

## South Dakota Comprehensive Plan/Program Narrative

### Sec. 300.201 Consistency with State policies.

The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures, established under Secs. 300.101 through 300.163, and 300.165 through 300.174.  
(Authority: 20 U.S.C. 1413(a)(1))

### South Dakota Administrative Rule 24:05:21:01. Local education agency comprehensive plans- Contents.

Each local education agency must have a current comprehensive plan approved by the school board on file with the district superintendent or designee. Documentation supporting the implementation of the local school district's comprehensive plan shall be maintained by the district for review by Special Education Programs staff during onsite monitoring visits. Districts shall update comprehensive plans consistent with 24:05:21:01.02 and recertify their content annually.

The Elk Point-Jefferson School District has formally adopted the following policies and procedures as the district's comprehensive plan for special education. These policies and procedures were approved by the school board on May 9th, 2022. As indicated by the signature below, the authorizing official acknowledges the Elk Point-Jefferson School District will meet all requirements of the Individuals with Disabilities Education Act and Article 24:05 through the implementation of these policies and procedures and furthermore, provides assurances that it meets each of the conditions in 34 CFR 300.201 through 300.213.

CERTIFICATION- I certify that I have read and reviewed the above assurance and will comply with all provisions of applicable federal and state laws.

---

Signature of Authorized Official

Date

[Philip Schonebaum](#)- Superintendent

---

Typed Name and Title

402 S. Douglas St. Elk Point, SD 57025

(605) 356- 5950

---

Address/State/Zip

Telephone Number

\*This page must be signed by the school district official listed above and returned to:

Department of Education  
Special Education Programs  
800 Governor's Drive  
Pierre, SD 57501

## Table of Contents

<u>Section</u>	<u>Page</u>
<b>SECTION I: Free and Appropriate Public Education (FAPE)</b>	<b>5-6</b>
<ul style="list-style-type: none"><li>● FAPE beginning at age 3; 300.101(b); ARSD 24:05:13:02</li><li>● Children advancing from grade to grade; 300.101(c); ARSD 24:05:13:02</li><li>● Limitations- age exceptions to FAPE; 300.102; ARSD 24:05:22:04.01</li><li>● FAPE- methods and payments; 300.103; ARSD 24:05:19:08</li><li>● Residential placement; 300.104; ARSD 24:05:19:08</li><li>● Assistive technology; 300.105; ARSD 24:05:27:20, ARSD 24:05:27:18, ARSD 24:05:27:19</li><li>● Extended school year services; 300.106; ARSD 24:05:25:26</li><li>● Non Academic services; 300.107; ARSD 24:05:28:06</li><li>● Physical education; 300.108; ARSD 24:05:28:08</li><li>● Program options; 300.110; ARSD 24:05:28:04</li></ul>	
<b>SECTION II: Full educational opportunity goal (FEOG)</b>	<b>7</b>
<b>SECTION III: Child Find 34 C.F.R. § 300.111; Child Identification ARSD 24:05:22</b>	<b>8-9</b>
<ul style="list-style-type: none"><li>● Use of the term developmental delay; ARSD 24:05:24.01:09</li><li>● Children who may be suspected of having a disability, and in need of special education, even though they are advancing from grade to grade, 300.111(c)(1); ARSD 24:05:22:01</li><li>● Children who are highly mobile, including migrant children, 300.111(c)(2); ARSD 24:05:22:01</li></ul>	
<b>SECTION IV: Individualized Education Program (IEP)</b>	<b>10-14</b>
<ul style="list-style-type: none"><li>● Content of the IEP; 300.320(a)(1-7); ARSD 24:05:27:01.03</li><li>● Transition services; 300.320(b); ARSD 24:05:27:13.02</li><li>● Transfer of rights at the age of majority; 300.320(c); ARSD 24:05:27:01.03</li><li>● The IEP team; 300.321; ARSD 24:05:27:01.01</li><li>● Parent participation in the IEP; 300.322; ARSD 24:05:25:16</li><li>● When the IEP must be in effect; 300.323; ARSD 24:05:25:22</li><li>● Development of the IEP; 300.324; ARSD 24:05:27:01.02</li><li>● Routine checking of hearing aids and external components of surgically implanted medical devices, 300.113; ARSD 24:05:27:05</li></ul>	
<b>SECTION V: Least Restrictive Environment (LRE)</b>	<b>15-16</b>
<ul style="list-style-type: none"><li>● A continuum of alternative placements; 300-115; ARSD 24:05:28:02</li><li>● Placements; 300.116; ARSD 24:05:28:03</li><li>● Non-academic settings, 300.117; ARSD 24:05:28:06</li><li>● Children in public or private institutions; 300.118; ARSD 24:05:28:07</li><li>● Teachers and administrators are provided with technical assistance and training; 300.119; ARSD 24:05:28:11</li><li>● Monitors placements, 300.120; ARSD 24:05:28:12</li></ul>	
<b>SECTION VI: Procedural Safeguards</b>	<b>17-29</b>
<ul style="list-style-type: none"><li>● Opportunity to examine records; parent participation in meetings; 300.501(a)(b)(c); ARSD 24:05:30:02</li><li>● Independent educational evaluations; 300.502; ARSD 24:05:30:03</li><li>● Prior written notice; content of notice; 300.503; ARSD 24:05:30:04</li><li>● Procedural safeguards notice; 300.504; ARSD 24:05:30:06.01, ARSD 24:05:30:06.02</li><li>● Use of electronic mail; 300.505; ARSD 24:05:30:06.03</li><li>● Availability of mediation; 300.506; ARSD 24:05:30:09</li><li>● Filing of due process complaints; 300.507; 300.508; 300.509; ARSD 24:05:30:07.01</li><li>● Resolution process; 300.510; ARSD 24:05:30:08.09-.12</li><li>● Impartial due process hearing; 300.511; ARSD 24:05:30:09.04</li><li>● Hearing rights; 300.512; ARSD 24:05:30:12</li></ul>	

- Hearing decisions; 300.513; 300.514; 300.515; 300.516; 300.517; ARSD 24:05:30:11
- Status of child during due process proceedings; 300.518; 24:05:30:14 ARSD.
- Surrogate parents; children who are wards of the state; homeless youth; 300.519; ARSD 24:05:30:15
- Transfer of rights at age of majority; 300.520; ARSD 24:05:30:16.01
- Discipline procedures and manifestation determination; 300.530; ARSD 24:05:26:09.03
- Determination of setting; 300.531; ARSD 24:05:26:09.2
- Right of appeal of the determination of setting; 300.532; ARSD 24:05:26:09.05
- Placement during appeals; 300.533; ARSD 24:05:26:09.06
- Protections for children not determined eligible for special education and related services; 300.534; ARSD 24:05:26:14
- Referral to action by law enforcement and judicial authorities; 300.535; ARSD 24:05:26:15
- Change of placement due to disciplinary removals; 300.536; ARSD 24:05:26:02.01

## **SECTION VII: Evaluation**

**30-36**

- Parental consent (for initial evaluation, services, and re-evaluations; 300.300; ARSD 24:05:25:02.01, ARSD 24:05:25:06.01
- Initial evaluations; 300.301; ARSD 24:05:25:03
- Screening for instructional purposes; 300.302; ARSD 24:05:25:03.03
- Re-evaluations; 300.303; ARSD 24:05:25:06
- Evaluation procedures; 300.304; 300.305; ARSD 24:05:25:04
- Determining eligibility; 300.306; ARSD 24:05:25:04.03
- Specific learning disabilities; 300.307 through 300.311; ARSD 24:05:25:07, ARSD 24:05:25:08, ARSD 24:05:25:11, ARSD 24:05:25:12

## **SECTION VIII: Confidentiality**

**37-40**

- Notice requirements to parents; 300.612; ARSD 24:05:29:18
- Access rights; 300.613; ARSD 24:05:29:04
- Record of access; 300.614; ARSD 24:05:29:05
- Records on more than one child; 300.615; ARSD 24:05:29:06
- List of types and locations of information; 300.616; ARSD 24:05:29:07
- Fees for copies of records; 300.617; ARSD 24:05:29:08
- Amendments to records at parent's request; 300.618; ARSD 24:05:29:09
- Opportunity for a hearing; 300.619; ARSD 24:05:29:10
- Result of hearing and hearing procedures; 300.620-621; ARSD 24:05:29:12
- Parental consent for the release of records; 300.622; ARSD 24:05:29:13
- Safeguarding of records; 300.623; ARSD 24:05:29:14
- Destruction of information; 300.624; ARSD 24:05:29:15
- Children's rights; transfer at the age of majority; 300.625; ARSD 24:05:29:16
- Enforcement; policies and procedures; 300.626; ARSD 24:05:29:17
- Transfer of records for migratory children with disabilities; 300.213; ARSD 24:05:21:05

## **SECTION IX: Transition from Part C**

**41**

## **SECTION X: Private School Placements**

**42-47**

- Definition of parentally-placed private school children; 300.130; ARSD 24:05:32:01
- Child find for parentally-placed private school children with disabilities; 300.131; ARSD 24:05:32:01.01
- Provision of services for parentally-placed private school children with disabilities; 300.132; ARSD 24:05:32:03.01, ARSD.
- Expenditures for parentally-placed private school children with disabilities; 300.133; ARSD 24:05:32:01.02
- Consultation process with private schools attended by children with disabilities; 300.134; ARSD 24:05:32:01.05
- Written affirmation by private school officials of meaningful consultation; 300.135; ARSD 24:05:32:01.06
- Compliance; rights of private school officials to submit a state complaint; 300.136; ARSD 24:05:32:01.07
- Determination of equitable services for parentally-placed private school students with disabilities; 300.137; ARSD 24:05:32:03.02,
- Provision of equitable services for parentally-placed private school students with disabilities; 300.138; ARSD 24:05:32:03.02
- Location of services and transportation; 300.139; ARSD 24:05:32:03.03
- Due process complaints and state level complaints; 300.140; ARSD 24:05:32:03.04
- Requirements that funds not benefit a private school; 300.141; ARSD 24:05:32:12
- Use of personnel for the provision of services to parentally-placed private school students with disabilities; 300.142; ARSD 24:05:32:13

- Prohibition on separate classes; 300.143; ARSD 24:05:32:11
- Property, equipment, and supplies used to provide special education and related services to parentally-placed private school students with disabilities; 300.144; ARSD 24:05:32:15, ARSD 24:05:32:16
- Children with disabilities in private schools placed or referred by public agencies; 300.145 – 300.147; ARSD 24:05:34:02
- Placement of children with disabilities by their parents in private schools when FAPE is an issue; 300.148; ARSD 24:05:31:01-07

**SECTION XI: Compliance with SEA General Supervision Requirements and Implementation of Procedural Safeguards** **48-49**

- Responsibility for general supervision and procedural safeguards; 300.149-150; ARSD 24:05:20:18; ARSD 24:05:30:01
- State complaint procedures; 300.151-153; ARSD 24:05:15

**SECTION XII: FAPE Methods of Ensuring Services** **50-51**

- Restrictions and requirements on accessing public benefits (Medicaid); 300.154(d); ARSD 24:05:14:01.03
- Restrictions and requirements on accessing private benefits; 300.154(e); ARSD 24:05:14:01.03
- Use of Part B funds for services when parent consent is unable to be obtained; 300.154(f); ARSD 24:05:14:01.06

**SECTION XIII: Hearings Related to LEA Eligibility** **52**

**SECTION XIV: Personnel Qualifications** **53**

**SECTION XV: Performance Goals and Indicators** **54**

**SECTION XVI: Participation in Assessments** **55**

**SECTION XVII: Supplementation of State, local, and other Federal Funds** **56**

**SECTION XVIII: Public Information** **57**

**SECTION XIX: State Advisory Panel** **58**

**SECTION XX: Other Required Provisions** **59-60**

- Suspension and expulsion rates; 300.170; ARSD 24:05:14:16
- Annual description of Part B funds; 300.171; ARSD 24:05:21:03
- Access to instructional materials (NIMAC); 300.172; ARSD 24:05:14:17
- Over-identification and disproportionality; 300.173; ARSD 24:05:17:10
- Prohibition on mandatory medication; 300.174; ARSD 24:05:14:21

## SECTION I:

### **Free and Appropriate Public Education (FAPE) 34 C.F.R. §§ 300.101-300.108, 300.110; ARSD 24:05:13:02**

The Southeast Area Cooperative and all member schools/districts will make a Free Appropriate and Public Education (FAPE) available to all children with disabilities residing in the district(s) between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in 300.530(d); 24:05:26 and 24:05:26.01, ARSD.

Free Appropriate Public Education (FAPE) defined for purposes of ARSD 24:05 includes special education and related services which meets the following requirements:

- are provided at public expense, under public supervision and direction and without charge
- meet the standards of the state board and the implementing regulations for Part B of the Individuals with Disabilities Act.
- include preschool, kindergarten, elementary and secondary school education in South Dakota
- be provided in conformity with an individual education plan and ARSD 24:05

An eligible child is a child in need of special education or special education and related services who have received a multi-disciplinary evaluation and has an IEP (Individualized Education Program) developed by an IEP team. This definition applies to all eligible children ages 3 to 21, inclusive, and to only those children under the age of 3 who are in need of prolonged assistance. (300.101 (b); ARSD 24:05:13:02

- **FAPE beginning at age 3; 300.101(b); ARSD 24:05:13:02**

All eligible preschool aged students will have FAPE made available to them by their third birthday, including those whose birthdays fall during the summer months.

- **Children advancing from grade to grade; 300.101(c); ARSD 24:05:13:02**

All eligible students with disabilities, regardless of whether they are advancing from grade to grade, will have FAPE available to them on an individualized basis as determined by the student's IEP team on an annual basis. Exceptions to FAPE for students age 3-21 includes those students who have graduated from high school with a regular high school diploma.

- **Limitations- age exceptions to FAPE; 300.102; ARSD 24:05:22:04.01**

One exception to the age range of FAPE is the special education student turning 21 during the school year who would continue to have free school privileges during the duration of the school year. Another exception is that children younger than age 3 who qualify for prolonged assistance will receive special education and special education and related services, despite not yet being 3.

- **FAPE- methods and payments; 300.103; ARSD 24:05:19:08**

Consistent with IEP requirements in this article regarding the provision of services in a timely manner, the department shall ensure that there is not delay in implementing a student's IEP, including any case in which the payment source for providing or paying for special education and special education and related services to the student is being implemented.

The Southeast Area Cooperative and its member districts provide services to eligible students without cost to parents to ensure FAPE. However, this does not relieve any insurer or similar third party from its responsibility to pay for otherwise valid obligations.

- **Residential placement; 300.104; ARSD 24:05:19:08**

When necessary for FAPE, the school district will provide FAPE to students with disabilities through a public or private residential program at no cost to the parents.

- **Assistive technology; 300.105; ARSD 24:05:27:20, ARSD 24:05:27:18, ARSD 24:05:27:19**

The Southeast Area Cooperative and its member districts ensure that assistive technology services that are necessary for the provision of FAPE and for students to receive benefit from their special education program are provided at no cost to parent. This may include: evaluation, acquisition of assistive technology through purchase or lease, customizing devices to benefit individual student and/or training for family, student and/or staff.

An assistive technology device does not include a medical device that is surgically implanted, or the replacement of this device.

- **Extended school year services; 300.106; ARSD 24:05:25:26**

When necessary for FAPE, extended school year services will be provided to students with disabilities at no cost to parents. The IEP team determines eligibility for ESY services on an individual basis. The IEP team will determine length of time and duration of services based on student's individual needs. The IEP team can determine need based on any one of the following criteria: regression/recoupment of skills, maintenance of critical life skills and/or emerging skills.

As used in this section, the term, extended school year, means special education or special education and related services that meet the standards of the state and are provided to a student with a disability beyond the normal school year, in accordance with the student's IEP.

- **Nonacademic services; 300.107; ARSD 24:05:28:06**

The Southeast Area Cooperative will assist member districts in determining to the maximum extent possible, that students with disabilities are allowed to participate with non-disabled peers during nonacademic services such as extracurricular activities, meals and recess. If supplementary aids and services are necessary to achieve integration, the district will provide them.

- **Physical education; 300.108; ARSD 24:05:28:08**

Physical education services, specially designed, if necessary, shall be made available to every child in need of special education or special education and related services, unless the district enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades. Each child shall be afforded the opportunity to participate in the regular physical education program available to children without disabilities unless the child is enrolled full time in a separate facility or the child needs specially designed physical education instruction which cannot be provided in the regular physical education program.

If specially designed physical education instruction is prescribed in the student's individual education program, the district responsible for the education of the child shall provide the services directly or make arrangements for it to be provided through other public or private programs.

For children enrolled in separate facilities, the district responsible for the education of the child shall ensure that the student receives appropriate physical education services.

- **Program options; 300.110; ARSD 24:05:28:04**

All students in need of special education or special education and related services, within the district, to the maximum extent possible, have available to them the variety of educational programs and services available to students without disabilities, including art, music, industrial arts, family and consumer science and vocational education.

The student's IEP team annually determines what the least restrictive environment is for each individual student based on strengths and needs in the areas of eligibility. The IEP team also determines the student's goals, mode of instruction and communication, necessary accommodations and/or modifications and the need for related services in order to participate to the maximum extent possible, in the educational programming options of the district

## SECTION II:

### **Full educational opportunity goal (FEOG) 34 C.F.R. § 300.109; ARSD 24:05:22:04, ARSD 24:05:22:04.01**

The Southeast Area Cooperative and its member districts, consistent with the timetable established by the State of South Dakota and Part B of the Individuals with Disabilities Education Act (IDEA), has a goal of providing full educational opportunity to all children with disabilities, aged birth through twenty-one. The district will review data annually (e.g. state performance plan indicators, statewide & district assessments) to guide decisions with regard to adjustments in its programs to ensure appropriate services to all students with disabilities.

Each school district shall provide special education or special education and related services for children less than three years of age who are in need of prolonged assistance.

A child's eligibility for special education or special education and related services continues from age 3 through completion of an approved public or nonpublic school secondary program or through age 21, as designated in that child's individual education program as set out in SDCL 13-37-1.

### SECTION III:

#### **Child Find 34 C.F.R. § 300.111; Child Identification ARSD 24:05:22**

The Southeast Area Cooperative and its member districts has in effect policies and procedures to ensure that all children with disabilities who reside within the boundaries of the district/cooperative member districts and who may be in need of special education and related services are located, identified, and evaluated according to all relevant regulations. This includes those students who may be homeless or wards of the state, as well as children with disabilities who may attend private schools within the jurisdiction of the district. Child find includes our ongoing efforts to identify pre-school and school age students with disabilities through our referral and evaluation procedures, as well as our periodic screening of preschoolers who may be experiencing developmental delays.

The public awareness campaign for the Southeast Area Cooperative and its member school districts is ongoing and focuses on the special education program services available within the school districts and how to access them.

Methods used to inform parents and other interested parties of the identification, location and evaluation of children in need of special education or special education and related services may include several of the following:

- newspaper releases in the local school district newspaper
- radio/television announcements within the local school district's coverage area
- information published in the school district newspaper
- written material will be made available to interested parties within the district's boundaries
- information will be published within each district's local paper regarding screening activities to be conducted for children's ages birth through five
- early childhood development screenings will occur periodically throughout the school year at each of the Southeast Area Cooperative School districts
- cooperative and district websites
- written information will be displayed to make the public aware of the child find activities by each school district
- referrals will be addressed on an on-going basis throughout the year when brought to the attention of district personnel.
  - as designated (superintendent, designee, the special education coordinator/director) is responsible for the coordination, implementation and documentation of the system and will maintain data regarding child identification activities.
  - data will include all children screened and referred, those receiving multi-disciplinary evaluations, those referred but not evaluated, those evaluated but not placed and those receiving special education and related services.

Procedures for collection, maintenance, and reporting of current and accurate data on all child identification activities are ongoing and include children not currently enrolled in the public schools education program. Each member district will maintain appropriate documentation of child find activities.

- Data Collection: all children enrolled and not currently enrolled in the public school education program are located through ongoing child find activities as outlined previously. Referrals are directed to the building administrator and/or special education director or "designee".
- Maintenance: each member district within the Cooperative will maintain appropriate documentation of child find activities. The documentation should include:
  - annual student information systems data
  - child identification news release information
  - written materials of services available
  - screening press releases
  - parental rights brochures
  - referral forms
  - student handbook and/or newsletters containing pertinent data
  - any other written materials developed and used to support the on-going child identification process including information from all public and private agencies and institutions located within the district's boundaries



- Reporting: screening information is given directly to the families. All reporting is also submitted to the state as well as keeping records within the districts which are available upon parent's request.
  - a practical method of determining which children are currently receiving needed special education or special education and related services
  - documentation supporting the implementation of a district's child identification system shall be maintained by the district for review by Special Education Program staff during on-site monitoring visits and must include annual child count data submitted to the division for approval.
  - an LEA representative shall annually complete the information required in the student information management system provided by the Department of Education no later than December 1<sup>st</sup>.

- **Use of the term developmental delay; ARSD 24:05:24.01:09**

The Southeast Area Cooperative and its member districts utilize the eligibility criteria of developmental delay for individuals through age 5 to receive special education services or special education and related services.

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

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

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

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

- **Children who may be suspected of having a disability, and in need of special education, even though they are advancing from grade to grade, 300.111(c)(1); ARSD 24:05:22:01**

The district ensures that children who may be suspected as having a disability, and in need of special education, even though they are advancing from grade to grade are subject to child find requirements. Advancement from grade to grade is not used in determining eligibility for services.

- **Children who are highly mobile, including migrant children, 300.111(c)(2).**

The district ensures that children who reside within the school district and are highly mobile, including migrant children, are subject to child find requirements. Mobility is not used in determining eligibility for services.

## SECTION IV:

### Individualized Education Program (IEP) 34 C.F.R. 300.112; ARSD 24:05:27

The Southeast Area Cooperative and its member districts ensures that each identified student with a disability has a current IEP in place that meets the requirements of Section 636(d) of the IDEA, and that has been developed in accordance with the requirements at 34 CFR sections 300.320 through 324. All identified students with disabilities in our district will have a current IEP in place at the beginning of the school year, and for eligible preschool students, by their third birthday. Each eligible student's IEP will be reviewed periodically, but not less than annually, to review progress and determine whether annual goals are being met.

- **Content of the IEP; 300.320(a)(1-7); ARSD 24:05:27:01.03**

Each student's individualized education program shall include:

- A statement of the student's present levels of academic achievement and functional performance, including
  - how the student's disability affects the student's involvement and progress in the general education curriculum (i.e. same curriculum as non-disabled peers) or
  - for preschool students, as appropriate, how the disability affects the student's participation in appropriate activities
- A statement of measureable annual goals, including academic and functional goals, designed to:
  - meet the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum; and
  - meet each of the student's other educational needs that result from the student's disability;
- For students with disabilities who take alternate assessments aligned to achievement standards, each student's IEP shall provide a description of benchmarks or short-term objectives
- A statement of the special education and related services and supplementary aids and services, based upon peer-reviewed research to the extent practical, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student:
  - to advance appropriately toward attaining the annual goals
  - to be involved and make progress in the general education curriculum in accordance with this section and to participate in extracurricular and other nonacademic activities; and
  - to be educated and participate with other students with disabilities and nondisabled students in the activities described in this section
- An explanation of the extent, if any, to which the student will not participate with nondisabled students in the regular class and in activities described in this section
- A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments consistent with §24:05:14:14. If the IEP team determines that the student shall take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why;
  - the student cannot participate in the regular assessment; and
  - the particular alternate assessment selected is appropriate for the student;
- The projected date for the beginning of the services and modifications described in this section and the anticipated frequency, location and duration of those services and modifications
- A description of how the student's progress toward the annual goals described in this section will be measured and when periodic reports on the progress the student is making toward meeting the annual goals (such as through quarterly progress reports, report cards will be provided
- Beginning not later than the first IEP to be in effect when the student turns 16, or younger, if determined appropriate by the IEP team and updated annually thereafter, the IEP shall include:

- Appropriate, measureable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills; and
- The transition services (including course of study) needed to assist the student in reaching those goals; and
- Beginning not later than one year before a student reaches the age of majority under state law, the student's individualized education program must include a statement that the student has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act, if any, that will transfer to the student on reaching the age of majority consistent with §24:05:30:16.01

The IEP team will ensure that all appropriate special education issues are addressed and documented on the IEP. The district's Comprehensive Plan, the Special Education Programs IEP Technical Assistance Guide and student's strengths and needs will be used as references in the development, review, and revision of each IEP.

All decisions will be made by the IEP team through the IEP process and specified on the student's IEP.

The IEP will be in effect prior to special education or special education and related services are provided to a student.

The Southeast Area Cooperative member districts utilize the IEP program through Infinite Campus or the Word Document provided by Special Education Programs located on the DOE website to ensure all requirements of the IEP are met.

The Southeast Area Cooperative personnel are available to assist districts with completion of IEP requirements to ensure appropriate content.

Training is provided either through the State Department or through the Cooperative, as needed.

- **Transition services; 300.320(b); ARSD 24:05:27:13.02**

On or before a student turns 16 years of age, the district will ensure that each student's individualized education program shall include:

- A coordinated set of activities for a student with a disability, designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student with a disability to facilitate the student's movement from school to post-secondary activities; including,
  - post-secondary education
  - vocational education
  - integrated employment (including supported employment)
  - continuing and adult education
  - adult services
  - independent living or
  - community participation
- The coordinated set of activities shall be based on the individual student's needs, taking into account the student's strengths, preferences, and interests, and shall include:
  - instruction
  - related services
  - community experiences
  - development of employment and other post-school adult living objectives
  - and, if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation
- Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if required, to assist a student with a disability to benefit from special education

The Southeast Area Cooperative member districts utilize a variety of checklists and measures to assess a student's transition needs and then document through goals and activities on the IEP.

The Cooperative member districts utilize the State Transition Liaisons, school counselors, Vocational Rehabilitation Counselors, as well as others, to identify and implement transition services. The member districts also use Project Skills with students who are eligible for this program.

- **Transfer of rights at the age of majority; 300.320(c); ARSD 24:05:27:01.03**

Beginning not later than one year before a student reaches the age of majority under state law, the district ensures that each student's individualized education program will include a statement that the student has been informed of his or her rights under Part B of the Individuals with Disabilities Education Act, if any, that will transfer to the student on reaching the age of majority consistent with §24:05:30:16.01 and district policies and procedures.

The Southeast Area Cooperative member districts do a variety of activities when informing parents such as: transition and guardianship information brochures, websites. This is not an all-inclusive list.

- **The IEP team; 300.321; ARSD 24:05:27:01.01**

The district ensures that the IEP team for each student with disabilities include the following members:

- the parent(s) or guardian(s) of the student;
- not less than one general education teacher of the student, if the student is, or may be, participating in the general education environment;
- not less than one special education teacher of the student or, if appropriate, at least one special education provider of the student
- a representative of the school district who:
  - is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities
  - is knowledgeable about the general education curriculum; and
  - is knowledgeable about the availability of resources of the school district;
- an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described above, inclusive, of this section;
- at the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student including related services personnel as appropriate
- if appropriate, the student; and
- transition services participants as described in §§24:05:25:16.01 and 24:05:25:16.02
- the determination of knowledge or special education expertise of any individual described in this section shall be made by the party (parent or district) who invited the individual to be a member of the IEP team. A district may designate another district member of the IEP team to also serve as the district representative, if the criteria in this section are satisfied.

At the minimum, the IEP team will include the parent/guardian, general education teacher, if appropriate, special education teacher and a LEA Representative.

- **Parent participation in the IEP; 300.322; ARSD 24:05:25:16**

The district ensures that one or both parents of the child are present at each IEP team meeting or are afforded the opportunity to participate.

The district shall notify parents of the meeting early enough to ensure that they will have an opportunity to attend, scheduling the meeting at a mutually agreed-upon time and place.

The notice to the parents shall state the purpose, time, and location of the IEP team meeting and who will be in attendance and inform the parents of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child, including information related to the participation of the Part C coordinator or other representatives of the Part C system at the initial IEP team meeting for child previously served under Part C of the IDEA.

If the purpose of the IEP team meeting is the consideration of post-secondary goals and transition services for a student, the notice must also address the provisions of §24:05:25:16.01.

- o The notice must:
  - indicate that a purpose of the meeting is the consideration of the postsecondary goals and transition services for the student
  - indicate that the district will invite the student, and;
  - to the extent appropriate, with the consent of the parents of a student who has reached the age of majority, identify any other agency that is likely to be responsible for providing or paying for transition services and that will be invited to send a representative

Parental consent, or the consent of an eligible student who has reached the age of majority, under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If parents cannot attend, the district shall use other methods to ensure participation, including individual or conference calls consistent with §24:05:27:08.04.

- **When the IEP must be in effect; 300.323; ARSD 24:05:25:22**

The district ensures if the child is determined to be in need of special education or special education and related services, the IEP team shall develop an appropriate individual education program for the child. At the beginning of each school year, thereafter, the district must have in effect an IEP for each child with disabilities within its jurisdiction. For children beginning at age three, an IEP shall be in effect by that date. If a child's third birthday occurs during the summer, the IEP team shall determine the date when services under the IEP will begin.

- **Development of the IEP; 300.324; ARSD 24:05:27:01.02**

The district ensures in developing, reviewing and revising each student's individualized education program, the team shall consider the strengths of the student and the concerns of the parents for enhancing the education for their student, the results of the initial and most recent evaluation of the student, the academic, developmental, and functional needs of the student.

The individualized education program team shall also:

- o in the case of the student whose behavior impedes his/her learning or that of others, consider the use of positive behavioral interventions and supports and other strategies to address that behavior;
- o in the case of a student with limited English proficiency, consider the language needs of the student as these needs relate to the student's individualized education program;
- o in the case of a student who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the team determines, after an evaluation of the student's reading and writing skills, needs and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student;
- o consider the communication needs of the student and, in the case of a student who is deaf or hard of hearing, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode; and
- o consider whether the student requires assistive technology devices and services

The general education teacher of a student with a disability, as a member of the individualized education program team, must, to the extent appropriate, participate in the development, review, and revisions of the student's individualized education program, including the determination of appropriate positive behavioral interventions and supports and other strategies for the student and the determination of supplementary aids and services, program

modifications, and supports for school personnel that will be provided for the student consistent with subdivision 24:05:27:01.01(3).

Nothing in this section requires the team to include information under one component of a student's individualized education program that is already contained under another component of the student's individualized education program.

No additional information may be required to be included in a student's IEP beyond what is explicitly required in this section.

- **Routine checking of hearing aids and external components of surgically implanted medical devices, 300.113; ARSD 24:05:27:05**

The school districts will develop procedures necessary for maintaining devices within each student's IEP as appropriate.

## SECTION V:

### **Least Restrictive Environment (LRE), 34 C.F.R. §§ 300.114 – 300.120; ARSD 24:05:28**

The Southeast Area Cooperative and its member districts ensures the availability of a continuum of alternative placements to provide each student with a disability the opportunity for education in the Least Restrictive Environment. Any removal of a student with a disability from the general education environment may occur only when the nature and severity of the child's needs dictate that education in general classes, with the use of supplementary aids and services cannot be achieved satisfactorily, including preschool programs.

- **A continuum of alternative placements; 300-115; ARSD 24:05:28:02**

The IEP team will ensure that a continuum of alternative placements is available for each child who is receiving special education or special education and related services.

The IEP team shall provide for supplementary aids and services, such as resource room or itinerant instruction, to be provided in conjunction with the general classroom placement, as applicable.

For each of the programs listed in this section, the IEP team shall determine the extent to which related services are required in order for the child to benefit from the program.

The length of the school day shall be equal in duration to that of a regular public school day unless an adjusted school day is required in order to meet the individual needs of the child.

Children will be educated in the school the child would generally attend or as close to the child's home, as possible.

In those cases where placement is made in a separate day school program or residential school program, the district may abide by the school term of the facility in which the child is placed on the individual needs of the child.

#### Continuum

- General classroom with modifications 80-100%
- Resource Room 40-79%
- Self-Contained 0-39%
- Separate Day School
- Residential Facility
- Home-Hospital Program
- Other settings

- **Placements; 300.116; ARSD 24:05:28:03**

The Southeast Area Cooperative and its member districts shall establish and implement procedures which ensures that the IEP team will address the following factors in determining placements:

- each child 's educational placement must be individually determined at least annually and must be based on the child's educational program;
- provisions are made for appropriate classroom or alternative settings necessary to implement a child's individual education program;
- unless a child's individual education program requires some other arrangement, the child shall be as close as possible to the child's home
- placement in the least restrictive environment will not produce a harmful effect on the child or reduce the quality of services which that child needs; and
- a child with a disability is not removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum

The IEP team will review the child's strengths and needs in the areas of eligibility, specialized instruction needs, goals, modifications, related service needs and potential harmful effects of placement when determining least restrictive environment for each individual child.

The requirements of this section apply to all eligible preschool children, ages three through five, who are entitled to receive a free appropriate and public education.

In each case, the school district must ensure that placement is based upon each child's individual education program and meets all other requirements of this section.

- **Non-academic settings, 300.117; ARSD 24:05:28:06**

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities listed in this chapter, each school district shall develop and implement procedures which ensure that each child in need of special education or special education and related services participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of the child.

The district shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings.

The Southeast Area Cooperative is available to assist its member districts in determining necessary services for students to participate in nonacademic activities.

- **Children in public or private institutions; 300.118; ARSD 24:05:28:07**

Each school district through its IEP team and individual education program procedures, shall ensure that children placed in public or private institutions or other care facilities are educated with children who are not disabled to the maximum extent appropriate.

- **Teachers and administrators are provided with technical assistance and training; 300.119; ARSD 24:05:28:11**

The department shall ensure that teachers and administrators in all public agencies are fully informed about their responsibilities for implementing the provisions of this chapter and are provided with technical assistance and training necessary to assist them.

The Southeast Area Cooperative and its member districts encourage individuals to attend state provided technical assistance workshops and relevant trainings as well as providing ongoing training to all appropriate staff to assist all in the provision of services to students with disabilities within the cooperative and its member districts based on periodic needs assessment.

- **Monitors placements, 300.120; ARSD 24:05:28:12**

The department shall ensure that the provisions of this chapter are implemented by each district. If the department finds evidence that a district makes placements that are inconsistent with the requirements for the least restrictive environment in Part B of the Individuals with Disabilities Act, the department shall review the district's justification for its actions and shall assist in planning and implementing any necessary corrective action.

The districts will submit data to the State for the purpose of monitoring educational placements for students with disabilities on an annual basis.



## SECTION VI:

### **Procedural Safeguards, 34 C.F.R. § 300.121; ARSD 24:05:30**

The Southeast Area Cooperative and its member districts ensures that all children with disabilities and their parents are afforded the required procedural safeguards of 34 CFR 300.500 through 300.356 as outlined in the *South Dakota Parental Rights and Procedural Safeguards* document.

The district will provide a copy of the procedural safeguards document to the parents of an eligible child with a disability at least one time each year, in addition to the following:

- upon initial referral or parent request for an evaluation;
- upon request by the parent;
- in accordance with discipline procedures outline in the procedural safeguards document;
- upon receipt of the first state complaint or first due process complaint in a given school year.

- **Opportunity to examine records; parent participation in meetings; 300.501(a)(b)(c); ARSD 24:05:30:02**

The district ensures that the parents of a child in need of special education or special education and related services shall be afforded the opportunity to inspect and review all education records concerning the identification, evaluation, and educational placement of the child and the provisions of a free appropriate public education to the child, in accordance with the confidentiality of information requirements.

The parents of a child with a disability are afforded the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child. Each school district should provide notice consistent with district policies and procedures for procedural safeguards to ensure that parents of eligible students to be given the opportunity to participate in the meeting described in article 24:05. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the district shall use other methods to ensure their participation, including individual or conference calls or video conferencing.

A placement decision may be made by a group without parental involvement, if the district is unable to obtain the parent's participation in the decision. The district must have a record of its attempts to ensure parental involvement.

A meeting does not include informal or unscheduled conversations involving school district personnel and conversation on issues such as teaching methodology, lesson plans, or coordination of services provision. In addition, a meeting does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

- **Independent educational evaluations; 300.502; ARSD 24:05:30:03**

For purposes of this section, "evaluation" means the procedures used in accordance with district policies to determine whether a child is a child with a disability and to determine the nature and extent of the special education and related services that the child needs. For purposes of this section, the term, "public expense", means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent consistent with department and district policies on interagency agreements, coordination of services, obligations of non-educational public agencies, public benefits or insurance, private insurance, and use of Part B funds for insurance costs.

If a parent refuses to consent to a proposed evaluation initiated by the School District, an IEE at public expense is not available because there is not a public evaluation with which the parent can disagree. If a parent believes a proposed public evaluation is inappropriate, he or she may pursue an appropriate publicly funded evaluation via the mediation or due process procedures provided under the law and outlined in further sections of this policy.

However, because no single assessment or procedure may be utilized as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate education program for the child, the results of an IEE cannot be the sole determining factor for eligibility and individualized education programs.

Except for the criteria described in this section, a district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

- Procedure to Obtain an IEE at Public Expense:
  - Parents should submit to the school district a written request for an IEE and may include in such request an explanation of their reasons for objecting to the evaluation conducted by the school district. However, the school district will not deny parents a publicly funded IEE because they do not provide the district with a written request or because they fail to provide reasons for requesting an IEE.
    - Upon receipt of a parental request for an IEE, the school district will determine whether it will initiate a due process hearing to establish the appropriateness of its evaluation or proceed with ensuring that an IEE is provided at public expense. The school district will respond in writing to a parental request for an IEE within fifteen (15) school days from the date the request is received.
    - If the school district decides that an IEE will be made available at public expense, the school district's written response to the parents will contain the following information:
      - A list of the names and addresses of IEE examiners located within the Southeast Area Cooperative service area in addition to specific evaluation facilities outside of the service area. The list will identify those IEE examiners who, in the school district's judgment, meet the same criteria that the school district uses when it initiates an evaluation and selects an examiner. If the school district cannot identify a qualified examiner with the specified area, it will identify an individual located in the state of South Dakota who is qualified to perform the evaluation. Parents will be given the opportunity to provide information to the school district that demonstrates that unique circumstances justify selection of an IEE examiner who does not meet the school district's qualification criteria.
      - The location of the evaluation - IEE's are to be conducted in the school district whenever possible. However, parents shall be given the opportunity to provide information to the school district that demonstrates that unique circumstances may warrant the necessity of evaluating the child at a location outside of the school district.
      - A description of the school district's criteria for selection of IEE examiners.
      - A list of the areas that need to be assessed to be comparable to the district's evaluation.
- The following minimum qualifications for IEE examiners are consistent with the school district's criteria for selecting examiners when initiating an evaluation. Examiners with credentials or characteristics other than those listed below may not be provided by the school district at public expense.
  - An examiner must be licensed by the South Dakota Department of Education in the appropriate field when the area of evaluation is governed by state licensure, or hold a college or university degree and training in the appropriate field of expertise where no applicable license exists. Physicians, nurses, and non-school psychologists must be licensed by the State of South Dakota.
  - IEEs shall not exceed 10% of the customary charges applied by qualified evaluators within the school district and service cooperative. Parents will be given the opportunity to submit information for the school district to consider demonstrating why expenses exceed the maximum allowable cost.
  - The examiner must not be an employee of the school district or other public agency responsible for providing educational services within the school district.
  - The examiner must be permitted to directly communicate and share information with members of the IEP team. The examiner will be expected to conduct in-class observations if the school district examiner observed the child as part of his or her assessment or as a required component of the evaluation of a learning disability. The examiner must also agree to release the assessment and results, including parent and teacher surveys, prior to receipt of payment for services.

- o IEEs shall not exceed 10% of the customary charges applied by qualified evaluators per day or hour for similarly qualified staff members employed by the school district or Southeast Area Cooperative during the current school year as determined by the district superintendent or director of special education. In the event the examiner is one not typically employed by the school district, such as a medical doctor, psychiatrist, or other similar professional, reimbursement costs will be limited to reasonable and customary charges as determined by the school district. If the school district believes the requested expenses to be unreasonable, it may decline to provide the full cost of the IEE and initiate a due process hearing to challenge the provision of the IEE at public expense.
- o Maximum costs reimbursed to parents for food, lodging, and travel when an evaluation cannot occur within the school district and when such necessity has been shown pursuant to this section, will reflect the per diem reimbursement rates for the current year as set by the Board of Finance for South Dakota state employees. In all cases, reimbursed expenses will be limited to those incurred by the student and up to two accompanying adults. Additionally in all cases, travel and lodging would be limited to one day before and one day after the completion of the evaluation. Travel will be reimbursed at a rate commensurate with the most economical method when considering the number of individuals attending the evaluation. When lodging, meals, or other additional expenses can be minimized through reduced rates, these must be given priority. Such cases include lodging in family dormitories at the evaluation facility and food available at a facility cafeteria. In those cases when individuals choose to purchase travel, food, or lodging above and beyond the reimbursement rates outlined in this section, the school board will reimburse based on the most economical costs the individual could have incurred while receiving the same benefit.
- o If a dispute or disagreement arises regarding the parent's right to obtain an IEE at public expense, the selection of an IEE examiner, the location of the evaluation, or the maximum allowable cost of the IEE, the school district will, without unnecessary delay, initiate a due process hearing to demonstrate that the evaluation obtained by the parent did not meet the agency's criteria.

List of Independent Educational Evaluators

Name	Contact Information	A b i l i t y	A c h i e v e m e n t a n d Ski ll- B a s e d	A d a p t i v e B e h a v i o r a n d B e h a v i o r	A u t i s m	O c c u p a t i o n a l T h e r a p y	P h y s i c a l T h e r a p y	S p e e c h - L a n g u a g e P a t h o l o g y
LifeScope (formerly CCHS) 2501 West 26th Street Sioux Falls, SD 57105	<a href="http://www.cchs.org">www.cchs.org</a>  (605) 444-9500	X	X	X	X	X	X	X
USD - Center for Disabilities 1400 West 22nd Street Sioux Falls, SD 57105	<a href="mailto:cd@usd.edu">cd@usd.edu</a>  (605) – 357-1439				X			

South Central Cooperative 406 E. 14 <sup>th</sup> Ave. Tyndall, SD 57066	<a href="http://www.southcentralcoop.k12.sd.us/">www.southcentralcoop.k12.sd.us/</a> (605)- 589-3134	X	X	X	X	X	X	X
--	---	---	---	---	---	---	---	---

- **Prior written notice; content of notice; 300.503; ARSD 24:05:30:04**

Written notice meets the requirements of §24:05:30.05 must be given to the parents five (5) days before the district proposes or refuses to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education to the child. The five-day notice requirements may be waived by the parents.

The content of the notice must include the following:

- a description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take the action, and a description of any other options the IEP team considered and the reasons why those options were rejected.
- a description of each evaluation procedure, assessment, record or report that the district uses as a basis for the proposal or refusal
- a description of any other factors which are relevant to the district's proposal or refusal
- a statement that the parents of a child with a disability have protection under the procedural safeguards of this article and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- sources for parents to contact to obtain assistance in understanding the provisions of article 24:05.

This notice must be written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, 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 local education agency shall take steps to ensure that the notice is translated orally or by other means to the parent in his native language or other mode of communication, that the parent understands the content of the notice, and that there is written evidence that the requirements in this section have been met.

The Southeast Area Cooperative and its member districts utilize the Prior Written Notice provided through Infinite Campus or the State website to ensure all content is appropriate.

- **Procedural safeguards notice; 300.504; ARSD 24:05:30:06.01; ARSD 24:05:30:06.02**

The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under this article and the state complaint procedures relating to:

- independent educational evaluation;
- prior written notice;
- parental consent;
- access to educational records;
- opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
  - the time period in which to file a complaint;
  - the opportunity for the district to resolve the complaint; and
  - the difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- the child's placement during pendency of any due process complaint;
- procedures for students who are subject to placement in an interim alternative educational setting;

- o requirements for unilateral placement by parents of children in private schools at public expense;
- o the availability of mediation;
- o hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- o civil actions, including the time period in which to file those actions; and
- o attorneys' fees.

The form of the notice must be consistent with § 24:05:30:06, including written evidence that the requirements in this section have been met.

A copy of the procedural safeguards must be given to the parents, only one(1) time per school year, except that a copy must also be given to the parent:

- o upon initial referral or parent request for evaluation
- o upon request by parent
- o in accordance with the discipline procedures in district policies on suspension and expulsion
- o upon receipt of the first state complaint filed under department procedures and the first due process complaint filed under district policies and procedures in a school year

A district may place a current copy on the procedural safeguards notice on its website, if a website exists.

● **Use of electronic mail; 300.505; ARSD 24:05:30:06.03**

A parent of a child with a disability may elect to receive notices required by this chapter by an electronic mail communication, if the district makes that option available.

● **Availability of mediation; 300.506; ARSD 24:05:30:09**

Each school district 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. Procedures for mediation are as follows:

- o the district 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 right to a hearing on a parent's due process complaint, or to deny any other rights afforded under this article; and
- o the mediation conference is an intervening, informal process conducted in a non-adversarial atmosphere that is scheduled in a timely manner and held in a location that is convenient to the parties in the dispute.

The state shall bear the cost of the mediation process, including the costs of meetings described in § 24:05:30:09.02.

The mediation process shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The department shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education or special education and related services. Mediators shall be selected on a random, rotational, or other impartial basis.

An individual who serves as a mediator:

- o May not be an employee of:
  - any school district or state agency that is involved in the education or care of the child; or
  - the department, if the department is providing direct services to a child who is the subject of the mediation process; and
- o May not have a personal or professional interest that conflicts with the person's objectivity

A person who otherwise qualifies as a mediator is not an employee of a district or state agency solely because the person is paid by the department to serve as a mediator.

A school district may establish procedures to offer to parents and schools who elect not to use the mediation process to meet, at a time and location convenient to the parents with a disinterested party;

- o who is under contract with a parent training and information center or community parent resource center in the state, or an appropriate alternative dispute resolution entity; and

- who would explain the benefits of the mediation process and encourage the parents to use the process

If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth that resolution and that:

- states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court; and
- is signed by both the parent and a representative of the district who has the authority to bind the district

A written signed mediation agreement under this section is enforceable in any state court of competent jurisdiction or in a district court of the United States.

- **Filing of due process complaints; 300.507; 300.508; 300.509; ARSD 24:05:30:07.01**

A parent or a school district may file a due process complaint on any matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

A due process complaint shall allege a violation that occurred not more than two (2) years before the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The timeline described in this section does not apply to a parent if the parent was prevented from filing a due process complaint due to:

- specific misrepresentations by the district that it had resolved the problem forming the basis of the due process complaint; or
- the district's withholding of information from the parent that was required under this chapter to be provided to the parent

The school district shall inform the parent of any free or low-cost legal and other relevant services available in the area, if the parent or school district files a due process complaint under this section or the parent requests the information (i.e. South Dakota Advocacy, South Dakota Parent Connection)

A school district must have procedures that require either party or the attorney representing a party, to provide to the other party a due process complaint, which must remain confidential. The party filing a due process complaint shall forward a copy to the department.

The notice required in district policies and procedures must include:

- the name of the child
- the address of the residence of the child
- the name of the school the child is attending
- in the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending
- a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem, and
- a proposed resolution of the problem to the extent known and available to the party at the time

The Southeast Area Cooperative and its member districts utilize the Dispute Resolution Forms found on the State Website to ensure all required content is included.

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.

The due process complaint required by this chapter is deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within fifteen (15) days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in district policies and procedures.

Within five (5) days of receipt of the notification required under district policies and procedures, the hearing officer shall make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of district policies and shall immediately notify the parties in writing of that determination.

A party may amend its due process complaint only if:

- the other party consents in writing to the amendments and is given the opportunity to resolve the due process complaint through resolution meeting held under district policies and procedures; or
- the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than 5 days before the due process hearing begins.

A party files an amended due process complaint, the timelines for the resolution meeting and the time period for resolving the complaint begin again with the filing of the amended due process complaint.

If the district has not sent a prior written notice under this chapter to the parent regarding the subject matter contained in the parent's due process complaint, the district shall, within ten days of receiving the due process complaint, send to the parent a response that includes:

- an explanation of why the district proposes or refuses to take that action raised in the due process complaint;
- a description of other options that the IEP team considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the district used as the basis for the proposed or refused action; and
- a description of other factors that are relevant to the district's proposed or refused action.

A response by the district under this section does not preclude the district from asserting that the parent's due process complaint was insufficient, if appropriate.

Except as provided in district policies, the party receiving a due process complaint shall, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

● **Resolution process; 300.510; ARSD 24:05:30:08.09.12**

Within fifteen (15) days of receiving notice of the parent's due process complaint, and before the initiation of a due process hearing under this chapter, the district shall convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint.

The meeting:

- shall include a representative of the district who has decision-making authority on behalf of the district; and
- may not include an attorney of the district unless the parent is accompanied by an attorney.

The parent and district shall determine the relevant members of the IEP team to attend the meeting.

The purpose of the resolution meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the district has the opportunity to resolve the dispute that is the basis for the due process complaint.

The resolution meeting need not be held if:

- the parent and the district agree in writing to waive the meeting; or
- the parent and the district agree to use the mediation process described in this chapter

If the district has not resolved the due process complaint to the satisfaction of the parent within thirty (30) days of the receipt of the due process complaint, the due process hearing may occur.

Except as provided in § 24:05:30:08.14, the timeline for issuing a final decision in a due process hearing begins at the expiration of the thirty (30) day period.

Except where the parties have jointly agreed to waive the resolution process or to use mediation, 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.

If the district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedure in district policies, the district may, at the conclusion of the thirty (30) day period, request that a hearing officer dismiss the parent's due process complaint.

If the district fails to hold the resolution meeting specified in district policies and procedures within fifteen (15) days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

The forty-five (45) day timeline for the due process hearing described in this chapter starts the day after one of the following events:

- o both parties agree in writing to waive the resolution meeting
- o after either the mediation or resolution meeting starts but before the end of the 30 day period, the parties agree in writing that no agreement is possible; or
- o if, after both parties agree in writing to continue the mediation at the end of the thirty (30) day resolution period, the parent or the district withdraws from the mediation process.

If a resolution to the dispute is reached at the meeting described in district policies and procedures, the parties shall execute a legally binding agreement that is:

- o signed by both the parent and a representative of the district who has the authority to bind the district; and
- o enforceable in any state court of competent jurisdiction or in a district court of the United States.

If the parties execute an agreement pursuant to this section, a party may void the agreement within three (3) business days of the agreement's execution.

If a settlement agreement is reached in a resolution meeting, the local school district shall forward a signed and dated copy of the written agreement to the State Director of Special Education. The department is required to report data on resolution agreements to the U.S. Department of Education, Office of Special Education Programs.

● **Impartial due process hearing; 300.511; ARSD 24:05:30:09.04**

If a due process complaint is received under this chapter 24:05:26.01, the parents or the district involved in the dispute shall have an opportunity for an impartial due process hearing; consistent with the procedures in this article.

The department is responsible for ensuring that a due process hearing is held.

The party requesting a due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under this chapter, unless the other party agrees, otherwise.

A parent may file a separate due process complaint on an issue separate from a due process complaint already filed.

A parent or district shall request an impartial hearing on their due process complaint within two (2) years of the date the parent or district knew or should have known about the alleged action that forms the basis of the due process complaint.

The timeline described in this section does not apply to a parent if the exceptions in district policies and procedures exist.

A hearing may not be conducted by a person who is an employee of the department or a school district which is involved in the education 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:

- o possess knowledge of and the ability to understand, the provisions of IDEA, federal and state regulation pertaining to IDEA and legal interpretations of IDEA by federal and state courts



- o possess knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- o 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.

Subject to the provisions of this section, a hearing officer's determination of whether a child received a FAPE shall be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies:

- o impeded the child's right to a FAPE
- o significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- o caused a deprivation of educational benefit

Nothing in this section precludes a hearing officer from ordering a district to comply with procedural requirements under this chapter, suspension and expulsion.

- **Hearing rights; 300.512; ARSD 24:05:30:12**

Any party to a hearing under this chapter or chapters 24:05:26 and 24:05:26.01 has the right to:

- o be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that neither party has the right to be represented by a non-attorney at a hearing;
- o present evidence and confront, cross-examine, and compel the attendance of witnesses;
- o prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
- o obtain a written or at the option of the parents, electronic verbatim record of the hearing; and
- o obtain written, or at the option of the parents, electronic findings of fact and decisions.

The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the state advisory 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.

At least five (5) business days prior to a hearing conducted under this section for procedural safeguards, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

The department shall ensure that not later than forty-five (45) calendar days after the expiration of the thirty (30) day period under this section for procedural safeguards or adjusted time period described in this section, a final decision is reached on the hearing and a copy of the decision is mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the periods set out in this section at the request of either party. Each hearing must be conducted at a time and place which is reasonably convenient to the parents and child involved.

- **Hearing decisions; 300.513; 300.514; 300.515; 300.516; 300.517; ARSD 24:05:30:11**

Any party aggrieved by the decision of the hearing officer under this chapter or chapters 24:05:26 and 24:05:26.01 may bring a civil action with respect to a due process complaint notice requesting a due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(2). A civil action may be filed in either state or federal court without regard to the amount in controversy.

The party bringing the action has ninety (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:

- shall review the records of the administrative proceedings;
- shall hear additional evidence at the request of a party; and
- basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

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

In any action or proceeding brought under 20 U.S.C. § 1415(e), the court, in its discretion, may award reasonable attorneys' fees under 20 U.S.C. § 1415(i)(3) as in effect on December 3, 2004, as part of the cost to the prevailing party who is the parent of a child with a disability; to the prevailing party who is the state or district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or to the prevailing party who is the state or district against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Funds under Part B of the Individuals with Disabilities Education Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the IDEA and this chapter. This does not preclude a district from using IDEA, Part B funds for conducting an action or proceeding under section 615 of IDEA.

- **Status of child during due process proceedings; 300.518; ARSD 24:05:30:14**

Except as provided in chapters 24:05:26 and 24:05:26.01, during the pendency of any administrative hearing or judicial proceeding regarding a due process complaint notice requesting a due process hearing pursuant to this chapter, the child involved must remain in the present educational placement unless the state or school district and the parents agree otherwise. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

If the complaint involves an application for initial services under this article from a child who is transitioning from Part C of the IDEA to Part B and is no longer eligible for Part C services because the child has turned three, the district is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the district must provide those special education and related services that are not in dispute between the parent and the district.

If the decision of a hearing officer in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the state and the parents for purposes of pendency.

- **Surrogate parents; children who are wards of the state; homeless youth; 300.519; ARSD 24:05:30:15**

Each school district shall establish procedures for the assignment of a surrogate parent to ensure that the rights of a child are protected if no parent, as defined in §24:05:13:04, can be identified and the district, after reasonable effort, cannot locate a parent or if the child is a ward of the state or the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act, as amended to January 1, 2009.

A district's method for determining whether a child needs a surrogate parent must include the following:

- the identification of staff members at the district or building level responsible for referring students in need of a surrogate parent;
- the provision of in-service training on the criteria in this section for determining whether a child needs a surrogate parent; and
- the establishment of a referral system within the district for the appointment of a surrogate parent.

If a child is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, if the surrogate meets the requirements of this section.

The district superintendent or designee shall appoint surrogate parents.

The district shall ensure that a person selected as a surrogate has no personal or professional interest that conflicts with the interest of the child the surrogate represents and has knowledge and skills that ensure adequate representation of the child. The district is responsible for the training and certification of surrogate parents and shall maintain a list of persons who may serve as surrogate parents.

A person assigned as a surrogate may not be an employee of the department, district, or any other agency that is involved in the education or care of the child.

If a child is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents, without regard to the nonemployee provision above, until a surrogate parent can be appointed who meets all of the requirements of this section.

A person who otherwise qualifies to be a surrogate under the provisions of this section is not an employee of the agency solely because the person is paid by the agency to serve as a surrogate parent.

The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement, and provision of FAPE to the students.

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

The term, parent, means:

- a biological or adoptive parent of a child;
- 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;
- a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state;
- 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
- a surrogate parent who has been appointed in accordance with district policies and procedures.

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 decisions for the child.

If a judicial decree or order identifies a specific person or persons under the above subdivisions, inclusive, of this section to act as the parent of a child or to make educational decisions on behalf of a child, then the person or persons are deemed to be the parent for purposes of this section.

Ward of the state means a child who, as determined by the state, 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 above definition of a parent.

- **Transfer of rights at age of majority; 300.520; ARSD 24:05:30:16.01**

Consistent with state law, when a child with a disability reaches the age of majority that applies to all children, except for an eligible child who has been determined to be incompetent, the following shall occur:

- the school district shall provide any notice required by article 24:05 to both the individual and the parents;
- all other rights accorded to parents under article 24:05 transfer to the child; and
- all rights accorded to parents under article 24:05 transfer to children who are incarcerated in an adult or juvenile, state, or local correctional institution.

If a state transfers rights under this section, the school district shall notify the individual and the parents of the transfer of rights. If, consistent with state law, an eligible child is determined not to have the ability to provide informed consent with respect to the educational program of the child, the school district shall appoint the parent, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the child's eligibility under this article.

- **Discipline procedures and manifestation determination; 300.530; ARSD 24:05:26:09.03**

Within ten (10) school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team, as determined by the parent and the district, shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
- whether the conduct in question was the direct result of the school district's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the district, the parent, and relevant members of the student's IEP team determine that a condition in either subdivision of this section was met.

If the district, the parent, and relevant members of the student's IEP team determine that the condition described above in this section was met, the district shall take immediate steps to remedy those deficiencies.

- **Determination of setting; 300.531; ARSD 24:05:26:09.2**

The student's IEP team shall determine the interim alternative educational setting in which a student is placed under §§ 24:05:26:08.01, 24:05:26:02.01, and 24:05:26:09.05.

Each district shall establish and implement procedures for suspension and expulsion of students with disabilities.

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with other requirements of this chapter, is appropriate for a student with a disability who violates code of student conduct.

- **Right of appeal of the determination of setting; 300.532; ARSD 24:05:26:09.05**

The parent of a student with a disability who disagrees with any decision regarding placement under this chapter or with the manifestation determination, or a school district that believes that maintaining the current placement of the student

is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to this article.

- **Placement during appeals; 300.533; ARSD 24:05:26:09.06**

If an appeal under this chapter has been made by either the parent or the school district, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § 24:05:26:08.01 or 24:05:26:09.05, whichever occurs first, unless the parent and the state education agency or school district agree otherwise.

- **Protections for children not determined eligible for special education and related services; 300.534; ARSD 24:05:26:14**

A student who has not been determined to be eligible for special education and related services under this article and who has engaged in behavior that violated any rule or code of conduct of the school district, including any behavior described in this chapter, may assert any of the protections provided for in this article if the school district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

A school district is deemed to have knowledge that a student is a student with a disability if:

- the parent of the student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;
- the parent of the student has requested an evaluation of the student pursuant to this article; or
- the teacher of the student, or other personnel of the district or other public agency has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the district or to other supervisory personnel of the district.

A district is not deemed to have knowledge that the student is a student with a disability under this section, if the parent of the student has not allowed an evaluation of the student pursuant to this article, or has refused services under this article, or the district conducted an evaluation consistent with this article and determined that the student was not a student with a disability.

If the district does not have knowledge that a student is a student with a disability before taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with this chapter.

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this chapter, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district shall provide special education and related services in accordance with the provisions of this article including the discipline procedures and free appropriate public education requirements.

- **Referral to action by law enforcement and judicial authorities; 300.535; ARSD 24:05:26:15**

Nothing in Part B of the Individuals with Disabilities Education Act prohibits a school district or other public agency from reporting a crime committed by a student with a disability to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

A school district or other public agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime. A school district reporting a crime under this chapter may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act, as amended to January 8, 2009

- **Change of placement due to disciplinary removals; 300.536; ARSD 24:05:26:02.01**

For purposes of removal of a student with a disability from the student's current educational placement under this chapter, a change of placement occurs if:

- o the removal is for more than ten consecutive school days; or
- o the student is subjected to a series of removals that constitute a pattern because:
  - they cumulate to more than ten school days in a school year;
  - of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another; and
  - the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals.

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

## SECTION VII:

### Evaluation 34 C.F.R. §300.122; ARSD 24:05:25

The Southeast Area Cooperative and its member districts ensure that reasonable efforts will be made to obtain consent to conduct initial evaluations and re-evaluations. These efforts will be documented. Evaluations and reports will be completed in order to comply with deadlines as set forth for the Department of Education. Screenings are not considered to be evaluations. Multiple assessments will be used to determine eligibility for special education services will be given in the student's native language, be valid and reliable, be administered by trained personnel and sufficiently comprehensive to identify all of the child's special education services and related services.

The IEP team, using the results of assessments, will determine the child's eligibility for special education services and related services. A copy of the evaluation report shall be provided to parents at no cost. Lack of instruction may not be used to determine eligibility for services.

The IEP team will ensure that children suspected of having a specific learning disability (SLD) have been observed in their normal learning environment and that IEP team members are qualified to determine if a child has an SLD. Documentation must be used that supports a child having an SLD.

Evaluation, for the purposes of this section, means the procedures used in accordance with district policies to determine whether a child is a child with a disability and to determine the nature and extent of the special education and related services that the child needs.

- **Parental consent (for initial evaluation, services, and re-evaluations; 300.300; ARSD 24:05:25:02.01, ARSD 24:05:25:06.01 ARSD.**

Any school district proposing to conduct an initial evaluation to determine whether a child qualifies as a child with a disability shall, after providing notice consistent with district policies and procedures for procedural safeguards, obtain informed consent from the parent of the child before conducting the evaluation.

Parental consent for initial evaluation may not be construed as consent for initial provision of special education and related services.

The school district shall make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

To meet the reasonable efforts requirement in this section, the district shall document its attempts to obtain parental consent using procedures such as detailed records and dates of telephone calls, correspondence, and home or place of employment visits.

Consent, as used in this article, the term consent, means:

- the parent has been fully informed of all information relevant to the activity for which consent is sought, in the native language, or other mode of communication;
- the parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent describes that activity and lists the records, if any, that will be released and to whom
- the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- if a parent revokes consent, that revocation is not retroactive, it does not negate an action that has occurred after the consent was given and before the consent was revoked; and
- if the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the local education agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

For initial evaluations only, if the child is a ward of the state and is not residing with the child's parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

- despite reasonable efforts to do so, the district cannot discover the whereabouts of the parent of the child;
- the rights of the parents of the child have been terminated in accordance with state law; or
- the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

To meet the reasonable efforts requirement in this section, the district shall document its attempts to obtain parental consent using procedures such as detailed records and dates of telephone calls, correspondence, and home or place of employment visits.

If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under this section, or the parent fails to respond to a request to provide consent, the district may, but is not required to, pursue the initial evaluation of the child by using the procedural safeguards in article 24:05, including the mediation procedures or the due process procedures, if appropriate, except to the extent inconsistent with state law relating to such parental consent.

The school district does not violate its obligation under child find in article 24:05 and the requirements in this chapter regarding parental consent, evaluation, and reevaluation if the district declines to pursue the evaluation.

Other consent requirements include the following:

- Parental consent is not required before:
  - reviewing existing data as part of an evaluation or a reevaluation; or
  - administering a test or other evaluation that is administered to all children unless, before administration of the that test or evaluation, consent is required of parents of all children;

A school district may not use a parent's refusal to consent to one service or activity under this section to deny the parent or child any other service, benefit, or activity of the school district, except as required by article 24:05;

If a parent of a child who is receiving alternative instruction under SDCL 13-27-3 or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or if the parent fails to respond to a request to provide consent, the school district may not use the consent override procedures described in district policies for procedural safeguards, including mediation and due process hearing procedures. The school district

is not required to consider the child as eligible for services under district policy for children voluntarily enrolled in nonpublic schools.

Before conducting a reevaluation of an eligible child, parental consent is required, unless:

- the school district can demonstrate that it has taken reasonable measures to obtain consent, and the child's parent has failed to respond; and
- the school district documents its efforts to obtain consent by using the procedures consistent with § 24:05:25:17.

If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override procedures described in chapter 24:05:30 including mediation and due process hearing procedures.

- **Initial evaluations; (Placement evaluations, ARSD 24:05:25:03)**

Before any action is taken concerning the initial placement of a child with disabilities in a special education program, a full and individual initial evaluation of the child's educational needs must be conducted in accordance with the requirements of this chapter.

Initial evaluations must be completed within 25 school days after receipt by the district of signed parent consent to evaluate unless other timelines are agreed to by the school administration and the parents.

Written evaluation reports, determination of eligibility, and conducting an IEP team meeting must be completed within 30 days from the end of the 25 school day evaluation timeline. If another timeline for completing the evaluation process is agreed to by the parent and school administration, the written evaluation reports, determination of eligibility, and conducting an IEP team meeting must be completed within 30 days from the end of agreed upon evaluation timeline.

Consistent with the consent requirements in this section, either a parent of a child or a school district may initiate a request for an initial evaluation to determine whether the child is a child with a disability.

The timeline for conducting initial evaluations does not apply to a school district if:

- the parent of the child repeatedly fails or refuses to produce the child for the evaluation or
- a child enrolls in a school of another school district after the relevant timeline for conducting an initial evaluation has begun, and before a determination by the child's previous school district as to whether the child is a child with a disability.

The exception in this section applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

- **Screening for instructional purposes; 300.302; ARSD 24:05:25:03.03**

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services.

- **Re-evaluations; 300.303; ARSD 24:05:25:06**

A school district shall ensure that a reevaluation of each child with a disability is conducted in accordance with this chapter if the school district determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation or if the child's parents or teacher requests a reevaluation.

A reevaluation conducted under this section may occur not more than once a year, unless the parent and district agree otherwise, and must occur at least once every three years, unless the parent and the district agree that a reevaluation is unnecessary.

Reevaluations must be completed within 25 school days after receipt by the district of signed consent to reevaluate unless other time limits are agreed to by the school administration and the parents consistent with § 24:05:25:03.



Each school district shall follow the procedures under § 24:05:25:04.02 when reevaluating a student for the additional purposes of:

- determining whether the child continues to have a disability and determining the educational needs of the child;
- determining the present levels of academic achievement and related developmental needs of the child;
- determining whether the child continues to need special education and related services; and
- determining whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP and to participate, as appropriate, in the general education curriculum.

If no additional data are needed to determine continuing eligibility and the child's educational needs, the district shall notify the parents of that determination and reasons for it and of the right of the parent to request an assessment, for purposes of determining the child's educational needs under this article, and to determine continuing eligibility.

The school district is not required to conduct an assessment unless requested to do so by the child's parents.

However, a school district shall follow the procedures in this chapter before determining that the child is no longer a child with a disability.

The evaluation procedures described in this chapter are not required before the termination of a child's eligibility under this article due to graduation from secondary school with a regular high school diploma, or exceeding the age eligibility for FAPE.

- **Evaluation procedures; 300.304; 300.305; ARSD 24:05:25:04**

The district shall provide notice to the parents of a child with a disability, in accordance with article 24:05 that describes any evaluation procedures the district proposes to conduct.

School districts shall ensure, at a minimum, that evaluation procedures include the following:

- Assessments and other evaluation materials are provided and administered in the child's native language or by another mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer. In addition, assessments and other evaluation materials:
  - are used for the purposes for which the assessments or measures are valid and reliable; and
  - are administered by trained and knowledgeable personnel in conformance with the instructions provided by their producer;
- Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;
- Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment accurately reflects the child's aptitude or achievement level or whatever other factors the assessment purports to measure, rather than the child's impaired sensory, manual, or speaking skills except where those skills are the factors which the assessment purports to measure;
- No single measure or assessment is used as the sole criterion for determining eligibility or an appropriate educational program for a child;
- A variety of assessment tools and strategies are used to gather relevant functional, developmental, and academic information about the child, including information provided by the parents, that may assist in determining:
  - whether the child is a child with a disability; and
  - the content of the child's IEP, including information related to enabling the child:
    - to be involved in and progress in the general education curriculum; or
    - for a preschool child, to participate in appropriate activities;

- o Technically sound instruments, assessment tools, and strategies are used that:
  - may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and
  - provide relevant information that directly assists persons in determining the educational needs of the child;
- o The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities; and
- o The evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified.

Assessments of children with disabilities who transfer from one school district to another school district in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 24:05:25:03.01, to ensure prompt completion of full evaluations.

As part of an initial evaluation, if appropriate, and as part of any reevaluation, the individual education program team required by district policy and other qualified professionals, as appropriate, with knowledge and skills necessary to interpret evaluation data, shall:

- Review existing evaluation data on the child, including:
  - o evaluations and information provided by the parents of the child;
  - o current classroom-based local or state assessments and observations; and
  - o observations by teachers and related services providers; and
- Based on the above review and input from the student's parents, identify what additional data, if any, are needed to determine:
  - o whether the student has a particular category of disability as described in article 24:05;
  - o the present levels of academic achievement and related developmental needs of the student; and
  - o whether the student needs special education and related services.

The school district shall administer assessments and any other evaluation materials as may be needed to produce the data required to make the determinations listed in this section. If no additional data are needed to make the determinations in this section, the school district shall notify the student's parents of this fact and the reasons for this decision. The group described in this section may conduct its review without a meeting.

• **Determining eligibility; 300.306; ARSD 24:05:25:04.03**

Upon completing the administration of assessments and other evaluation measures as required by this chapter, the individual education program team and other qualified individuals required by § 24:05:25:04.02 shall determine whether the student is a student with a disability, and shall determine the educational needs of the child, as defined in this article. The school district shall provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.

A student may not be determined to be a student with a disability if the determinant factor for that decision is lack of appropriate instruction in reading, including the essential components of reading instruction as defined in ESEA, or lack of appropriate instruction in math or limited English proficiency and if the student does not otherwise meet the eligibility criteria under chapter § 24:05:24.01.

Students with disabilities are students evaluated in accordance with district policies and procedures that are eligible in one or more of the following categories:

- o Autism Spectrum Disorder
- o Cognitive Disability
- o Emotionally Disturbed
- o Other Health Impaired
- o Specific Learning Disability

- Speech & Language Impairment
- Hearing Loss
- Deafness
- Vision Loss
- Deaf-Blind
- Orthopedic Impairment
- Traumatic Brain Injury
- Multiple Disability
- Developmental Delay(3-5 years of age)
- Prolonged Assistance (Birth to Three)

And, the disability adversely affects educational performance, and who, because of those disabilities, need special education or special education and related services.

If it is determined through an appropriate evaluation, under district policies and procedures, that a student has one of the disabilities identified in this section, but only needs a related service and not special education, the student is not a student with a disability under article 24:05.

If consistent with this section, the related service required by the student is considered special education, the student is a student with a disability.

In interpreting evaluation data for the purpose of determining eligibility and determining the educational needs of the child in making placement decisions, including decisions regarding preschool children, each school district shall do the following:

- Draw upon information from a variety of sources, including ability and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;
- Ensure that information obtained from sources is documented and carefully considered;
- Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
- Ensure that the placement decision is made in conformity with the least restrictive environment rules in district policy; and
- Ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

If a determination is made that a child is disabled and needs special education and related services, an individual education program must be developed for the child in accordance with least restrictive environment requirements.

If the IEP team determines that a student is eligible for special education or special education and related services because the student has a disability and needs special education even though the student does not meet specific requirements in district policies and procedures, the IEP team must include documentation in the record as follows:

- the record must contain documents that explain why the standards and procedures that are used with the majority of students resulted in invalid findings for this student;
- the record must indicate what objective data were used to conclude that the student has a disability and is in need of special education. These data may include test scores, work products, self-reports, teacher comments, previous tests, observational data, and other developmental data
- since the eligibility decision is based on a synthesis of multiple data and not all data are equally valid, the team must indicate which data had the greatest relative importance for the eligibility decisions; and
- the IEP team override decision must include a sign-off by the IEP team members agreeing to the override decision. If one or more IEP team members disagree with the override decision, the record must include a statement of why they disagree signed by those members.

The Southeast Area Cooperative and its member districts utilize the State Department resources such as the Eligibility Guide to ensure all evaluations are conducted in accordance with eligibility requirements.

- **Specific learning disabilities; 300.307 through 300.311; ARSD 24:05:25:07, ARSD 24:05:25:08, ARSD 24:05:25:11, ARSD 24:05:25:12**

For a child suspected of having a specific learning disability, the documentation of the determination of eligibility shall contain a statement of:

- whether the child has a specific learning disability;
- the basis for making the determination, including an assurance that the determination has been made in accordance with this section;
- the relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- the educationally relevant medical findings, if any;
- whether:
  - the child does not achieve adequately for the child's age or does not meet state-approved grade-level standards; and
  - the child does not make sufficient progress to meet age or state-approved grade-level standards; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards or intellectual development;
- the determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level;
- if the child has participated in a process that assesses the child's response to scientific, research-based intervention:
  - the instructional strategies used and the student-centered data collected; and
  - the documentation that the child's parents were notified about:
    - the state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
    - strategies for increasing the child's rate of learning; and
    - the parents' right to request an evaluation;
- If using the discrepancy model, the group finds that the child has a severe discrepancy of 1.5 standard deviations between achievement and intellectual ability in one or more of the eligibility areas, the group shall consider regression to the mean in determining the discrepancy; and
- If using the response to intervention model for eligibility determination, the group shall demonstrate that the child's performance is below the mean relative to age or state approved grade level standards.

## SECTION VIII:

### **Confidentiality 34 C.F.R. 300.123; ARSD 24:05:29, ARSD 24:05:21:05**

The Southeast Area Cooperative and its member districts will inform parents about the requirements of Chapter 24, the protection of identifiable student information and will permit parents to inspect and review any education records of their child in relation to Chapter 24. Parents have the right to request explanations and interpretations of records. A record of access shall be maintained which documents all parties obtaining access to education records which may be inspected by the parent or eligible child upon request. Parents may only access information that pertains to their child.

Districts will have policies in place regarding types and location of education records that are used by the district. Districts may charge a fee, in accordance with their policies, to make copies of educational records. No fee shall be charged to review and inspect records. Parents may request districts to amend information contained in records if they believe the records are inaccurate, misleading or violates privacy rights of the student. The district may provide an opportunity for a hearing to challenge the information in the student's records to ensure the information is accurate and correct. If the district determines the information is inaccurate, it shall amend the information accordingly and inform the parents in writing. If the district determines the information is accurate, the parents will be notified of their right to place documentation into the student's record regarding their disagreement.

The cooperative and its member districts ensure that parental consent will be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies collecting or using the information under this article or used for any purpose other than meeting a requirement of this chapter. Personally identifiable student information will be protected.

Districts will notify parents when information collected under this chapter is no longer needed. At the parent's request, this information must be destroyed. All districts are monitored by the Department of Education regarding confidentiality of student information. Information pertaining to migrant children will be linked with other agencies as needed.

- **Notice requirements to parents; 300.612; ARSD 24:05:29:18**

The department shall give notice that fully informs parents about the requirements under this chapter, including the following:

- a description of the extent to which the notice is given in the native languages of the various population groups in the state;
- a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including sources from whom information is gathered, and the uses to be made of the information;
- a summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
- a description of all the rights of parents and children regarding this information, including the rights under 34 C.F.R. Part 99, Family Educational Rights and Privacy Act, as amended to July 1, 2013.

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

- **Access rights; 300.613; ARSD 24:05:29:04**

Each school district shall permit parents to inspect and review any education records relating to their student which are collected, maintained, or used by the agency under this chapter. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individual education program or hearing relating to the identification, evaluation, or placement of the student, or discipline hearing, or resolution session, and in no case more than forty-five (45) calendar days after the request has been made.

The right to inspect and review education records under this section includes the following:

- the right to response from the district to reasonable requests for explanations and interpretations of the records;
- the right to request that the district provide copies of the 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
- the right to have a representative of the parent inspect and review the records.

The district may presume that the parent has authority to inspect and review records relating to the parent's child unless the agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, divorce, or custody.

- **Record of access; 300.614; ARSD 24:05:29:05**

Each school district shall keep a record of parties obtaining access to education records collected, maintained, or used under this chapter, except access by parents and authorized employees of the district, 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 or eligible student may inspect this record on request

- **Records on more than one child; 300.615; ARSD 24:05:29:06**

If any education 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 of that specific information.

- **List of types and locations of information; 300.616; ARSD 24:05:29:07**

Each school district shall provide parents on request a list of the types and location of education records collected, maintained, or used by the district.

- **Fees for copies of records; 300.617; ARSD 24:05:29:08**

A school district may charge a fee for copies of 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 district may not charge a fee to search for or to retrieve information under this chapter.

- **Amendments to records at parent's request; 300.618; ARSD 24:05:29:09**

A parent who believes that information in education records collected, maintained, or used under this article is inaccurate or misleading or violates the privacy or other rights of the student may request the district which maintains the information to amend the information.

The district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request.

If the district 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.

- **Opportunity for a hearing; 300.619; ARSD 24:05:29:10**

The district shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

- **Result of hearing and hearing procedures; 300.620-621; ARSD 24:05:29:12**

At a minimum, a district's hearing procedures must include the following elements:

- the hearing must be held within thirty (30) days after the district received the request and the parent of the student or eligible student shall be given notice of the date, place and time 5 days in advance of the hearing;
- the hearing may be conducted by any party, including an official of the district, who does not have a direct interest in the outcome of the hearing;
- the parent of the student or eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or be represented by individuals of his choice at his own expense, including an attorney;
- the district shall make its decision in writing within 30 days after the conclusion of the hearing; and
- the decision of the district shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

If, as a result of the hearing, the district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and inform the parents in writing.

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

Any explanation placed in the records of the student under this section must be maintained by the district as part of the records of the student as long as the record or contested portion is maintained by the district. If the records of the student or the contested portion is disclosed by the district to any party, the explanation must also be disclosed to the party.

- **Parental consent for the release of records; 300.622; ARSD 24:05:29:13**

Parental consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies collecting or using the information under this article or used for any purpose other than meeting a requirement under this chapter, unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA.

The district may not release information from education records to participating agencies without parental consent except as follows:

- an educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is to other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests or to officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in subdivision (2) of this section; and
- an educational agency or institution that discloses the education records of a student pursuant to subdivision (1) of this section shall make a reasonable attempt to notify the parent of the student or the eligible student at the last known address of the parent or eligible student, unless the disclosure is initiated by the parent or eligible student.

If the agency or institution includes in its annual notice of parent's rights that it is the policy of the public agency to forward education records on request to a school in which a student seeks or intends to enroll, then the public agency does not have to provide any further notice of the transfer of records.

Notwithstanding the FERPA exceptions for releasing information from education records without parental consent including the annual notice provision, if a student is enrolled, or will enroll in a private school that is not located in the district of the parent's residence, parental consent must be obtained before any personally identifiable information about the student is released between officials in the district where the private school is located and officials in the district of the parent's residence.

An educational agency receiving personally identifiable information from another educational agency or institution may make further disclosures of the information on behalf of the educational agency without the prior written consent of the parent or eligible student if the conditions of subdivisions (1) and (2) of this section are met and if the educational agency informs the party to whom disclosure is made of these requirements.

- **Safeguarding of records; 300.623; ARSD 24:05:29:14**

Each school district shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official in the district 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 concerning personally identifiable information.

Each district shall maintain for public inspection a current listing of the names and positions of those employees within the district who may have access to personally identifiable information on students in need of special education or special education and related services.

- **Destruction of information; 300.624; ARSD 24:05:29:15**

The school district shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the student.

The information no longer needed must be destroyed at the request of the parents. However, a permanent record of the student's name, address, and phone number, the student's grades, attendance record, classes attended, and grade level completed may be maintained without time limit.

- **Children's rights; transfer at the age of majority; 300.625; ARSD 24:05:29:16**

All of the parental rights in this chapter are extended to the child upon reaching the age of 18 unless the child has been declared incompetent by the courts, consistent with § 24:05:30:16.01, including taking into consideration the type or severity of a child's disability

- **Enforcement; policies and procedures; 300.626; ARSD 24:05:29:17**

The department shall ensure that all school districts in this state comply with the requirements on confidentiality of information through on-site monitoring, approval of comprehensive plans, and complaint resolution. Sanctions for noncompliance include the disapproval of local special education programs and the withholding of state and federal funds.

- **Transfer of records for migratory children with disabilities; 300.213; ARSD 24:05:21:05**

A school district shall cooperate in the U.S. Secretary of Education's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory children with disabilities for the purpose of electronically exchanging, among the states, health and educational information regarding those children.



## **SECTION IX:**

### **Transition from Part C to Part 34 C.F.R. § 300.124; ARSD 24:05:27:21**

The Southeast Area Cooperative and its member districts will ensure that children participating in early intervention programs assisted under Part C, and who will participate in preschool programs assisted under Part B, experience a smooth and effective transition to those preschool programs.

By the third birthday of such a child, an individualized education program (IEP) or, if consistent with 34 C.F.R. § 300.323(b), an individualized family service plan (IFSP), has been developed and is being implemented for the child.

The local education agency (LEA) will participate in transition planning conferences arranged by the designated lead agency.

At least ninety (90) days prior to the child's third (3) birthday, the school district will meet with the local service coordinator and the child's family to discuss and begin necessary steps in the transition plan.

The school district will provide the family with information on the eligibility and evaluation requirements under Part B of the IDEA, including the parent's and school district's rights regarding procedural safeguards.

In addition, the school district will review with the family a child's program options for the period commencing on the day a child turns three and through the remainder of the school year regarding transition planning, including development of an individual education program.

All requirements under IDEA 2004 will be implemented in the process for determining eligibility for a child moving from the Part C program to the Part B program.

## SECTION X:

### **Private School Placements; 34 C.F.R. §§ 300.129 – 300.148; 24:05:31, ARSD 24:05:32**

The Southeast Area Cooperative and its member districts will ensure that eligible children with disabilities who are parentally placed in private schools, including religious schools, or placed in schools or facilities that meet the state definition of elementary school or secondary school shall receive services. If a child with a disability is enrolled in a private school, the public school district will be responsible for providing those services. A representative from the child's school shall attend all meetings either in person or via electronic device including telephone.

Child find activities, similar to those conducted for public school children, will be conducted by the cooperative and its member districts to locate, identify, and evaluate all private school (defined above) children with disabilities. Services provided to children in private schools shall be equitable to those services offered to children with disabilities in the public school district.

The public school district shall consult with the private school representative regarding child find activities, proportionate funding for children with disabilities enrolled in private schools, and the manner in which services are provided. In the event the public school district and private school representative disagree regarding services, the public school district will provide a written explanation regarding the disagreement.

After the consultation, the district will obtain a written affirmation from the private school representative. If a written affirmation is not received in a reasonable time, the public school district shall forward documentation of the consultation to the Department of Education. If a private school feels the public school district did not engage in a meaningful consultation, the private school may submit a complaint to the Department of Education.

Services provided to students in private schools must meet the IEP requirements which will be developed, reviewed and revised according to Chapter 24.

Special education services and related services, including materials and equipment, shall be secular, neutral and non-ideological. Services may be provided at the child's private school, including religious school.

Transportation must be provided from the child's school or home to a site another service site and from the service site to the child's home or school depending on the time of service. Districts will not provide transportation from the child's home to the private school.

School districts may not use IDEA funds to meet the general education needs of a private school or its students. School districts may use IDEA funds for staff who provide services to students in private schools. Upon cessation of need, the school district shall remove equipment and supplies from the private school or if removal is necessary to prevent unauthorized use of equipment or supplies.

In the event that child is under the care and custody of the state, the districts will be responsible for identification, evaluation and placement of the child. The state will be responsible for the cost of special education services and related services.

The state Department of Education will monitor districts to ensure FAPE is met for children with disabilities, who are enrolled in private schools. Districts may be required to reimburse parents for parentally placed children if a hearing officer determines that the district did not meet FAPE. The reimbursement amount may be diminished if parents did not give proper notice

prior to removal of the child, did not make the child available for evaluation or judicial finding of the parents' unreasonableness.

- **Definition of parentally-placed private school children; 300.130; ARSD 24:05:32:01**

The department is responsible for ensuring the participation of eligible parentally-placed private school children in the program assisted or carried out under this article consistent with their number and location by providing them with special education and related services in accordance with this chapter including direct services, unless the U.S. Secretary of Education has arranged for services under the by-pass procedures in Part B of IDEA.

The department shall ensure that a services plan is developed and implemented for each private school child with a disability who has been designated by the district in which a private school is located to receive special education and related services under this chapter. For purposes of this chapter, the term, parentally-placed private school children with disabilities, means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the state definition of elementary school or secondary school, other than children with disabilities covered under chapter 24:05:31.

- **Child find for parentally-placed private school children with disabilities; 300.131; ARSD 24:05:32:01.01**

Each district shall establish a child find process to locate, identify, and evaluate all private school children with disabilities, including religious elementary and secondary school children and children receiving alternative instruction under SDCL 13-27-3 in schools located in the school district served by the district.

The activities undertaken to carry out the responsibility for private school children with disabilities must be similar to activities undertaken for children with disabilities in public schools.

The child find process shall be designed to ensure:

- the equitable participation of parentally-placed private school children; and
- an accurate count of those children.

The child find process shall be completed in a time period comparable to that for students attending public schools in the district consistent with this article.

Each school district in which private, including religious, elementary schools and secondary schools are located shall, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a state other than the state in which the private schools that they attend are located.

Each school district shall maintain in its records, and provide to the department, the following information related to parentally-placed private school children covered under this chapter: the number of children evaluated; the number of children determined to be children with disabilities; and the number of children served.

- **Provision of services for parentally-placed private school children with disabilities; 300.132; ARSD 24:05:32:03.01**

If a child with a disability is enrolled in a religious or other private school, by the child's parent, and will receive special education or related services from the district, the district shall:

- initiate and conduct meetings to develop, review, and revise a services plan for the child, in accordance with § 24:05:32:03.02; and
- ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the district shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

- **Expenditures for parentally-placed private school children with disabilities; 300.133; ARSD 24:05:32:01.02**

To meet the requirements of § 24:05:32:01, each school district must spend the following amounts on providing special education and related services including direct services to parentally-placed private school children with disabilities:

- for children aged 3 to 21, inclusive, an amount that is the same proportion of the school district's total sub-grant under Part B of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 21, inclusive, who are enrolled by their parents in private, including religious, elementary schools and

secondary schools located in the school district served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 21, inclusive; and

- o for children aged 3 to 5, inclusive, an amount that is the same proportion of the school district's total sub-grant under Section 619, Preschool, of the Individuals with Disabilities Education Act as the number of private school children with disabilities aged 3 to 5, inclusive, who are enrolled by their parents in private, including religious, elementary schools located in the school district served by the district is to the total number of children with disabilities in its jurisdiction aged 3 to 5, inclusive.

If a district has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which Congress appropriated the funds, the district shall obligate the remaining funds for special education and related services, including direct services, to parentally-placed private school children with disabilities during a carry-over period of one additional year.

In calculating the proportionate amount of federal funds to be provided for parentally-placed private school children with disabilities, the district, after timely and meaningful consultation with representatives of private schools, shall conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the district.

State and local funds may supplement and in no case supplant the proportionate amount of federal funds required to be expended for parentally-placed private school children with disabilities under this chapter.

- **Consultation process with private schools attended by children with disabilities; 300.134; ARSD 24:05:32:01:05**

To ensure timely and meaningful consultation, a school district, or, if appropriate, the department shall consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

- o the child find process, including:
  - how parentally-placed private school children suspected of having a disability can participate equitably; and
  - how parents, teachers, and private school officials will be informed of the process;
- o the determination of the proportionate share of federal funds available to serve parentally-placed private school children with disabilities under this chapter, including the determination of how the proportionate share of those funds was calculated;
- o the consultation process among the district, private school officials, and representatives of parents of parentally-placed private school children with disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services;
- o how, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of:
  - the types of services, including direct services and alternate service delivery mechanisms;
  - how special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
  - how and when those decisions will be made; and
- o How, if the district disagrees with the views of the private school officials on the provision of services or the types of services, whether provided directly or through a contract, the district will provide to the private school officials a written explanation of the reasons why the district chose not to provide services directly or through a contract.

- **Written affirmation by private school officials of meaningful consultation; 300.135; ARSD 24:05:32:01.06**

When timely and meaningful consultation, as required by § 24:05:32:01.05, has occurred, the district shall obtain a written affirmation signed by the representatives of participating private schools.

If the representatives do not provide the affirmation within a reasonable period of time, the district shall forward the documentation of the consultation process to the department.

- **Compliance; rights of private school officials to submit a state complaint; 300.136; ARSD 24:05:32:01.07**

A private school official has the right to submit a complaint to the department that the school district did not engage in consultation that was meaningful and timely or did not give due consideration to the views of the private school official.

If the private school official wishes to submit a complaint, the official shall provide to the department the basis of the noncompliance by the district with the applicable private school provisions in this chapter. The district shall forward the appropriate documentation regarding its consultation process to the department.

If the private school official is dissatisfied with the decision of the department, the official may submit a complaint to the U. S. secretary of education by providing the information on noncompliance described in this section.

The department shall forward the appropriate documentation regarding the state's decision on the complaint to the U.S. Secretary of Education.

- **Determination of equitable services for parentally-placed private school students with disabilities; 300.137; ARSD 24:05:32:03.02**

The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities are not required to meet the highly qualified special education teacher requirements of this article.

Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No private school child with a disability is entitled to any service or to any amount of a service the child would receive if enrolled in a public school.

- **Provision of equitable services for parentally-placed private school students with disabilities; 300.138; ARSD 24:05:32:03.02**

The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities are not required to meet the highly qualified special education teacher requirements of this article.

Each private school child with a disability who has been designated to receive services under this chapter, must have a services plan that describes the specific special education and related services that the district will provide to the child in light of the services that the district has determined, through the process described in this chapter, it will make available to private school children with disabilities. The services plan must to the extent appropriate:

- meet the IEP content requirements with respect to the services provided; and
- be developed, reviewed, and revised consistent with the IEP provisions in this article.

The provision of services pursuant to this chapter shall be provided by employees of a school district, or through contract by the school district with an individual, association, agency, organization, or other entity.

Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, shall be secular, neutral, and non-ideological.

- **Location of services and transportation; 300.139; ARSD 24:05:32:03.03**

Services provided to eligible parentally-placed private school children may be provided on the premises of a child's private school, including a religious school, to the extent consistent with state law. If necessary for the child to benefit

from or participate in the services provided under this chapter, a private school child with a disability must be provided transportation:

- o from the child's school or the child's home to a site other than the private school; and
- o from the service site to the private school, or to the child's home, depending on the timing of the services.

Districts are not required to provide transportation from the child's home to the private school. The cost of transportation described in this section may be included in calculating whether the district has met the requirement of § 24:05:32:01.02.

- **Due process complaints and state level complaints; 300.140; ARSD 24:05:32:03.04**

The due process hearing and mediation procedures in chapter 24:05:30 do not apply to complaints that a school district has failed to meet the requirements of this chapter, including the provision of services indicated on the child's service plan.

The due process hearing and mediation procedures in chapter 24:05:30 apply to complaints that the district has failed to meet the child find requirements in § 24:05:32:01.01, including the parent consent and evaluation requirements in this article.

Any due process complaint regarding the child find requirements shall be filed with the school district in which the private school is located and a copy shall be forwarded to the department. Complaints that the department or a school district has failed to meet the requirements of this chapter may be filed under the procedures in chapter 24:05:15 consistent with the procedures in § 24:05:32:01.07

- **Requirements that funds not benefit a private school; 300.141; ARSD 24:05:32:12**

A school district may not use IDEA Section 619 Preschool or Part B funds to finance the existing level of instruction in a private school or to otherwise benefit the private school. The school district shall use funds provided under Part B of the Individuals with Disabilities Education Act to meet the special education and related services needs of students enrolled in private schools, but not for:

- o the needs of a private school; or
- o the general needs of the students enrolled in the private school.

- **Use of personnel for the provision of services to parentally-placed private school students with disabilities; 300.142; ARSD 24:05:32:13**

- A school district may use IDEA Section 619 Preschool and Part B funds to make public personnel available in other than public facilities to the extent necessary to provide services designed for students enrolled in a private school if those services are not normally provided by the private school.

- **Prohibition on separate classes; 300.143; ARSD 24:05:32:11**

A school district may not use IDEA Section 619 Preschool or Part B funds for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site and the classes include students enrolled in public schools and students enrolled in private schools.

- **Property, equipment, and supplies used to provide special education and related services to parentally-placed private school students with disabilities; 300.144; ARSD 24:05:32:15, ARSD 24:05:32:16**

The school district shall remove equipment and supplies from a private school if the equipment and supplies are no longer needed for the purposes of the program authorized under Part B of the IDEA or if removal is necessary to avoid unauthorized use of the equipment or supplies for other than Part B program purposes

- **Children with disabilities in private schools placed or referred by public agencies; 300.145 – 300.147; ARSD 24:05:34:02**

The school district in which the child under care and custody of the state resides is responsible for the identification, evaluation, and placement of the child pursuant to the rules in this article governing children in need of special education

or special education and related services. The state is responsible for the costs of special education or special education and related services.

- **Placement of children with disabilities by their parents in private schools when FAPE is an issue; 300.148; ARSD 24:05:31:01-07**

The provisions of this chapter apply to eligible children who are or have been placed in or referred to a private school or facility by a school district as a means of providing special education or special education and related services and to eligible children placed in private schools by their parents when FAPE is at issue.

The department shall ensure that an eligible child who is placed in or referred to a private school or facility by a school district is provided special education or special education and related services in conformance with an individual educational program which meets the requirements of this article at no cost to the parents and is provided an education which meets the standards that apply to state and local school districts, including the requirements in this chapter, with the exception of requiring highly qualified special education teachers. The eligible child has all of the rights of a child with a disability served by a school district.

The department shall do the following to implement this chapter:

- monitor compliance with this chapter through procedures such as written reports, on-site visits, and parent questionnaires;
- disseminate copies of this chapter to each private school and facility to which a public agency has referred or placed an eligible child; and
- provide an opportunity for those private schools and facilities to participate in the development and revision of state standards which apply to them.

If an eligible child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the public agency is not required by this chapter to pay for the child's education, including special education and related services, at the private school or facility. However, the public agency must include the child in the population whose needs are addressed consistent with chapter 24:05:32.

Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child and the question of financial responsibility are subject to the due process procedures.

If the parents of an eligible child, who previously received special education and related services under the authority of a school district, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the school district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district has not made a free appropriate public education available to the child in a timely manner before that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the state standards that apply to education provided by the state and districts.

The cost of reimbursement described in § 24:05:31:05 may be reduced or denied if:

- At the most recent individualized education program team meeting that the parents attended before removal of the child from the public school:
  - the parents did not inform the individualized education program team that they were rejecting the placement proposed by the school district to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
  - at least ten (10) business days, including any holidays that occur on a business day, before the removal of the child from the public school, the parents did not give written notice to the school district of the information described above;
- Before the parents' removal of the child from the public school, the school district informed the parents, through the notice requirements described in chapter 24:05:30, of its intent to evaluate the child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parents did not make the child available for the evaluation; or

- o Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Notwithstanding the notice requirements in § 24:05:31:06, the cost of reimbursement may not be reduced or denied for failure to provide notice if:

- o compliance with § 24:05:31:06 would likely result in physical harm to the child;
- o the school prevented the parent from providing the notice; or
- o the parents had not received notice, pursuant to chapter 24:05:30, of the notice requirement in § 24:05:31:06.

In addition, the cost of reimbursement, may, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if the parents are not literate or cannot write in English or if compliance with this section would likely result in serious emotional harm to the child.

## SECTION XI:

### **Compliance with SEA General Supervision Requirements and Implementation of Procedural Safeguards; 34 C.F.R. §§ 300.149 – 300.150; ARSD 24:05:30:01, ARSD 24:05:20:18; State Complaint Procedures; 34 C.F.R. §§ 300.151 – 300.153; ARSD 24:05:15**

The Southeast Area Cooperative and its member districts shall establish, maintain and implement procedural safeguards that meet the requirements of Chapter 24. Complaints from individuals or organizations must be submitted in writing with the alleged violation not occurring more than a year prior to receiving the written complaint. The complaint shall include contact information regarding the complainant, the alleged violations with regard to a specific child, name and address of the child, name of the school the child is attending, a description of the nature of the problem of the child, and a proposed resolution. A copy of the complaint shall also be delivered to the school district that is providing services to the child.

In resolving a complaint that finds that the district did not provide appropriate services, the department shall consider compensatory services or monetary reimbursement and ensure appropriate future provision of services.

Upon receiving a complaint against a school district, the Department of Education will appoint a complaint investigation coordinator who will make a recommendation to the state special education director. The state special education director will then determine if the complaint is valid, determine corrective action and deadline for corrective action to be completed, submit a written report of findings to all parties involved. The complainant will be allowed to submit additional information. The district will be allowed to respond to the complaint, propose a solution, and engage in voluntary mediation with the complainant. If a complaint is the subject of a due process hearing, the department shall set aside the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

The state Department of Education will inform agencies and parents of the complaint process.

- **Responsibility for general supervision and procedural safeguards; 300.149-150; ARSD 24:05:30:01**

Each school district shall establish, maintain, and implement procedural safeguards which meet the requirements of this chapter.

- **State complaint procedures; 300.151-153; ARSD 24:05:15**

A complaint is a written signed statement by an individual or organization, including an individual or organization from another state, containing a statement that the department of education or a school district has violated a requirement of federal or state statutes, rules, or regulations that apply to a program and a statement of the facts on which the complaint is based. The complaint must allege a violation that occurred not more than one year before the date the complaint is received by the department.

The written signed statement shall also include:

- o the signature and contact information for the complainant; and
- o if alleging violations with respect to a specific child:
  - the name and address of the residence of the child;
  - the name of the school the child is attending;



- in the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;
- A description of the nature of the problem of the child, including facts related to the problem; and a proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

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 B of the IDEA, shall address:

- the failure to provide appropriate services, including corrective actions appropriate to address the needs of the student such as compensatory services or monetary reimbursement; and
- appropriate future provision of services for all students with disabilities.

An organization or individual may file a written, signed complaint with the state director of special education. The party filing the complaint shall forward a copy of the complaint to the school district serving the child at the same time the party files the complaint with the department.

If the complaint is against a school district, the following steps shall be taken:

- the state director of special education shall appoint a complaint investigation coordinator from the department's special education programs. The coordinator and any consultants may conduct an independent on-site investigation if it determines that one is necessary;
- the complainant may submit additional information, either orally or in writing, about the allegations in the complaint;
- the school district may respond to the complaint, including, at a minimum:
  - at the discretion of the school district, a proposal to resolve the complaint; and
  - an opportunity for a parent who has filed a complaint and the school district to voluntarily engage in mediation consistent with this article;
- the complaint coordinator and any consultants shall make a recommendation to the state director of special education;
- after reviewing all relevant information, the state director of special education shall make an independent determination as to whether the complaint is valid, what corrective action is necessary to resolve the complaint, and the time limit during which corrective action is to be completed. The state director of special education shall submit a written report of the final decision to all parties involved;
- the written report shall address each allegation in the complaint, contain findings of fact and conclusions, and include reasons for the final decision;
- if the complaint is valid, the state director of special education shall find the school district out of compliance with federal and state statutes and rules;
- if corrective action is not completed within the time limit set, including technical assistance and negotiations, the department shall withhold all federal funds applicable to the program until compliance with applicable federal and state statutes and rules is demonstrated by the school district;
- when the school district demonstrates completion of required correction action, the department's Office of Finance and Management shall be notified by the state director of special education, and all moneys withheld shall be paid to the school district; and
- documentation supporting the corrective actions taken by a school district shall be maintained by the department's special education programs and incorporated into the state's monitoring process.

All complaints must be resolved within sixty (60) days after receipt of the complaint by the state director of special education except as stated in this section. The time limit of sixty (60) days may be extended only under exceptional circumstances as determined by the state director of special education, such as the need for additional time to provide necessary information. Under these circumstances, an extension of time may not exceed thirty (30) days in any one instance.

In addition, the sixty (60) day time limit may be extended, if the parent, individual, or organization and the school district involved in the complaint agree to engage in mediation in order to attempt to resolve the issues specified in the complaint.

The department's special education programs shall inform parents and other interested individuals, including parent training centers, protection and advocacy agencies, independent living centers, and other appropriate entities about the state's complaint procedures by taking the following actions:

- conducting parent surveys through the state's monitoring process;

- o providing copies of the state's procedures to parent and advocacy groups across the state;
- o notifying local school districts through statewide memoranda;
- o presenting state procedures at statewide conferences; and
- o disseminating copies to parent training and information centers, independent living centers, protection and advocacy agencies, and other appropriate entities.

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 shall 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 shall inform the complainant to that effect. A complaint alleging a school district's failure to implement a due process decision must be resolved by the department.

## SECTION XII:

### **FAPE Methods of Ensuring Services 34 C.F.R. § 300.154; ARSD 24:05:14:01.03, ARSD 24:05:14:01.06**

The Southeast Area Cooperative and its member districts may access Medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services. However, parents are not required to enroll in public benefits or insurance for their children to receive FAPE. Nor will parents be required to pay for any out-of-pocket expenses such as deductibles or co-pays. Parents must provide written consent to access these programs and will be notified prior to accessing these programs. The notification will include information regarding the protection of personally identifiable information, and any disclosures to the program agencies. If a district is not able to obtain parental consent to access public benefits or private insurance, the costs to ensure FAPE may be paid for with IDEA funds.

- **Restrictions and requirements on accessing public benefits (Medicaid); 300.154(d); ARSD 24:05:14:01.03**

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

- o may not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;
- o may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this article, but pursuant to § 24:05:14:01.06, may pay the cost that the parent otherwise would be required to pay;
- o may not use a student's benefits under a public benefits or insurance program if that use would:
  - decrease available lifetime coverage or any other insured benefit;
  - result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
  - increase premiums or lead to the discontinuation of benefits or insurance; or
  - risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;
- o must provide written notification to the student's parents pursuant to § 24:05:14:01.04; and
- o must obtain written parental consent consistent with § 24:05:29:13 before accessing a student's or parent's public benefits or insurance for the first time specifying:
  - personally identifiable information, as defined in § 24:05:29:02(12), that may be disclosed (e.g., records or information about the services that may be provided to a particular student);
  - the purpose of the disclosure (e.g., billing for services under this article);
  - that disclosure will be made to the state Medicaid agency; and

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

- **Restrictions and requirements on accessing private benefits; 300.154(e); ARSD 24:05:14:01.03**

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

- may not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the IDEA;
- may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this article, but pursuant to § 24:05:14:01.06, may pay the cost that the parent otherwise would be required to pay;
- may not use a student's benefits under a public benefits or insurance program if that use would:
  - decrease available lifetime coverage or any other insured benefit;
  - result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the student outside of the time the student is in school;
  - increase premiums or lead to the discontinuation of benefits or insurance; or
  - risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures;
- must provide written notification to the student's parents pursuant to § 24:05:14:01.04; and
- must obtain written parental consent consistent with § 24:05:29:13 before accessing a student's or parent's public benefits or insurance for the first time specifying:
  - personally identifiable information, as defined in § 24:05:29:02(12), that may be disclosed (e.g., records or information about the services that may be provided to a particular student);
  - the purpose of the disclosure (e.g., billing for services under this article);
  - that disclosure will be made to the state Medicaid agency; and
  - that the parent understands and agrees that the public agency may access the parent's or student's public benefits or insurance to pay for services under this article.

- **Use of Part B funds for services when parent consent is unable to be obtained; 300.154(f); ARSD 24:05:14:01.06**

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

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

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

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

### **SECTION XIII:**

#### **Hearings Related to LEA Eligibility 34C.F.R. § 300.155; ARSD 24:05:2023:01**

The Southeast Area Cooperative and its member districts understand they have a right to a hearing before the State Department of Education makes a final determination regarding eligibility for funding under Part B.

The applicant's chief executive officer may file a hearing request as follows:

- the applicant must request the hearing within 30 days after the action of the department;
- within thirty (30) days after it receives a request, the department shall hold a hearing on the record pursuant to SDCL chapter 1-26 and shall review its action;
- no later than ten (10) days after the hearing the department shall issue its written ruling, including findings of fact and reasons for the ruling;
- if the department determines that its action was contrary to state or federal statutes or rules that govern the applicable program, the department shall rescind its action;
- if the department does not rescind its final action after a review, the applicant may appeal to the U. S. secretary of education. The applicant shall file a notice of the appeal with the U. S. secretary of education within 20 days after the applicant has been notified by the department of the results of the department's review. If supported by substantial evidence, the decision of the department is final;
- the U.S. secretary of education may also issue interim orders to the department as necessary and appropriate pending appeal or review; and
- if the U.S. secretary of Education determines that the action of the department was contrary to the Individuals with Disabilities Education Act and implementing regulations, the Secretary shall issue an order to the department to take appropriate action.

The department shall make available to the applicant during regular business hours all records of the department pertaining to any review or appeal it is conducting under this section, including records of other applicants.

If the department does not comply with any provision of this section, or with any order of the U.S. Secretary of Education, the Secretary shall immediately terminate all assistance to the department under the Individuals with Disabilities Education Act or issue such other orders deemed appropriate to achieve compliance.

## SECTION XIV:

### **Personnel Qualifications 34 C.F.R. § 300.156; ARSD 24:05:16:16 & ARSD 24:05:16:01**

The Southeast Area Cooperative and its member districts will ensure that personnel who serve children with disabilities have content knowledge, skills and have proper certification or licensure. Paraprofessionals who are properly trained and supervised must have a high school diploma or GED, work within defined roles of the cooperative or school district, work under the supervision of and be evaluated by certified staff. Professional development for paraprofessionals must be addressed in the staff development component of the comprehensive plan.

- **Personnel qualifications; ARSD 24:05:16:16**

To ensure that all personnel necessary to carry out the purposes of Part B and Part C of the Individuals with Disabilities Education Act are appropriately and adequately prepared and trained, including ensuring that those personnel have the content knowledge and skills to serve children with disabilities, the department shall determine that all personnel providing special education or related services, including related services, paraprofessionals and assistants, early intervention, and early childhood personnel, perform these functions under state-approved or state-recognized certification or licensure or other comparable requirements that apply to the area in which the person is providing special education or related services.

The department shall ensure that related services personnel who deliver services in their discipline or profession meet the requirements of this section and have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis.

- **Paraprofessionals and assistants; ARSD 24:0516:16:01**

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

- paraprofessionals must have a high school diploma or GED;
- paraprofessionals must work within defined roles and responsibilities as identified by the school district;
- paraprofessionals must work under the supervision of, and be evaluated by, certified staff; and
- each school district must describe the training to be provided paraprofessionals in the staff development component of the district's comprehensive plan under § 24:05:16:05.

**SECTION XV:**

**Performance Goals and Indicators 34 C.F.R. § 300.157; ARSD 24:05:14:13**

The Southeast Area Cooperative and its member districts will submit, on a timely basis, all data requested by the state Department of Education that is needed to monitor the performance of the children with disabilities with respect to state established performance goals and indicators.

The department shall have in effect established goals for the performance of children with disabilities in the state that:

- promote the purposes of Part B of the Individuals with Disabilities Education Act;
- are the same as the state's objectives for progress by children in its definition of adequate yearly progress, including the state's objectives for progress by children with disabilities, under the ESEA;
- address graduation rates and dropout rates, as well as such other factors as the state may determine; and
- are consistent, to the extent appropriate, with any other goals and academic standards for children established by the state.

The department shall have in effect established performance indicators that the state shall use to assess progress toward achieving the above goals including measurable annual objectives for progress by children with disabilities under the ESEA.

Annually, the department shall report to the U.S. Secretary of Education and the public on the progress of the state, and of children with disabilities in the state, toward the goals established under this section, which may include elements of the reports required under the ESEA.

## SECTION XVI:

### Participation in Assessments 34 C.F.R. § 300.160; ARSD 24:05:14:14, ARSD 24:05:14:14.01

The Southeast Area Cooperative and its member districts ensure that all students with disabilities will be included in state and district assessments, with appropriate accommodations and alternate assessments when necessary. Parents will be informed of their child's participation during the course of the IEP meeting, including any necessary accommodations or any assessment that will be based on alternate or modified achievement standards.

The districts will provide all necessary data to the state Department of Education regarding the participation of students with disabilities in state and districtwide testing programs and will, to the extent possible, utilize universal design principles in the development and administration of any assessments.

All children with disabilities shall be included in all general state and districtwide assessment programs, including assessments described in the ESEA, with appropriate accommodations and alternate assessments if necessary and as indicated in their respective IEPs. As appropriate, the department or local educational agencies shall develop guidelines for the provision of appropriate accommodations.

The districts' guidelines for the provision of appropriate accommodations shall:

- identify only those accommodations for each assessment that do not invalidate the score; and
- instruct IEP teams to select, for each assessment, only those accommodations that do not invalidate the score.

As appropriate, the district shall develop and implement alternate assessments and guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in regular assessments even with accommodations as indicated in their respective individualized education programs.

The alternate assessments and guidelines shall provide for alternate assessments that:

- are aligned with the state's challenging academic content standards and challenging student academic achievement standards;
- if the state has adopted modified academic achievement standards permitted under the regulations promulgated to carry out the ESEA, measure the achievement of children with disabilities against those standards; and
- if the state has adopted alternate academic achievement standards permitted under the regulations promulgated to carry out the ESEA, measure the achievement of children with the most significant cognitive disabilities against those standards.

As appropriate, the department or local educational agency shall provide IEP teams with a clear explanation of the differences between assessments based on grade-level academic achievement standards and those based on modified

or alternate academic achievement standards, including any effects of state or local policies on the student's education resulting from taking an alternate assessment based on alternate or modified academic achievement standards, such as whether only satisfactory performance on a regular assessment would qualify a student for a regular high school diploma.

As appropriate, the districts shall ensure that parents of students selected to be assessed based on alternate or modified academic achievement standards are informed that their child's achievement will be measured based on alternate or modified academic achievement standards.

**SECTION XVII:  
Supplementation of State, local, and other Federal Funds 34 C.F.R. §§ 300.162-163; ARSD 24:05:19:0**

The Southeast Area Cooperative ensures the appropriate use of funds under Part B to pay for the excess costs of providing special education or special education and related services to children with disabilities. Available funding will be used to supplement state and local funds and other federal funds and to not supplant.

Excess costs are those costs that are in excess of the average annual per student expenditure in a local education agency during the preceding schoolyear for an elementary or secondary school student.

IDEA Part B funds may be used for the following activities:

- costs of special education and related services and supplementary aids and services provided in a general education class or other education related setting to a student with a disability in accordance with the individual education program of the student, even if one or more non-disabled students benefit from these services;
- to develop and implement coordinated, early intervening educational services in accordance with this chapter; and
- to establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part to pay for high cost special education and related services.

A school district may use funds received under Part B of the IDEA to purchase appropriate technology for recordkeeping, data collection and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities that is needed for the implementation of those case management activities.

Except as provided in district policy on exception to maintenance of effort and adjustments to local fiscal efforts in certain fiscal years, Individuals with Disabilities Education Act, Part B funds may not be used to reduce the level of expenditures made by a local education agency from local funds below the level of expenditures for the fiscal year immediately preceding the fiscal year for which the local education agency is applying for funds for the education of children with disabilities.

A school district complies with this section for purposes of establishing the school district's eligibility for an award for a fiscal year if the district budgets for the education of students with disabilities, at least the same total or per capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available:

- local funds only or
- the combination of state and local funds

Notwithstanding the restrictions in district policy on proscribed use of funds, a school district may reduce the level of expenditures by the district under Part B of the Individuals with Disabilities Education Act below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:



- o the voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;
- o a decrease in the enrollment of students with disabilities;
- o the termination of the obligation of the district, consistent with this chapter, to provide a program of special education to a particular student with a disability that is an exceptionally costly program as determined by the state, because the student:
  - o has left the jurisdiction of the district;
  - o has reached the age at which the obligation of the district to provide a free appropriate public education to the student has terminated; or
  - o no longer needs the program of special education;
- o the termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities; or
- o the assumption of cost by the extraordinary costs fund operated by the department.

**SECTION XVIII:  
Public Information 34 C.F.R. § 300.165; ARSD 24:05:20:02**

The Southeast Area Cooperative and its member districts ensure that the public will have an opportunity to provide input prior to the adoption of any policies or procedures with regard to Part B. The annual Part B application will be on the board agenda prior to submission. Public input will be solicited for the application.

The districts shall ensure that notices include the following:

- o procedures for applicants to follow in completing and submitting requests for Individuals with Disabilities Education Act, Part B funds;
- o the objectives of the Individuals with Disabilities Education Act, Part B program;
- o an offer of technical assistance in completing the request for funds;
- o a general description of the state's procedures for reviewing and approving requests; and
- o a statement of a local education agency's obligation to make all documents relating to the eligibility of the district, including the request for funds and any evaluations, periodic program plans, or reports required by the state for the Individuals with Disabilities Education Act, Part B project available to parents of children with disabilities and to the general public.

**SECTION XIX:**  
**State Advisory Panel 34 C.F.R. § 300.167-169; ARSD 24:05:14:18-19**

The Southeast Area Cooperative and its member districts support the work of the State Special Education Advisory Panel and will refer interested parents to the appropriate state contact if they are interested in serving on the panel. The Department of Education shall establish and maintain an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities.

The advisory panel will consist of members appointed by the governor, or any other official authorized under state law to make such appointments, be representative of the state population, and be composed of individuals involved in, or concerned with, the education of children with disabilities, including:

- o parents of children with disabilities, ages birth through 26;
- o individuals with disabilities;
- o teachers;
- o representatives of institutions of higher education that prepare special education and related services personnel;
- o state and local education officials, including officials who carry out activities under subtitle B of title VII of the McKinney-Vento Homeless Assistance Act, as amended to January 1, 2007;
- o administrators of programs for children with disabilities;
- o representatives of other state agencies involved in the financing or delivery of related services to children with disabilities;
- o representatives of private schools;
- o not less than one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities;
- o a representative from the state child welfare agency responsible for foster care; and
- o representatives from the state juvenile and adult corrections agencies.

A majority of the members of the panel must be individuals with disabilities or parents of children with disabilities, ages birth through 21

**SECTION XX:**  
**Other Required Provisions 34 C.F.R. § 300.170 through 300.174.**

The Southeast Area Cooperative and its member districts permit the Department of Education to review its data to determine if discrepancies exist regarding children with disabilities and suspension/expulsion rates as compared to their non-disabled peers.

Data regarding race and ethnicity will also be reviewed for discrepancies.

Districts will update their comprehensive plans annually.

Districts will work with the state DOE to obtain resources for children who are visually impaired.

Neither the cooperative nor its member districts may require parents to obtain a prescription for their child for certain controlled substances as a condition of attending school or receiving an evaluation.

Teachers and other school personnel may share classroom observations with each other and with parents.

- **Suspension and expulsion rates; 300.170; ARSD 24:05:14:16**

The department shall examine data, including data disaggregated by race and ethnicity, from local education agencies and other state agencies, as appropriate, to determine whether significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities among local educational agencies in the state or compared to the rates for nondisabled children within the agencies.

If discrepancies are occurring, the department shall review and, if appropriate, revise or require the affected local education agency or state agency to revise its policies, procedures, and practices relating to:

- the development and implementation of individualized education programs;
- the use of positive behavioral interventions and supports; and
- procedural safeguards to ensure that these policies, procedures, and practices comply with the Individuals with Disabilities Education Act, Part B.

- **Annual description of Part B funds; 300.171; ARSD 24:05:21:03**

The information required in an agency's comprehensive plan coupled with statements of expenditures, descriptions of the annual use of IDEA, Part B funds, and certification of federal assurances establish a local education agency's eligibility for funds under the Individuals with Disabilities Education Act, Part B.

- **Access to instructional materials (NIMAC); 300.172; ARSD 24:05:14:17**

The department shall adopt the National Instructional Materials Accessibility Standard (NIMAS), for the purposes of providing instructional materials to blind persons or other persons with print disabilities. Blind persons or other persons with print disabilities means children served under this article who qualify to receive books and other publications produced

in specialized formats in accordance with the federal Act to Provide Books for Adults who are Blind, in accordance with 2 U.S.C. 135a, as amended to January 1, 2007.

In implementing NIMAS, the department shall coordinate with the National Instructional Materials Accessibility Center (NIMAC), and the department:

- As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, shall enter into a written contract with the publisher of the print instructional materials to:
  - require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or
  - purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats;
- Shall provide instructional materials to blind persons or other persons with print disabilities in a timely manner.
- In carrying out this section, the department, to the maximum extent possible, shall work collaboratively with the state agency responsible for assistive technology programs.

- **Over-identification and disproportionality; 300.173; ARSD 24:05:17:10**

The department shall provide for the collection and examination of data to determine whether any inappropriate over identification or significant disproportionality based on race and ethnicity is occurring in the state and in districts of the state with respect to:

- the identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in chapter 24:05:24.01;
- the placement in particular educational settings of these children; and
- the incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

In the case of a determination of inappropriate over identification or significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular settings of these children, the department shall provide for the review of and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure compliance with the requirements of Part B of the Individuals with Disabilities Education Act; require any district identified under this section to reserve the maximum amount of funds allowable to provide comprehensive coordinated early intervening services to serve children in the district, particularly, but not exclusively, children in those groups that were significantly over identified under this section; and require the district to publicly report on the revision of policies, practices, and procedures described under this section.