

CHAPTER 24:14:01

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

~~(1) "Birth to Three," the early intervention program for infants and toddlers from birth to age 3 within the Department of Education;~~

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

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

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

~~(5) "Department secretaries," the secretary of each of the following departments: Education, Health, Human Services, and Social Services;~~

(64) "Early Head Start," a community-based program established pursuant to the Head Start Act for low-income families with infants and toddlers and pregnant women, to promote healthy prenatal outcomes for pregnant women, to enhance the development of very young children, and to promote healthy family functioning;

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

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

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

(~~108~~) "Head Start Act," 42 U.S.C. § 9801 et seq., as amended to ~~July 1, 2012~~ November 19, 2014;

(~~119~~) "Head Start," a program established pursuant to the Head Start Act that promotes the school readiness of children ages birth to five from low-income families by enhancing their cognitive, social, and emotional development in the following domains: language and literacy, cognition and general knowledge, physical development and health, social and emotional development, and approaches to learning;

(~~1210~~) "Homeless children," ~~the term~~, homeless children and youths, as defined in ~~section 725 (42 U.S.C. § 11434a)~~ of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq., as amended to January 1, 200~~8~~9;

(~~1311~~) "Individualized family service plan team," ~~"IFSP team"~~ the group of individuals described in § 24:14:13:06;

(~~1412~~) "Individualized family service plan," ~~"IFSP,"~~ a written plan for providing early intervention services to a child and to the child's family pursuant to chapter 24:14:13;

(~~1513~~) "Individuals with Disabilities Education Act," ~~"IDEA,"~~ the ~~federal Individuals with Disabilities Education~~ Act ~~as~~ codified at ~~20 U.S.C. §§ 1401 to 1444, inclusive,~~ 20 U.S.C. § 1400 et seq. December 3, 2004, and 34 C.F.R. Part 300 published in the Federal Register on August 14, 2006, December 1, 2008, and February 14, 2013 and as amended on December 10, 2015, and 34 C.F.R. Part 303 published in the Federal Register on September 28, 2011 and as amended on December 19, 2014;

(~~1614~~) "Multidisciplinary," the involvement of two or more separate disciplines or professions as follows:

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

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

~~(1715)~~ "Native language," ~~when used with reference to persons of limited English proficiency:~~

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

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

~~(1816)~~ "Natural environment," settings that are natural or typical for a same-aged infant or toddler without a disability, which may include the home or community settings, pursuant to § 24:14:13:04.01;

~~(1917)~~ "Nonpublic-~~agency~~ service provider," a private agency or individual involved in the provision of early intervention services;

~~(2018)~~ "Part B," Part B of the Individuals with Disabilities Education Act, which establishes the special education program for children with disabilities aged 3 to 21, inclusive;

~~(2119)~~ "Part C," Part C of the Individuals with Disabilities Education Act, which establishes the early intervention program for infants and toddlers with disabilities from birth to age three;

~~(2220)~~ "Personally identifiable information," information that includes the following:

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

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

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

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

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

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

(~~2321~~) "Public agency," the department or another political subdivision of the state that is responsible for providing early intervention services to children eligible under this ~~chapter~~ article and to their families;

(~~2422~~) "Qualified personnel," persons who have met state-approved or -recognized certification, licensing, registration, or other comparable requirements that apply to the area in which the person provides early intervention services or conducts evaluations or assessments;

(~~2523~~) "Unit," a 15-minute measurement of time; and

(~~2624~~) "Ward of the state," a child who, as determined by the state ~~where~~ in which the child resides, is a foster child, a ward of the state, or in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent in § 24:14:01:03.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

- (1) A biological or adoptive parent of a child;
- (2) A foster parent, unless ~~state law, regulations, or~~ contractual obligations with a state or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health, or development decisions for the child, but not the state if the child is a ward of the state;
- (4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with chapter 24:14:14.

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

If a judicial decree or order identifies a specific person under subdivisions 1 to 4, inclusive, of this section to act as the parent of a child or to make educational or early intervention service

decisions on behalf of a child, then the person is deemed to be the parent for purposes of this section, except that if a contractor provides any services to a child or any family member of the child, the contractor may not act as the parent for the child.

Source: 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

24:14:02:04. Program supervision. The department is responsible for general supervision of the Part C program. The department shall monitor all programs and activities used by the state to implement the provisions of this article to ensure statewide compliance, whether or not such programs or activities receive assistance made available under the Part C program, ~~to ensure statewide compliance.~~

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

General Authority: SDCL 13-37-1.1.

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

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

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

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

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

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

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:02:05.05. State use of targets and reporting. The department shall use the targets established in the state's performance plan and the priority areas described in § 24:14:02:05.02 to analyze the performance of each Part C program in implementing Part C of IDEA.

The department shall:

(1) Report annually to the public on the performance of each Part C program on the targets in the state performance plan no later than ~~60~~ 120 days following the department's submission of its annual performance report to the U.S. Secretary of Education; and

(2) Make the state performance plan, annual performance reports, and reports on each Part C program available through public means, including by posting on the website of the department, distribution to the media, and distribution through public agencies.

If the department collects performance data through state monitoring or sampling, the department shall include in its report the most recently available performance data on each Part C program and the date the data were collected.

The department shall report annually to the U.S. Secretary of Education on the performance of the state under the state performance plan.

The department may not report to the public or the U.S. Secretary of Education any information on performance that would result in the disclosure of personally identifiable information ~~about individual children~~, or that is insufficient to yield statistically reliable information.

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

General Authority: SDCL 13-37-1.1.

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

24:14:02:05.06. State enforcement -- Determinations. On an annual basis, based on local Part C program performance data, information obtained through monitoring visits, and other information available, the department shall determine whether each Part C program meets the requirements and purposes of Part C ~~of the IDEA~~.

If the department determines, for two consecutive years, that a Part C ~~program intervention~~ program needs assistance in implementing the requirements of Part C ~~of the IDEA~~, the department ~~shall~~ may take one or more of the following actions:

(1) Advise the ~~Part C~~ program of available sources of technical assistance that may help ~~the program~~ address the areas in which the program needs assistance: ~~Assistance may include assistance from the department's Part C program, other offices of the department, other state agencies, technical assistance providers approved by the department, and other federally-funded nonprofit agencies. The department shall require the program to work with appropriate entities. Such technical assistance may include:~~

~~—(a) The provision of advice by experts to address the areas in which the program needs assistance, including explicit plans for addressing the area for concern within a specified period of time;~~

~~—(b) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically-based research;~~

~~—(c) Designating and using distinguished administrators, service coordinators, service providers, and other personnel from the Part C program to provide advice, technical assistance, and support; and~~

~~(d) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the IDEA, and private providers of scientifically-based technical assistance; and~~

(2) Identify the ~~Part C~~ program as a high-risk grantee and impose special conditions on the program's grant under Part C ~~of the IDEA~~; and

(3) If the department determines, for three or more consecutive years, that a ~~Part C~~ program needs intervention in implementing the requirements of Part C ~~of the IDEA~~, the department ~~shall~~ may require the program to prepare and implement a corrective action plan ~~if the department determines that the program should be able to correct the problem to correct deficiencies~~ within one year, or the department may withhold, in whole or in part, any further payments to the program under Part C ~~of the IDEA~~, ~~the department may also take any of the actions described in subdivisions (1) and (2) of this section.~~

Notwithstanding the other provisions of this section, if the department determines that a ~~Part C~~ program needs substantial intervention in implementing the requirements of Part C ~~of the IDEA~~

or there is a substantial failure to comply with any condition of the program's eligibility under Part C ~~of the IDEA~~, the department shall withhold, in whole or in part, any further payments to the program under Part C ~~of the IDEA~~.

Nothing in this section restricts the department from using any other authority available to it to monitor and enforce the requirements of Part C ~~of the IDEA~~.

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

General Authority: SDCL 13-37-1.1.

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

24:14:03:04. Procedures for resolving complaints. ~~The complaint resolution procedure is as follows.~~ If ~~the~~ a complaint is made against a public agency or nonpublic service provider, the ~~following steps shall be taken~~ complaint resolution procedure is as follows:

(1) The state director of the Part C program shall appoint a complaint ~~investigation team.~~ ~~The team may conduct an independent on-site investigation if it determines that one is necessary~~ investigator;

(2) The complainant shall have the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) The department, ~~a~~ public agency, or ~~a~~ nonpublic service provider shall have the opportunity to respond to the complaint, including at a minimum:

(a) At the discretion of the department, a proposal to resolve the complaint; and

(b) An opportunity for a parent who has filed a complaint and the department, ~~a~~ public agency, or ~~a~~ nonpublic service provider to voluntarily engage in mediation consistent with this article;

(4) The complaint ~~team~~ investigator shall make a recommendation to the state director of the Part C program;

(5) After reviewing all relevant information, the state director of the Part C program 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 the Part C program shall submit a written report of the final decision to all parties involved;

(6) The written report shall address each allegation in the complaint, contain findings of fact and conclusions, and ~~include~~ reasons for the final decision;

(7) 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 public agency or ~~a~~ nonpublic service provider; and

(8) Documentation supporting the corrective actions taken by ~~a~~ the public agency or ~~a~~ nonpublic service provider ~~shall~~ must be maintained by the department's Part C program and incorporated into the state's monitoring process.

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

General Authority: SDCL 13-37-1.1.

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

CHAPTER 24:14:04
FINANCIAL MATTERS

Section

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

- (1) The child find requirements in chapter 24:14:11;

- (2) Evaluation and assessment, including the functions related to evaluation and assessment;
- (3) Service coordination functions and activities; and
- (4) Administrative and coordinative activities related to ~~the following~~:

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

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

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:04:04. ~~Entitled~~ Early intervention services provided at no cost. The department may not charge fees for the individualized family service plan services that a child is otherwise entitled to receive at no cost to parents. Agency jurisdictional disputes may not result in the denial of services to the child or the child's family.

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:04:04.03. Use of public benefits or insurance -- Parental refusal to consent. If a parent does not provide consent to access public benefits or insurance to pay for Part C services, the

Part C program ~~shall still make available~~ must provide early intervention services on the individualized family service plan to which the parent has provided consent at no cost.

Source: 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

Parental consent must be obtained:

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

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

Source: 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

If a parent refuses access to the parent's or the child's private insurance, the Part C program ~~shall still~~ must provide early intervention services to the child as specified on the ~~individualized family service plan~~ IFSP at no cost to parents.

Source: 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

Source: 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:04:09. Interagency dispute resolution procedures. Interagency disputes shall be reviewed and resolved by the department secretaries.

If, in resolving the dispute, the department secretaries determine that the assignment of financial responsibility under this chapter was inappropriately made, the department secretaries shall arrange for reimbursement of any expenditures incurred by the agency originally assigned responsibility. For the purposes of this section, the term, department secretaries, means the secretaries of education, health, human services, and social services.

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

General Authority: SDCL 13-37-1.1.

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

24:14:04:12. Payment for provision of early intervention services. The ~~Department of Education~~ department shall pay providers for authorized services according to the established Medicaid rates, as referenced in § 67:16:02:01.01. Eligible early intervention services are reimbursed at the Medicaid rate. ~~Rates for early~~ Early intervention services that are not eligible Medicaid services ~~and therefore do not have a Medicaid rate~~, are as provided in this section. Except as identified under § 24:14:04:10, funds under this article must be used to provide payment for the provision of early intervention services that meet the requirements under §§ 24:14:08:01 to

24:14:08:20, inclusive. Rates identified are for a 15-minute unit of service. Fractions of a unit are rounded up to the next unit. A provider may bill for services only if the recipient was present.

Service	Rate
Assistive technology service and device	Usual and customary charge
Family training, counseling, and home visits — , unless medical in nature and provided by a qualified mental health professional. In those cases the Medicaid rate applies.	\$12.42 <u>Calculated at 80% of commonly billed speech rate</u>
Health services — unless provided by a Home Health Agency. In those cases the Medicaid rate applies.	- \$12.07
Nutrition services	\$12.78
Social work services — unless provided by a Home Health Agency. In those cases the Medicaid rate applies.	- \$12.42
Special instruction	<u>Calculated at 80% of commonly billed Speech rate</u>
Service coordination	\$ 8.00

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

General Authority: SDCL 13-37-1.1

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

24:14:04:12.01. Reimbursement if travel is necessary solely to provide early intervention service. Reimbursement of ~~mileage and~~ travel ~~time~~ is available to a service provider only if travel is necessary solely to provide early intervention services. If the service provider is required to travel to a location away from ~~his or her~~ the service provider's home or office for another purpose, ~~mileage and~~ travel ~~time are then~~ reimbursement is available only for the portion of the travel required for the sole purpose of providing the early intervention services.

Source: 31 SDR 67, effective November 15, 2004.

General Authority: SDCL 13-37-1.1.

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

24:14:04:12.02. Reimbursement for travel to place of other employment. The ~~mileage travel~~ between a service provider's home and that provider's other place of employment ~~that is not~~ unless for the purpose of providing early intervention services, is not ~~subject to~~ eligible for travel reimbursement if the provider travels from the provider's home to that other place of employment and then travels to an eligible child's home. Mileage Reimbursement may be paid for a provider's travel only if the travel from the provider's other place of employment to an eligible child's home and back to the point of origin, or to an equidistant point, is for official early intervention business. The provider may not be reimbursed for travel home if the travel is conducted as a responsibility of the provider's other place of employment.

Source: 31 SDR 67, effective November 15, 2004.

General Authority: SDCL 13-37-1.1.

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

24:14:04:13. Reimbursement for travel time. Travel ~~time~~ to and from service provision sites is reimbursed to the ~~early intervention~~ service provider at a flat rate ~~as provided in this section. All other early intervention services not specified in this section are reimbursed at a travel time rate of \$13.14 per unit based on actual miles traveled. The flat rate is \$1.00 per mile. This rate must be adjusted annually by the secretary to reflect the legislative approved Consumer Price Index change for providers. The annual adjustment must be implemented in accordance with the state fiscal year. A provider may not be reimbursed for travel less than one mile.~~

Services	Travel Time Rate
Physical and Occupational Therapy, Evaluations and Meetings	\$13.14 per unit
Speech and Language Therapy, Evaluations and Meetings	\$11.53 per unit
Assistive Technology, Evaluations and Meetings	\$13.14 per unit
Family Training, Counseling, and Home Visits	\$11.18 per unit
Health Services, Evaluations and Meetings	\$10.86 per unit
Nutrition Services, Evaluations and Meetings	\$11.50 per unit
Social Work Services, Evaluations and Meetings	\$11.18 per unit
Special Instruction, Evaluations and Meetings	\$7.20 per unit
Service Coordination, Evaluations and Meetings	\$7.20 per unit

~~—— Flat rates for travel time in this section are calculated at 90% of the most commonly billed early intervention rates pursuant to § 24:14:04:12. The flat rate for travel time, as described above, is effective January 1, 2010.~~

Source: 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008; 36 SDR 96, effective December 8, 2009.

General Authority: SDCL 13-37-1.1

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

~~**24:14:04:14. Mileage reimbursement.** Mileage is reimbursed to the early intervention service provider in accordance with SDCL 3-9-1. No mileage reimbursement may be made for in-city travel. Mileage is reimbursed if the provider travels to a service provision site and the child is not available for service Repealed.~~

~~**Source:** 26 SDR 153, effective May 22, 2000.~~

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

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

~~**24:14:04:15. Services provided by paraeducators.** Paraeducators are reimbursed at the lesser of their usual and customary charge or \$6.00 per unit of service Repealed.~~

~~**Source:** 26 SDR 153, effective May 22, 2000.~~

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

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

24:14:04:16. Services provided by assistants. Certified occupational therapy assistants, ~~and~~ physical therapy assistants, and speech language pathology assistants are reimbursed at ~~90~~ 70 percent of the provider rate established under this chapter.

Source: 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

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

24:14:04:17. Submission of bills. A claim for reimbursement submitted under this chapter must be submitted within ~~six~~ three months of provision of service.

Source: 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

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

~~**24:14:04:19. Payment above established rate.** In order to ensure the provision of services, a provider may be reimbursed at a higher rate if documentation submitted shows that no other options are available. The Department of Education must provide written approval of a higher reimbursement rate before the provision of services. The Department of Education may revoke this approval at anytime after giving the provider 30 days written notice. The approval is in effect for a maximum of one year Repealed.~~

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

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

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

24:14:04:22. Claim requirements. A claim for individualized family service plan services provided under this chapter must be submitted ~~on a form which contains the following information:~~

- ~~— (1) The provider's name, address, and phone number;~~
- ~~— (2) The provider's employer identification or social security number;~~
- ~~— (3) The client's full name;~~
- ~~— (4) Type of service;~~
- ~~— (5) Dates of service;~~
- ~~— (6) Units of service provided;~~
- ~~— (7) The unit price;~~
- ~~— (8) If claiming mileage or travel time reimbursement, the destination must be listed; and~~
- ~~— (9) Signature of the claimant. electronically through the department's online Part C system.~~

Source: 26 SDR 153, effective May 22, 2000.

General Authority: SDCL 13-37-1.1

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

CHAPTER 24:14:05

REPORTING REQUIREMENTS

Section

- 24:14:05:01 Data collection.
- 24:14:05:02 ~~Contents of client information report, Repealed.~~
- 24:14:05:07 ~~Information repository, Repealed.~~

24:14:05:01. Data collection. The department shall compile data on the Part C program ~~for infants and toddlers with disabilities~~ necessary to fulfill federal reporting requirements and other state reporting purposes. The data collection system ~~includes~~ must include a process for collecting data from ~~various~~ agencies and service providers in ~~South Dakota~~ this state and ~~provides~~ provide for the reporting of data required under 20 U.S.C. § 1418 and 1435(a)(14) ~~Individuals with Disabilities Education Act 2004~~ and other information that the federal agency may require, ~~including information required under § 1418 of the Individuals with Disabilities Education Act 2004~~. The department shall report the information required to the United States Department of Education at the time and in the manner specified by the United States Department of Education.

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

General Authority: SDCL 13-37-1.1.

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

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

~~—— (1) Date of birth;~~

~~—— (2) Criteria on which eligibility for the Individuals with Disabilities Education Act, Part C program was determined;~~

~~—— (3) Types of services provided to the child and the child's family through the Part C program;~~

~~—— (4) The primary setting in which early intervention services are provided;~~

~~—— (5) Data on the number and percentage of infants and toddlers with disabilities, by race, gender, and ethnicity, who, from birth through age two, stopped receiving early intervention services because of program completion or for other reasons;~~

~~—— (6) The number and percentage of infants and toddlers with disabilities by race, gender, and ethnicity who are receiving early intervention services, including any children reported to the contractor by tribe, tribal organizations, and consortia; and~~

~~—— (7) Other information required by the United States secretary of education under § 1418 of the Individuals with Disabilities Education Act 2004 Repealed.~~

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

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

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

24:14:05:07. Information repository. ~~The department shall aggregate all information submitted by the contractor for the preparation and dissemination of summary reports to the United States Department of Education, the South Dakota Interagency Coordinating Council, and to other state agencies upon request Repealed.~~

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

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

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

24:14:07:02. Children eligible for services. Infants and toddlers, from birth to 36 months of age, inclusive, are eligible for services under this ~~chapter~~ article if identified by providers of licensed health care and education services as:

(1) Demonstrating a developmental delay of at least a 1.5 standard deviation below the mean, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas:

(a) cognitive development,

(b) physical development, including vision and hearing, fine motor and gross motor;

(c) communication development, including receptive or expressive;

(d) social or emotional development; or

(e) adaptive development; ~~or~~

(2) Born at 28 weeks gestation or less; or

~~(2)(3)~~ Having a diagnosed physical or mental condition that has a high probability of resulting in developmental delay ~~or born at 28 weeks gestation or less.~~

Determinations of a diagnosed physical or mental condition shall be based on medical diagnoses, including Down's syndrome and other chromosomal abnormalities; sensory impairments, including vision and hearing; inborn errors of metabolism; microcephaly; severe attachment disorders, including failure to thrive; seizure disorders; and fetal alcohol syndrome.

Source: 20 SDR 223, effective July 7, 1994; 35 SDR 82, effective October 22, 2008; 36 SDR 96, effective December 8, 2009.

General Authority: SDCL 13-37-1.1.

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

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

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

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

Source: 20 SDR 223, effective July 7, 1994; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

- (1) Are designed to meet the developmental needs of each child eligible under this article and the needs of the family related to enhancing the child's development as identified by the individualized family service plan (IFSP) team in any one or more of the developmental areas listed in § 24:14:12:02;
- (2) Are selected in collaboration with the parents;
- (3) Are provided under public supervision by qualified personnel in conformity with an ~~individualized family service plan~~ IFSP pursuant to chapter 24:14:13 at no cost to parents;

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

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

Source: 20 SDR 223, effective July 7, 1994; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

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

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

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

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

Source: 20 SDR 223, effective July 7, 1994; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:08:04. Types of early intervention services. The types of services included under early intervention services are specified in §§ 24:14:08:05 to 24:14:08:20, inclusive, and ~~do not are~~ not comprise exhaustive lists of the types of services that may constitute early intervention services. Nothing in this section prohibits the identification in ~~the IFSP~~ an individualized family service plan of another type of service as an early intervention service if the service meets the criteria identified in § 24:14:08:01.

Source: 20 SDR 223, effective July 7, 1994; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:08:21. Other services. The individualized family service plan, to the extent appropriate, must:

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

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

Source: 20 SDR 223, effective July 7, 1994; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:09:01. Responsibilities of service coordinator. Each child eligible under this article and the child's family shall have available one service coordinator ~~selected pursuant to~~ who has the qualifications described in § 24:14:~~1009~~:03 who is responsible for ~~the following~~:

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

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

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

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

(5) Serving as the single point of contact in helping ~~clients to~~ the child and the child's family obtain service and assistance.

Source: 20 SDR 223, effective July 7, 1994; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

(1) Coordinating the performance of evaluations and assessments;

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

Source: 20 SDR 223, effective July 7, 1994; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:09:03. Qualifications of service coordinator. ~~Service coordinators~~ A service coordinator ~~must be persons who~~ have demonstrated knowledge and understanding about ~~the following:~~

- (1) Infants and toddlers who are eligible under this article;
- (2) Applicable State state and federal laws, ~~applicable~~;

(3) The nature and scope of services available under the state's early intervention program;
and

(4) The system of payments for services in the state.

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

General Authority: SDCL 13-37-1.1.

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

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

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

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

Source: 20 SDR 223, effective July 7, 1994; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

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

Source: 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

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

(2) "Initial assessment," the assessment of the child and the family conducted before the child's first IFSP meeting;

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

(4) "Initial evaluation," the child's evaluation to determine his or her initial eligibility under this Part C.

Source: 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:12:02. Evaluation and assessment of individual child. The department shall ensure that, subject to obtaining parental consent, each child under the age of three who is referred for evaluation or early intervention services under Part C and who is suspected of having a disability, receives timely, comprehensive, multidisciplinary evaluation of the child in accordance with this chapter unless eligibility is established under § 24:14:12:02.02. If the child is determined eligible, the child shall receive (1) a multidisciplinary assessment of the unique strengths and needs of that child and the identification of services appropriate to meet those needs; ~~and~~ (2) a family-directed assessment of the resources, priorities, and concerns of the family; and (3) the identification of the supports and services necessary to enhance the child's family's capacity to meet the developmental needs of that ~~infant or toddler~~ child. The assessments of the child and family may occur simultaneously with the evaluation, if the requirements of this chapter are met.

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

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

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

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

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:12:03. Family-directed assessment of needs. A family-directed assessment ~~of the needs of each child's family to appropriately assist in the development of the child~~ must be completed ~~to appropriately determine the child's and family's needs.~~ Family directed—A family-directed assessment must be carried out by qualified personnel using evidence-based early intervention practices as determined by the state Part C program. The practices must be designed to determine the resources, priorities, and concerns of ~~an individual~~ a family and the identification of the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child.

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

obtained through an assessment tool and through interviews with family members who participate in the assessment.

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

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

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

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

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

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

Source: 20 SDR 223, effective July 7, 1994; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:13:02. Department's responsibility. The department shall monitor agencies, institutions, and organizations used by the state to ~~carry out this article on the development and implementation of~~ develop and implement individualized family service plans ~~for eligible children (IFSPs).~~ ~~If there is a~~

The department shall resolve any dispute between agencies ~~as to who has~~ over the responsibility ~~for~~ of developing or implementing an ~~individualized family service plan IFSP,~~ the ~~department shall resolve the dispute.~~

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

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

(2) A review of the ~~individualized family service plan for a child and the child's family~~ IFSP must be conducted every six months, or more frequently if conditions warrant or if the family requests such a review. The purpose of the periodic review is to determine the degree to which

progress toward achieving the results or outcomes identified in ~~the individualized family service plan IFSP is being made~~ and whether modification or revision of the results, outcomes, or early intervention services identified in the ~~individualized family service plan IFSP~~ is necessary;

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

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

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

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

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

Source: 20 SDR 223, effective July 7, 1994; 23 SDR 179, effective April 29, 1997; 39 SDR 109, effective December 17, 2012; 40 SDR 40, effective September 11, 2013.

General Authority: SDCL 13-37-1.1.

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

24:14:13:03.01. Definitions. Terms used in this chapter mean:

- (1) "Frequency and intensity," the number of days or sessions that a service ~~will be~~ is provided, and whether the service is provided on an individual or group basis;
- (2) "Method," how a service is provided;
- (3) "Length," the time the service is provided during each session of that service, ~~such as an hour or other specified time period;~~
- (4) "Duration," ~~projecting a projection for~~ when a given service will no longer be provided, ~~such as when the child is expected to achieve the results or outcomes in his or her IFSP;~~ and
- (5) "Location," the actual place or places where a service ~~will be~~ is provided.

Source: 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:13:04. Content of individualized family service plan. The individualized family service plan (IFSP) must contain ~~the following~~:

- (1) A statement of the child's present levels of:
 - (a) Physical development, including vision, hearing, and health status; ~~cognitive~~
 - (b) Cognitive development; ~~communication~~

(c) Communication development; ~~social~~

(d) Social or emotional development; and ~~adaptive~~

(e) Adaptive skills; ~~based on multidisciplinary evaluation and assessment data;~~

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

(3) A statement of the measurable results or measurable outcomes expected to be achieved for the child and family, including preliteracy and language skills, as developmentally appropriate for the child, ~~and~~ the criteria, procedures, and timelines used to determine the degree to which progress toward achieving the results or outcomes identified in the ~~individualized family service plan is being made~~ IFSP; and whether modifications or revisions of the expected results or outcomes or early intervention services identified in the plan are necessary;

(4) A statement of the specific early intervention services based on peer-reviewed research, to the extent practicable, necessary to meet the unique needs of the child and the family to achieve the results or outcomes, including the ~~length~~

(a) Length; ~~duration~~

(b) Duration; ~~frequency~~;

(c) Frequency and intensity; ~~natural environments~~

(d) Natural environment in which each early intervention services will be provided, to the maximum extent appropriate consistent with this article, and a justification of the extent, if any, to which the early intervention services will not be provided in a natural environment; ~~location~~

(e) Location; ~~method~~

(f) Method of delivering the early intervention service; and ~~any~~

(g) Any payment arrangements;

(5) To the extent appropriate, the IFSP also must:

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

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

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

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

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

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

- (1) Describe how the ~~families~~ child's family will be included in the transitional plans;
- (2) Discuss with and train the child's parents, as appropriate, regarding future placements, ~~and~~ other matters relating to the child's transition;
- (3) Notify the appropriate local education agency in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B ~~of IDEA,~~ as determined in accordance with state law, and of the need for transitional planning;
- (4) With the approval of the family, convene a conference between the child's IFSP team, family, and local educational agency at least 90 days and at the discretion of the parties, and not more than nine months before the child is eligible for the preschool program under Part B ~~of Individuals with Disabilities Education Act IDEA,~~ in accordance with state law. In the case of a child who may not be eligible for preschool services under Part B ~~of IDEA,~~ service coordinators, with the approval of the family, make reasonable efforts to convene a conference among the child's IFSP team, the family, and providers of other appropriate services for children who are not eligible

for preschool services under Part B ~~of IDEA~~, to discuss the appropriate services that the child may receive;

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

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

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

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

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

- (1) The parent or parents of the child;
- (2) Other family members, as requested by the parent, if feasible;

(3) An advocate or person outside the family, ~~if the parent requests that the person participate as requested by the parent;~~

(4) The service coordinator who has been designated by the contractor to be responsible for implementation of the ~~individualized family service plan IFSP;~~

(5) A person or persons directly involved in conducting evaluations and assessments;

(6) As appropriate, the person or persons who will be providing early intervention services to the child or family;

(7) ~~A school district~~ A local education agency (LEA) representative at the initial eligibility determination; and

(8) ~~A school district~~ An LEA representative if the child is in need of prolonged assistance.

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

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

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

(1) Parental consent is obtained;

(2) An interim individualized family service plan (IFSP) is developed that includes the name of the service coordinator responsible for implementation of the interim ~~individualized family service plan~~ IFSP pursuant to § 24:14:13:03 and coordination with other agencies and persons;

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

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

Source: 20 SDR 223, effective July 7, 1994; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

Source: 20 SDR 223, effective July 7, 1994; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

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

Except where the parties have jointly agreed to waive the resolution process or to use mediation mediation, notwithstanding the above two paragraphs, the failure of ~~the a~~ parent filing a

due process complaint to participate in the resolution meeting delays the timelines for the resolution process and due process hearing until the meeting is held.

Source: 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

24:14:14:21. Appeal of administrative decision. Any party aggrieved by the findings and decisions of the hearing officer under this article may bring a civil action under the Individuals with Disabilities Education Act (~~IDEA~~), ~~20 U.S.C. § 1415(i)(2) as in effect on December 3, 2004~~. A civil action may be filed in either state or federal court without regard to the amount in controversy. The party bringing the action has 90 days from the date of a hearing officer's decision to file a civil action. In any action brought under this section, the court:

- (1) Shall receive the records of the administrative proceedings;
- (2) Shall hear additional evidence at the request of a party; and
- (3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

Nothing in Part C ~~of the Individuals with Disabilities Education Act~~ restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, as amended to July 1, 2012, Title V of the Rehabilitation Act of 1973, as amended to ~~July 1, 2012~~ December 10, 2015, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws, seeking relief that is also available under ~~section 615 of IDEA~~ 20 U.S.C. § 1415(b)(6), the procedures under this chapter for

a due process hearing must be exhausted to the same extent as would be required had the action been brought under ~~section 615 of IDEA~~ 20 U.S.C. § 1415(b)(6).

Source: 20 SDR 223, effective July 7, 1994; 26 SDR 153, effective May 22, 2000; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

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

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

- (1) The right to a response from the contractor or participating agency to reasonable requests for explanations and interpretations of the early intervention records;
- (2) The right to request that the contractor or participating agency provide copies of the early intervention records containing the information if failure to provide these copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- (3) The right to have a representative of the parent inspect and review the early intervention records.

The contractor or participating agency may presume that the parent has authority to inspect and review early intervention records relating to the parent's child unless the contractor or

participating agency has been provided documentation that the parent does not have the authority under applicable state law ~~governing such matters as foster care, guardianship, separation, divorce, or custody.~~

Source: 20 SDR 223, effective July 7, 1994; 28 SDR 105, effective January 31, 2002; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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

Cross-References:

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

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

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

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

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

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

(3) Training personnel to coordinate transition services for infants and toddlers with disabilities who are transitioning from an early intervention service program under Part C ~~of IDEA~~

to a preschool program under ~~section 619~~ 20 U.S.C. § 1419 of ~~IDEA~~ the Individuals with Disabilities Education Act, Head Start, Early Head Start, an elementary school program under Part B ~~of IDEA~~, or another appropriate program.

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

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

Source: 20 SDR 233, effective July 7, 1994; 35 SDR 82, effective October 22, 2008; 39 SDR 109, effective December 17, 2012.

General Authority: SDCL 13-37-1.1.

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