted in person or by phone, mail, or facsimile and must be documented.~~

~~Screening results must be reviewed within five working days to determine identification of eligibility for multidisciplinary evaluation and assessment, referral to other resources, or that no further action is needed Repealed.~~

~~**Source:** 20 SDR 223, effective July 7, 1994.~~

~~**General Authority:** SDCL 13-37-1.1.~~

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

~~**24:14:11:07. Primary referral sources.** The child find system includes the following procedures for use by primary referral sources for referring a child under the age of three to the early intervention program:~~

~~(1) Screening;~~

~~(2) Evaluation and assessment; and~~

~~(3) As appropriate, the provision of services in accordance with this article.~~

~~The procedures must provide for making referrals by primary referral sources and document that referrals are made, as soon as possible, but no more than two working seven days after a child has been identified as needing a multidisciplinary evaluation and assessment.~~

~~The agency must complete evaluation and assessment and hold an individual individualized family service plan meeting within 45 days after receipt of referral.~~

~~If exceptional circumstances make it impossible to complete the evaluation and assessment within 45 days, the service coordinator shall document those circumstances and develop an interim individual individualized family service plan, to the extent appropriate and consistent with this article.~~

Source: 20 SDR 223, effective July 7, 1994; 23 SDR 179, effective April 29, 1997; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:11:09. Referral of specific at-risk infants and toddlers. The procedures required in § 24:14:11:07 must provide for requiring the referral of a child under the age of three who:

- (1) Is the subject of a substantiated case of child abuse or neglect; or
- (2) Is identified as directly affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

Source:

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:12

EVALUATION AND ASSESSMENT

Section

24:14:12:01 Repealed.

24:14:12:01.01 Definitions.

24:14:12:02 Evaluation and assessment of individual child.

24:14:12:02.01 Procedures for evaluation of child.

24:14:12:02.02 Use of records to determine eligibility.

24:14:12:02.03 Informed clinical opinion.

24:14:12:03 Family-directed ~~identification~~ assessment of needs.

24:14:12:04 Nondiscrimination.

24:14:12:04.01 Determination child not eligible.

24:14:12:01.01. Definitions. Terms used in this chapter mean:

(1) “Assessment,” the ongoing procedures used by qualified personnel to identify the child’s unique strengths and needs and the early intervention services appropriate to meet those needs throughout the period of the child’s eligibility under Part C and includes the assessment of the child and the child’s family, pursuant with this chapter;

(2) “Initial assessment,” the assessment of the child and the family conducted prior to the child’s first IFSP meeting;

(3) “Evaluation,” the procedures used by qualified personnel to determine a child’s initial and continuing eligibility under Part C, consistent with the state’s definition of an eligible child; and

(4) “Initial evaluation,” the child’s evaluation to determine his or her initial eligibility under this Part C;

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:12:02. Evaluation and assessment of individual child. The department shall ensure that, subject to obtaining parental consent, each child under the age of three who is referred for evaluation or early intervention services under Part C and suspected of having a disability, receives:

(1) A timely, comprehensive, multidisciplinary evaluation of the child in accordance with this chapter unless eligibility is established under § 24:14:12:02.02; and

(2) If the child is determined eligible:

(a) A multidisciplinary assessment of the unique strengths and needs of that child and the identification of services appropriate to meet those needs; and

(b) A family-directed assessment of the resources, priorities, and concerns of the family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of that infant or toddler. The assessments of the child and family may occur simultaneously with the evaluation, provided that the requirements of this chapter are met.

A service coordinator shall arrange for the evaluation of each birth through two child referred for evaluation. The process shall be conducted by qualified personnel, be based on informed clinical opinion, and include a review of health records.

An evaluation of the child's level of functioning shall be conducted in each of the following developmental areas:

(1) Cognitive development;

(2) Physical development including fine motor or gross motor, or both, and vision and hearing;

(3) Communication ~~and~~ development including receptive or expressive, or both;

(4) Social or emotional development; and

(5) Adaptive development.

As An assessment shall be made of the unique needs of the child in terms of each of the developmental areas listed in this section, including the identification of services appropriate to meet those needs, a review of the results of the evaluation conducted under this chapter and personal observations of the child.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:12:02.01. Procedures for evaluation of child. Procedures for evaluating the child must include:

(1) Administering two or more evaluation instruments;

(2) Taking the child's history, including interviewing the parent;

(3) Identifying the child's level of functioning in each of the developmental areas in § 24:14:12:02;

(4) Gathering information from other sources such as family members, other care-givers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs; and

(5) Reviewing medical, educational, or other records.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:12:02.02 Use of records to determine eligibility. A child's medical and other records may be used to establish eligibility, without conducting an evaluation of the child, under Part C if those records indicate that the child's level of functioning in one or more of the developmental areas identified in § 24:14:12:02 constitutes a developmental delay or that the child otherwise meets the state's criteria for eligibility under this article. If the child's Part C eligibility is established under this section, the department or early intervention service provider shall conduct assessments of the child and family in accordance with this chapter.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:12:02.03. Informed clinical opinion. Qualified personnel shall use informed clinical opinion when conducting an evaluation and assessment of the child. In addition, the department shall ensure that informed clinical opinion may be used as an independent basis to establish a child's eligibility under Part C even when other instruments do not establish eligibility. However, in no event may informed clinical opinion be used to negate the results of evaluation instruments used to establish eligibility under this section.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:12:03. Family-directed identification assessment of needs. A family-directed ~~identification~~ assessment of the needs of each child's family to appropriately assist in the development of the child must be completed. Family-directed ~~identification~~ assessment must be designed to determine the resources, priorities, and concerns of an individual family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

Any assessment that is conducted must be voluntary on the part of ~~the~~ each family member participating in the assessment. If an assessment of the family is carried out, the assessment must be conducted by qualified personnel trained to use appropriate methods and procedures, be based on information provided by the family members who elect to participate through a personal interview, use of an assessment tool, and incorporate the family's description of its resources, priorities, and concerns related to enhancing the child's development.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

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

24:14:12:04. Nondiscrimination. The evaluation and assessment of children and families under this article must meet the following requirements for nondiscrimination:

(1) Tests and other evaluation and assessment materials and procedures must be administered in the native language of the parents ~~or other mode of communication in family members pursuant to § 24:14:01:01(13)~~, unless it is clearly not feasible to do so;

(2) Any assessment and evaluation procedures and materials that are used must be selected and administered so as not to be racially or culturally discriminatory;

(3) No single procedure may be used as the sole criteria for determining a child's eligibility under this article;

(4) Evaluations and assessments must be conducted by qualified personnel; and

(5) Tests must be selected and administered so as best to ensure that a test administered to a child with impaired sensory, manual, or speaking skills accurately reflects the child's aptitude or the achievement level of whatever factors the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:12:04.01. Determination child not eligible. If, based on the evaluation conducted under this chapter, the department determines that a child is not eligible under this article, the department shall provide the parent with prior written notice, and include in the notice information about the parent’s right to dispute the eligibility determination through dispute resolution mechanisms, such as requesting a due process hearing or mediation or filing a state complaint.

Source:

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:13

~~INDIVIDUAL~~ **INDIVIDUALIZED** FAMILY SERVICE PLAN

Section

- 24:14:13:01 ~~Individual~~ **Individualized** family service plan requirements.
- 24:14:13:02 Department's responsibility.
- 24:14:13:03 Development, review, and evaluation of ~~individual~~ **individualized** family service plan.
- 24:14:13:03.01 Definitions.
- 24:14:13:04 Content of ~~individual~~ **individualized** family service plan.
- 24:14:13:04.01 Natural environment.
- 24:14:13:05 Transition from Part C program.
- 24:14:13:05.01 Transition - - Intra-agency agreement.
- 24:14:13:06 Participation in ~~individual~~ **individualized** family service plan meetings and periodic reviews.
- 24:14:13:07 Provision of services before completion of evaluation and assessment.
- 24:14:13:08 Responsibility and accountability for ~~individual~~ **individualized** family service plan.

24:14:13:01. Individual Individualized family service plan requirements. ~~Individual Individualized~~ family service plans must meet the following requirements:

(1) Be developed jointly by the family and qualified personnel involved in the provision of early intervention services;

(2) Be based on the multidisciplinary evaluation and assessment of the child and the assessment of the child's family; ~~and~~

(3) Include services necessary to enhance the development of the child and the capacity of the family to meet the special needs of the child;

(4) Be implemented as soon as possible once parental consent for early intervention services is obtained; and

(5) Be developed in accordance with the procedures in this chapter.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:13:02. Department's responsibility. The department shall monitor agencies, institutions, and organizations used by the state to carry out this article on the development and implementation of ~~individual~~ individualized family service plans for eligible children. If there is a dispute between agencies as to who has responsibility for developing or implementing an ~~individual~~ individualized family service plan, the department shall resolve the dispute.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

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

(1) For a child who has been ~~evaluated for the first time~~ referred to the Part C program and determined to be eligible, a meeting to develop the initial ~~individual~~ 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 ~~individual~~ 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 ~~individual~~ 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) ~~Individual~~ 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 must fully explain the contents of the ~~individual~~ individualized family service plan to the parents and obtain informed written consent from the parents before providing early intervention services described in this ~~article~~ 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, 1994; 23 SDR 179, effective April 29, 1997.

General Authority: SDCL 13-37-1.1.

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

24:14:13.03.01. Definitions. Terms used in this chapter mean:

(1) “Frequency and intensity,” the number of days or sessions that a service will be provided, and whether the service is provided on an individual or group basis;

(2) “Method,” how a service is provided;

(3) “Length,” the time the service is provided during each session of that service, such as an hour or other specified time period;

(4) “Duration,” projecting when a given service will no longer be provided, such as when the child is expected to achieve the results or outcomes in his or her IFSP; and

(5) “Location,” the actual place or places where a service will be provided.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:13.04. Content of individual individualized family service plan. The ~~individual~~ individualized family service plan must contain the following:

(1) A statement of the child's present levels of physical development, including vision, hearing, and health status; cognitive development; communication development; social or emotional development; and adaptive skills, based on multidisciplinary evaluation and assessment data;

(2) With the concurrence of the family, a statement of the family's resources, priorities, and concerns related to enhancing the development of the child as identified through the assessment of the family;

(3) A statement of the measurable results or measurable outcomes expected to be achieved for the child and family, including preliteracy and language skills, as developmentally appropriate for the child, and the criteria, procedures, and timelines used 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 modifications or revisions of the expected results or outcomes or early intervention services identified in the plan are necessary;

(4) A statement of the specific early intervention services based on ~~scientific~~ peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the child and the family to achieve the results or outcomes, including the length; duration; frequency; intensity; natural environments in which the each early intervention services will be provided to the maximum extent appropriate consistent with this article and a justification of the extent, if any, to which the early intervention services will not be provided in a natural environment; location; method of delivering the early intervention services; and any payment arrangements;

(5) To the extent ~~applicable, the medical and other services that the child needs that are not required under this article and, if necessary, the funding sources that will be used to secure those services through public or private resources. This requirement does not apply to routine medical services unless a child needs those services and the services are not otherwise available or being provided~~ appropriate, the IFSP also must:

(a) Identify medical and other services that the child or family needs or is receiving through other sources, but that are neither required nor funded under Part C; and

(b) If those services are not currently being provided, include a description of the steps the service coordinator or family may take to assist the child and family in securing those other services;

(6) The projected dates for initiation of ~~the~~ each early intervention services, which date must be as soon as possible after the parent consents to the service, as required in this article and the anticipated ~~length, duration, and frequency~~ of ~~those~~ each services;

(7) The name of the service coordinator from the profession most ~~immediately~~ relevant to the child's or family's needs or who is otherwise qualified to carry out all applicable responsibilities under Part C who is responsible for the implementation of the early intervention services identified in the child's individual individualized family service plan and coordination with other agencies and persons, including transition services. A different service coordinator may be appointed at any time; and

(8) The steps and services to be taken to support the transition of the child to preschool or other appropriate services or to exit from the Part C program pursuant to §§ 24:14:13:05 and 24:14:13:05.01.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:13:05. Transition from Part C program. The IFSP team shall ensure the transition of children participating in the Part C program under this article who are eligible for participation in preschool programs under Part B of Individuals with Disabilities Education Act as amended to ~~January July 1, 2008~~ 2012. This requirement includes the transition of children to other appropriate services if they will not be receiving preschool services, to the extent those services are appropriate, under Part B of IDEA. The IFSP must include the following steps and services to support the transition of the child pursuant to § 24:14:13:05.01:

(1) Describe how the families will be included in the transitional plans;

(2) Discuss with and train parents, as appropriate, regarding future placements and other matters relating to the child's transition;

(3) Notify the appropriate local education agency in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of IDEA, as determined in accordance with state law, of the need for transitional planning;

(4) With the approval of the family, convene a conference between the IFSP team, family, and local educational agency at least 90 days and at the discretion of the parties, and not more than nine months before the child is eligible for the preschool program under Part B of Individuals with Disabilities Education Act, in accordance with state law. In the case of a child who may not be eligible for preschool services under Part B of IDEA, with the approval of the family, make reasonable efforts to convene a conference among the IFPS team, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B of IDEA, to discuss the appropriate services that the child may receive;

(5) Review the child's program options for the period beginning on the day the child turns three and running through the remainder of the school year; and

(6) Prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting.

The local school district must provide the family with information on the eligibility and evaluation requirements under Part B of Individuals with Disabilities Education Act, including the parent's and district's rights regarding procedural safeguards. Information may be transmitted upon consent of the parent or guardian.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

Cross-Reference: Transition to preschool program, § 24:05:27:21.

24:14:13:05.01. Transition - - Intra-agency agreement. The department shall develop and implement an intra-agency agreement between the state special education program and Part C program that includes the following:

(1) Notification procedures to the state special education department and appropriate school district;

(2) Transition conference to discuss services and meeting to develop transition plans; and

(3) Applicability of transition requirements under Part C and Part B pursuant to this article and article 24:05.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:13:06. Participation in ~~individual~~ individualized family service plan meetings and periodic reviews. The initial meeting and each annual meeting to evaluate the ~~individual~~ individualized family service plan must include the following participants:

- (1) The parent or parents of the child;
- (2) Other family members, as requested by the parent, if feasible;
- (3) An advocate or person outside the family, if the parent requests that the person participate;
- (4) The service coordinator who ~~has been working with the family since the initial referral of the child for evaluation or who~~ has been designated by the contractor to be responsible for implementation of the ~~individual~~ individualized family service plan;
- (5) A person or persons directly involved in conducting evaluations and assessments;
- (6) As appropriate, the person or persons who will be providing early intervention services to the child or family;
- (7) A school district representative at the initial eligibility determination; and
- (8) A school district representative if the child is in need of prolonged assistance.

If a person listed in subdivision (5) of this section is unable to attend a meeting, the person shall participate by a telephone call, by having a knowledgeable authorized representative attend the meeting, or by making pertinent records available for the meeting.

Each periodic review must provide for the participation of the persons listed in subdivisions (1) to (4), inclusive, of this section. If conditions warrant, provisions must be made for the participation of other representatives identified in this section.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:13:07. Provision of services before completion of evaluation and assessment. Early intervention services for an eligible child and the child's family may begin before the completion of the evaluation and assessment under the following circumstances:

- (1) Parental consent is obtained;
- (2) An interim ~~individual~~ individualized family service plan is developed that includes the name of the service coordinator responsible for implementation of the interim ~~individual~~

individualized family service plan pursuant to § 24:14:13:03 and coordination with other agencies and persons;

(3) The services are needed immediately by the child and the child's family; and

(4) The evaluation and assessment are completed within the time required pursuant to chapter 24:14:11.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:13:08. Responsibility and accountability for ~~individual~~ individualized family service plan. Each agency or person who has a direct role in the provision of early intervention services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's ~~individual~~ individualized family service plan. However, Part C of the Individuals with Disabilities Education Act does not require that any agency or person be held accountable if an eligible child does not achieve the growth projected in the child's ~~individual~~ individualized family service plan.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:14

PROCEDURAL SAFEGUARDS

Section

24:14:14:01	Repealed.
24:14:14:01.01	Consent.
24:14:14:02	Opportunity to examine records.
24:14:14:03	Prior <u>written</u> notice.
24:14:14:04	Native language.
24:14:14:05	Parental consent.
24:14:14:06	Parents' right to decline service.
24:14:14:07	Surrogate parent.
24:14:14:08	Repealed.
24:14:14:09	Assigning a surrogate parent.
24:14:14:10	Surrogate not to be employee of agency.
24:14:14:11	Responsibilities of surrogate parent.
24:14:14:12 to 24:14:14:14	Repealed.
24:14:14:15	Mediation process.
24:14:14:16	Appointment of mediator.
24:14:14:16.01	Mediation agreement.
24:14:14:16.02	Meeting to encourage mediation.
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24:14:14:16.04	Timeline for filing a due process complaint.
24:14:14:16.05	Free or low-cost services to parent.
24:14:14:16.06	Due process complaint notice.
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24:14:14:16.08	Sufficiency of complaint.
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24:14:14:16.12	Other party response to due process complaint.
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24:14:14:16.19	Written settlement agreement.
24:14:14:16.20	Impartial due process hearing.
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24:14:14:16.22	Timeline for requesting a due process hearing.
24:14:14:16.23	Impartial hearing officer.
24:14:14:16.24	Decision of hearing officer.
24:14:14:17	Repealed.
24:14:14:18	Hearing rights.
24:14:14:18.01	Additional disclosure of information.
24:14:14:18.02	Attorney fees.
24:14:14:19	Convenience of hearing.
24:14:14:20	Timelines for hearing.
24:14:14:21	Appeal of administrative decision.
24:14:14:22	Status of child during proceedings.

24:14:14:01.01. Consent. Consent means that:

(1) 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~~ as defined in § 24:14:01:01(13);

(2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent form describes that activity and lists any records that will be released and to whom they will be released;

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and

(4) If a parent revokes consent, that revocation is not retroactive. It does not apply to an action that has occurred before the consent was revoked.

Source: 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:14:02. Opportunity to examine records. The parents of ~~an eligible~~ a child, who is referred to or receives services under this article, must be afforded the opportunity to inspect and review all Part C records about the child and the child's family that are collected, maintained, or used under Part C including records relating to screening, evaluations and assessments, eligibility determinations, development and implementation of ~~individual~~ individualized family service plan, provision of early intervention services, individual complaints dealing with the child, or any part of the child's early intervention record under Part C.

Source: 20 SDR 223, effective July 7, 1994; 35 SDR 82, effective October 22, 2008

General Authority: SDCL 13-37-1.1.

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

24:14:14:03. Prior written notice. ~~Written prior~~ Prior written notice must be given provided to the parents of ~~a child eligible under this article~~ five ~~working~~ days before a public agency or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of ~~the~~ their child or the provision of appropriate early intervention services to the child and the child's family. The notice must be in sufficient detail to inform the parents of the action that is being proposed or refused, the reasons for taking the action, and all procedural safeguards that are available under this article, including a description of mediation, how to file a state complaint, a due process complaint, and any timelines under those procedures.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:14:04. Native language. Prior written notice must be given to the parents of ~~a child eligible under this article~~ in written language understandable to the general public and provided in the native language of the parents, as defined in § 24:14:01:01(13), or other mode of communication used by the parents, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the service coordinator shall take steps to ensure the following:

- (1) Notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- (2) The parent understands the notice; and
- (3) There is written evidence that the requirements of this section have been met.

If a parent is deaf or blind or has no written language, then the mode of communication must be that normally used by the parent, including sign language, braille, or oral communication.

Source: 20 SDR 223, effective July 7, 1994; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:14:05. Parental consent. ~~The general requirements for parental consent are as follows:~~

~~(1) Written parental consent must be obtained before conducting the initial evaluation and assessment of a child or initiating the provision of early intervention services;~~

~~(2) If consent is not given, the service coordinator shall make reasonable efforts to ensure that the parent is fully aware of the nature of the evaluation and assessment or the service that would be available and understands that the child will not be able to receive the evaluation and assessment or services unless consent is given; and~~

~~(3) An agency, institution, or organization used by the state to carry out this article may initiate a hearing under this chapter to override a parent's refusal for initial evaluation and assessment. If an impartial reviewer rules in favor of the agency, institution, or organization, the agency, institution, or organization may initiate the evaluation or assessment process without parental consent. A decision to proceed without parental consent is subject to review by a court of competent jurisdiction on appeal by the parents.~~

The department shall ensure parental consent is obtained before:

(1) Administering screening procedures that are used to determine whether a child is suspected of having a disability;

(2) All evaluations and assessments of a child;

(3) Early intervention services are provided to the child under Part C;

(4) Public benefits or insurance or private insurance is used; and

(5) Disclosure of personally identifiable information.

If a parent does not give consent under (1), (2), or (3) above, the department shall make reasonable efforts to ensure that the parent is fully aware of the nature of the evaluation and assessment of the child or early intervention services that would be available; and understands that the child will not be able to receive the evaluation, assessment, or early intervention service unless consent is given.

The department may not use the due process hearing procedures under Part C or Part B of the IDEA to challenge a parent's refusal to provide any consent that is required under this section.

Source: 20 SDR 223, effective July 7, 1994; 23 SDR 179, effective April 29, 1997; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:14:06. Parents' right to decline service. The parents of an eligible child may determine whether they, their child, or other family members will accept or decline any early intervention service under this article at any time and may decline such a service after first accepting it without jeopardizing other early intervention services under this article.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:14:07. Surrogate parent. The rights of ~~an eligible~~ a child must be protected by a surrogate parent if no parent can be identified and the contractor, after reasonable effort, cannot locate a parent or if the child is a ward of the state.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

Cross-References: Surrogate parent defined, SDCL 13-37-2.1; Surrogate parent acting in place of parent, SDCL 13-37-27.

24:14:14:09. Assigning a surrogate parent. The service coordinator in conjunction with the local education agency as appropriate shall identify individuals at the agency and service provider level who may be appointed as surrogate parents. The surrogate must have no interests that conflict with the interests of the child the surrogate represents and have knowledge and skills that ensure adequate representation of the child. The service coordinator in conjunction with the local education agency is responsible for the training and certification of surrogate parents.

~~An individual assigned as a surrogate parent shall continue in that capacity as long as the child remains eligible for any program services and unless the person appointed as a surrogate parent fails to represent the best interest of the child. Removal of an individual as a surrogate parent shall be accomplished by the appointing agency.~~

In implementing the provisions under this section for children who are wards of the state or placed in foster care, the department shall consult with the public agency that has been assigned care of the child.

In the case of a child who is a ward of the state, the surrogate parent, instead of being appointed by the department may be appointed by the judge overseeing the infant or toddler's case provided that the surrogate parent meets the requirements in this section.

The department shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:14:10. Surrogate not to be employee of agency. A person assigned as a surrogate parent may not be an employee of any state agency, or a person or an employee of a person providing early intervention services, education, care, or other services to the child or to any family member of the child. A person who otherwise qualifies to be a surrogate under the

provisions of this chapter is not an employee of the agency solely because the person is paid by an agency to serve as a surrogate parent.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

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

24:14:14:11. Responsibilities of surrogate parent. A surrogate parent ~~may represent a child in all matters related to the following:~~

- ~~(1) The evaluation and assessment of the child;~~
- ~~(2) Development and implementation of the child's individual family service plan, including annual evaluations and periodic reviews;~~
- ~~(3) The ongoing provision of early intervention services to the child; and~~
- ~~(4) Any other rights established under this article~~ has the same rights as a parent for all purposes under Part C.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:14:15. Mediation process. The department shall ensure that procedures are established and implemented to allow parties to disputes involving any matter under this article, including matters arising before the filing of a due process complaint, to resolve disputes through a mediation process at any time. Procedures for mediation are as follows:

(1) The state director of the Part C program shall ensure that mediation is viewed as voluntary and freely agreed to by both parties and is in no way used to deny or delay ~~an aggrieved party's~~ a parent's right to a hearing on a parent's due process complaint, or to deny any other rights afforded under this article; and

(2) The mediation conference is an intervening, informal process conducted in a nonadversarial atmosphere, scheduled in a timely manner, and held in a location that is convenient to the parties in dispute.

The state shall bear the cost of the mediation process, including the costs of meetings described in § 24:14:14:16.02.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:14:16.03. Filing a due process complaint. A parent, the department, a contractor, a public agency, or a nonpublic service provider may file a due process complaint on any matter relating to the identification, evaluation, or placement of a child eligible under this article or the provision of early intervention services to the child and his or her family.

Source: 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:14:16.07. Content of due process complaint notice. The notice required in § 24:14:14:16.06 must include:

- (1) The name of the child;
- (2) The address of the residence of the child;
- (3) The name of the Part C service provider serving the child;
- (4) In the case of a homeless child, available contact information for the child and the name of the Part C service provider serving the child;
- (5) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including the facts relating to the problem; and
- (6) A proposed resolution of the problem to the extent known and available to the party at the time.

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of this section.

Source: 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:14:16.16. Resolution period -- General. If the public agency or nonpublic service provider has not resolved the due process complaint to the satisfaction of the ~~parent~~ parties within 30 days of the receipt of the due process complaint, the due process hearing may occur.

Except as provided in § 24:14:14:16.18, the timeline for issuing a final decision in a due process hearing begins at the expiration of the 30-day period.

Except where the parties have jointly agreed to waive the resolution process or to use medication, notwithstanding the above two paragraphs, the failure of the parent filing a due process complaint to participate in the resolution meeting delays the timelines for the resolution process and due process hearing until the meeting is held.

Source: 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:14:16.23. Impartial hearing officer. A hearing may not be conducted by a person who is an employee of the department, by a person who is an employee of a public agency or a nonpublic service provider that is involved in the ~~education~~ early intervention services or care of the child, or by any person having a personal or professional interest that conflicts with the person's objectivity in the hearing. A hearing officer shall:

- (1) Possess knowledge of, and the ability to understand, the provisions of IDEA, federal and state regulations pertaining to IDEA, and legal interpretations of IDEA by federal and state courts;

(2) Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(3) Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

An individual who otherwise qualifies to conduct a hearing is not an employee of the department solely because the individual is paid by the department to serve as a hearing officer.

The department shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Source: 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:14:18. Hearing rights. Any party to a hearing under this article ~~may~~ has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge of or training ~~in early intervention services for~~ with respect to the problems of children eligible with disabilities under this article;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five business days before the hearing;

(4) Obtain a written or, at the option of the parents, electronic verbatim record of the hearing; and

(5) Obtain written or, at the option of the parents, electronic findings of fact and decisions. The ~~public agency department~~ shall transmit those findings and decisions, after deleting any personally identifiable information, to the state ~~advisory panel~~ interagency coordinating council and shall make those findings and decisions available to the public.

Parents involved in hearings must be given the right to have the child who is the subject of the hearing present and open the hearing to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parents.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

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

24:14:14:21. Appeal of administrative decision. Any party aggrieved by the findings and decisions of the hearing officer under this article ~~may~~ has the right to bring a civil action under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(2) as in effect on December 3, 2004. 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~~ receive 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 C 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, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of children with disabilities, except that 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 a due process hearing must be exhausted to the same extent as would be required had the action been brought under section 615 of IDEA.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:14:22. Status of child during proceedings. During the pendency of any proceeding involving a hearing under this chapter, unless the ~~parties~~ department and parents of a child with a disability involved otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided in the setting identified in the individualized family service plan that is consented to by the parents. If the hearing involves an application for initial services under this article, the child ~~may~~ shall receive those services that are not in dispute.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:15

CONFIDENTIALITY OF INFORMATION

Section

- 24:14:15:01 Repealed.
- 24:14:15:02 Definitions.
- 24:14:15:02.01 Confidentiality procedures - - General.
- 24:14:15:02.02 Applicability and timeframe of procedures.
- 24:14:15:02.03 Notice to parents.
- 24:14:15:03 Annual notification of rights.
- 24:14:15:04 Access rights.
- 24:14:15:05 Record of access.
- 24:14:15:06 Records on more than one child.
- 24:14:15:07 List of types and locations of information.
- 24:14:15:08 Fees.

24:14:15:09 Amendment of records at parent's request.
24:14:15:10 Opportunity for a hearing.
24:14:15:11 Hearing procedures.
24:14:15:12 Result of hearing.
24:14:15:12.01 Disclosure of information.
24:14:15:13 Consent.
24:14:15:14 Safeguards.
24:14:15:15 Destruction of information.
24:14:15:16 Enforcement.

24:14:15:02. Definitions. Terms used in this chapter mean:

(1) "Act," the Family Educational Rights and Privacy Act of 1974 and implementing regulations at 34 C.F.R. Part 99, as amended, enacted as section ~~438~~ 444 of the General Education Provisions Act as in effect ~~January~~ July 1, 2000 2012;

(2) "Destruction," physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable under § 24:14:01:01(18);

~~(2)~~ (3) "Directory information," information contained in a the early intervention record of a child which would not generally be considered harmful or an invasion of privacy if disclosed, such as the child's name, address, telephone listing, dates in Part C program, and date and place of birth;

~~(3)~~ (4) "Disclosure," to permit access to or the release, transfer, or other communication of early intervention records or the personally identifiable information contained in those records to any party, except the party identified as the party that provided or created the record, by any means, including oral, written, or electronic;

(4) "~~Personally identifiable information,~~" ~~the child's name, the name of the child's parent or other family member, the address of the child or child's family, a personal identifier, such as the child's social security number or student number, and a list of personal characteristics or other information that would make the child's identity easily traceable; and~~

(5) "~~Record,~~" "Early intervention record," any information recorded in any way, including, but not limited to, handwriting, print, video or audio tape, film, microfilm, microfiche, and computer media; and

(6) "Participating agency," any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of IDEA and the rules in this article with respect to a particular child. A participating agency includes the department and contractors and any individual or entity that provides any Part C services, including service coordination, evaluations and assessments, and other Part C services, but does not include primary referral sources, or public agencies, such as the state Medicaid or CHIP program, or private entities, such as private insurance companies, that act solely as funding sources for Part C services.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

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

24:14:15:02.01. Confidentiality procedures - - General. The department shall:

(1) Ensure that the parents of a child referred under Part C are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with federal and South Dakota laws;

(2) Ensure the effective implementation of the safeguards by each participating agency, including the department and contractors, in the statewide system that is involved in the provision of early intervention services under this article; and

(3) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:15:02.02. Applicability and timeframe of procedures. The confidentiality procedures described in this chapter apply to the personally identifiable information of a child and the child's family that:

(1) Is contained in early intervention records collected, used, or maintained under Part C by the department, a contractor or a participating agency; and

(2) Applies from the point in time when the child is referred for early intervention services under Part C until the later of when the department, a contractor, or a participating agency is no longer required to maintain or no longer maintains that information under applicable federal and South Dakota laws.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:15:02.03. Notice to parents. The department shall give notice when a child is referred under Part C of IDEA that is adequate to fully inform parents about the requirements in this chapter, including:

(1) 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 the sources from whom information is gathered, and the uses to be made of the information;

(2) A summary of the policies and procedures that contractors and participating agencies shall follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;

(3) A description of all the rights of parents and children regarding this information, including their rights under the Part C confidentiality provisions in this chapter; and

(4) A description of the extent that the notice is provided in the native languages of the various population groups in the state.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:15:04. Access rights. Each contractor or participating agency shall permit parents to inspect and review any early intervention records relating to their child which are collected, maintained, or used by the contractor under this article. The contractor shall comply with a request without unnecessary delay and before any meeting regarding an ~~individual~~ individualized family service plan or hearing relating to the identification, evaluation, or placement of the child and in no case more than ~~45~~ ten calendar days after the request has been made.

The right to inspect and review early intervention records under this section include the following:

(1) The right to response from the contractor or participating agency to reasonable requests for explanations and interpretations of the early intervention records;

(2) The right to request that the contractor or participating agency provide copies of the early intervention records containing the information if failure to provide these copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the early intervention records.

The contractor or participating agency may presume that the parent has authority to inspect and review early intervention records relating to the parent's child unless the contractor or participating agency has been ~~advised~~ provided documentation that the parent does not have the authority under applicable state law governing such matters as foster care, guardianship, separation, divorce, or custody.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

Cross-References:

Jurisdiction and venue of guardianships, SDCL ch 30-36.

Appointment, qualification, bonds and removal of guardians, SDCL ch 30-27.

Custody, care and maintenance of wards, SDCL ch 30-28.

24:14:15:05. Record of access. Each contractor or participating agency shall keep a record of parties obtaining access to early intervention records collected, maintained, or used under this chapter, except access by parents and authorized employees, including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. A parent may inspect this record on request.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:15:06. Records on more than one child. If a an early intervention record includes information on more than one child, the parents of those children may inspect and review only the information relating to their child or may be informed only of that specific information.

Source: 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-37-1.1.

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

24:14:15:08. Fees. A contractor or participating agency may charge a fee for copies of early intervention records which are made for parents under this chapter if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. The contractor or participating agency may not charge a fee to search for or to receive information under this chapter.

A contractor or participating agency shall provide at no cost to parents, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:15:09. Amendment of records at parent's request. A parent who believes that information in early intervention records collected, maintained, or used under this article is inaccurate or misleading or violates the privacy or other rights of the child or parent may request the contractor or participating agency which maintains the information to amend the information.

The contractor or participating agency shall decide whether to amend the information in accordance with the request within five working days after receipt of the request.

If the contractor or participating agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 101, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:15:10. Opportunity for a hearing. The contractor or participating agency shall, on request, provide an opportunity for a hearing to challenge information in their child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parent.

A parent may request a due process hearing under the procedures in chapter 24:14:14 provided that such hearing procedures meet the requirements of the hearing procedures in § 24:14:15:11 or may request a hearing directly under the state's procedures in this chapter.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:15:12. Result of hearing. If, as a result of the hearing, the contractor or participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parent, it shall amend the information accordingly and inform the parents in writing.

If, as a result of the hearing, the contractor or participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parent, it shall inform the parents of the right to place in the early intervention records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the contractor.

Any explanation placed in the early intervention records of the child under this section must be maintained by the contractor or participating agency as part of the records of the child as long as the record or contested portion is maintained by the contractor. If the records of the child or the contested portion is disclosed by the contractor or participating agency to any party, the explanation must also be disclosed to the party.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:15:12.01. Disclosure of information. The department shall disclose to the state special education program and the school district where the child resides, in accordance with § 24:14:13:05.01, the following personally identifiable information under IDEA:

- (1) A child's name;
- (2) A child's date of birth; and
- (3) Parent contact information, including parents' names, addresses, and telephone numbers.

The information described in this section is needed to enable the department, as well as school districts and the state special education program, to identify all children potentially eligible for services under Part B of IDEA.

Source:

General Authority: SDCL 13-37-1.1.

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

24:14:15:13. Consent. Parental consent must be obtained before personally identifiable information is disclosed. ~~Information from records may not be released to participating agencies without parental consent except as follows:~~

~~(1) Personally identifiable information from the records of a child may be disclosed without the written consent of the parent of the child if the disclosure is to other early intervention programs who have been determined by the contractor to have legitimate interests;~~

~~(2) A contractor that discloses the records of a child pursuant to subdivision (1) of this section must make a reasonable attempt to notify the parent of the child at the last known address of the parent unless the disclosure is initiated by the parent.~~

~~If the contractor includes in its annual notice of parents' rights that it is the contractor's policy to forward records on request to an early intervention program in which a child seeks services, the contractor need not provide any further notice of the transfer of records.~~

~~A contractor receiving personally identifiable information from another may make further disclosures of the information on behalf of the contractor without the prior written consent of the parent if the conditions of subdivisions (1) and (2) of this section are met and if the contractor informs the party to whom disclosure is made of these requirements. If the parents refuse consent for the release of personally identifiable information to a third party, that party may initiate procedures to challenge a parent's refusal to consent~~

disclosed to anyone other than authorized representatives, officials, or employees of participating agencies collecting, maintaining, or using the information under Part C, subject to this section; or used for any purpose other than meeting a requirement of Part C.

The department or other participating agency may not disclose personally identifiable information to any party except participating agencies, including the department and contractors, that are part of the state's Part C system without parental consent unless authorized to do so under:

(1) Sections 24:14:15:12.01 and 24:14:13:05.01; or

(2) One of the exceptions enumerated in 34 C.F.R. 99.31, where applicable to Part C, which are expressly adopted to apply to Part C through this reference.

The department shall provide policies and procedures to be used when a parent refuses to provide consent under this section, such as a meeting to explain to parents how their failure to consent affects the ability of their child to receive services under Part C, provided that those procedures do not override a parent's right to refuse consent under chapter 24:14:14.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

Cross-Reference: 34 C.F.R. Part 99 (Family Educational Rights and Privacy).

24:14:15:14. Safeguards. Each contractor or participating agency shall protect the confidentiality of personally identifiable information at the stages of collection, maintenance, use, storage, disclosure, and destruction.

~~The~~ One official of each contractor or participating agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the provisions of this chapter and the Act concerning personally identifiable information.

The contractor or participating agency shall maintain for public inspection a current listing of the names and positions of those employees within the early intervention program who may have access to personally identifiable information on children.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:15:15. Destruction of information. The contractor or participating agency shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide services to the child under Part C, the General Education Provisions Act at 20 U.S.C. 1232f, and the Education Department General Administrative Regulations at 34 C.F.R. Part 76 and 80.

The information no longer needed must be destroyed at the request of the parents. However, a permanent record of the child's name, ~~address, and phone number may be maintained without time limit~~ date of birth, parent contact information, including address and phone number, names of service coordinators and contractors, and exit data, including year and age upon exit, and any programs entered into upon exiting, may be maintained without time limitation.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

24:14:15:16. Enforcement. The ~~division~~ department shall ensure that all agencies, institutions, and organizations used by the state to carry out this article comply with the requirements on confidentiality of information through sanctions, on-site monitoring and complaint resolution pursuant to chapter 24:14:03.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002.

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:16

COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT

Section

- 24:14:16:01 Comprehensive system of personnel development.
24:14:16:02 Personnel standards.
24:14:16:03 Shortage of personnel.

24:14:16:01. Comprehensive system of personnel development. The department shall ensure the development and implementation of a comprehensive system of personnel development, including the training of paraprofessionals and the training of primary referral sources with respect to the basic components of early intervention services available in the state. The comprehensive system of personnel development shall include:

(1) ~~Implementing~~ Training personnel to implement innovative strategies and activities for the recruitment and retention of early education service providers;

(2) Promoting the preparation of early intervention providers who are fully and appropriately qualified to provide early intervention services under this article; and

(3) ~~Training personnel to coordinate transition services for infants and toddlers served under this article from a program providing early intervention services under this article to a preschool program receiving funds under article 24:05, or another appropriate program~~ with disabilities who are transitioning from an early intervention service program under Part C of IDEA to a preschool program under section 619 of IDEA, Head Start, Early Head Start, an elementary school program under Part B of IDEA, or another appropriate program.

The comprehensive system of personnel development may include training personnel to work in rural and inner-city areas and training personnel in the emotional and social development of young children.

The system may also include training personnel to support families in participating fully in the development and implementation of the child's IFSP, and training personnel who provide services under Part C using standards that are consistent with early learning personnel development standards funded under the State Advisory Council on Early Childhood Education and Care established under the Head Start Act, if applicable.

Source: 20 SDR 233, effective July 7, 1994; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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

24:14:16:02. Personnel standards. Procedures relating to the establishment and maintenance of standards to ensure that personnel necessary to carry out the purposes of this chapter are appropriately and adequately prepared and trained are contained in chapter 24:05:16.

Early intervention services must be provided by qualified personnel, including the following:

- (1) Audiologists;
- (2) Nurses;
- (3) Registered dietitians;
- (4) Occupational therapists;
- (5) Physical therapists;
- (6) Pediatricians and other physicians for diagnostic or evaluation purposes;
- (7) Psychologists;
- (8) Social workers;
- (9) Special educators, including teachers of children with hearing impairments, including deafness, and teachers of children with visual impairments, including blindness;
- (10) Speech and language pathologists;
- (11) Family therapists;
- (12) Orientation and mobility specialists; and
- (13) Vision specialists, including ophthalmologists and optometrists.

The personnel identified in this section do not comprise exhaustive lists of the types of qualified personnel that may provide early intervention services. Nothing in this section prohibits the identification in the IFSP of another type of personnel that may provide early intervention services in accordance with Part C, provided such personnel meet the state standards.

Source: 20 SDR 233, effective July 7, 1994; 35 SDR 82, effective October 22, 2008.

General Authority: SDCL 13-37-1.1.

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