

24:05:13:01. Definitions. Terms defined in § 24:43:01:01 and in SDCL 13-37-1 have the same meaning when used in this article. In addition, terms used in this article mean:

(1) "Adult services," services pertaining to independent living, vocational development, preemployment services, or employment services designed for persons 16 years of age or older;

(2) "Approved program," a written description of a school district's, state agency's, special education school's, or community support provider's policies and procedures for implementing its special education program that is found by the department to comply with this article;

(3) "At no cost," the provision of specially designed instruction without charge to the parent except for incidental fees that are normally charged to students without disabilities or their parents as a part of the regular education program;

(4) "Braille," a person who produces materials in Braille by the use of a manual Braille writer, slate and stylus, or computer;

(5) "Braille teacher," an individual who assists classroom teachers in the instruction of reading and writing through the use of Braille;

(6) "Business day," Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day;

(7) "Community support provider," "CSP," a nonprofit facility as defined in SDCL 27B-1-17(4);

(8) "Consent," as used in this article, the term consent, means:

(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, or other mode of communication;

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

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

(d) If a parent revokes consent, that revocation is not retroactive, it does not negate an action that has occurred after the consent was given and before the consent was revoked; and

(e) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the local education agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent;

(9) "Core academic subjects," English, reading, language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography;

(10) "Day," calendar day unless otherwise indicated as a business day or school day;

(11) "Day school program," a specialized program provided in a facility, a school district, or a cooperative center that a child attends during the day, returning home at night;

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

(13) "Early childhood special education program," a program specially designed to meet the unique needs of children with disabilities, birth through ~~six~~ five years of age, including center-based instruction, home-based instruction, and instruction in hospitals and institutions;

(14) ~~"Elementary and Secondary Education Act," "ESEA," the federal Elementary and Secondary Education Act as codified at 20 U.S.C. 6301 et seq., January 8, 2002, and 34 C.F.R.~~

~~Part 200, published in the Federal Register on December 2, 2002; “Every Student Succeeds Act,”~~
“ESSA,” the federal reauthorization of Elementary and Secondary Education Act as codified at
20 U.S.C. 6301 et seq., December 10, 2015, and 34 C.F.R. 200, published in the Federal
Register on July 2, 2019;

(15) "Eligible student," a person through the age of 21 years who is a resident of the state of South Dakota and who requires special education or special education and related services because of the person's educational needs;

(16) "Extraordinary cost funds," amounts set aside by the secretary pursuant to SDCL 13-37-40;

(17) "High cost program," a program in which:

(a) Students have been identified as eligible for special education and related services;

(b) Each student in the program has an IEP;

(c) The cost of providing special education instruction and related services is more than fifty thousand dollars in excess of the total revenues credited to the special education fund of the school district referenced in SDCL 13-37-8.10; and

(d) The district incurs the costs referenced in subdivision (c) due to the intensity, frequency, and diversity of the special education needs of one or more of the students in the program;

(18) "High cost student," a student who meets the following criteria:

(a) The student has been identified as eligible for special education and related services;

(b) The student has an IEP;

(c) The cost of providing special education instruction and related services for the student is at least twice the funding allocation for the student as defined in SDCL 13-37-35.1; and

(d) The district incurs the costs referenced in subdivision (c) due to the intensity, frequency, and diversity of the special education needs of the student;

(19) "Homeless children," the term, homeless children and youths, as defined in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11431 et seq., as amended to January 1, 2009;

(20) "Individuals with Disabilities Education Act," "IDEA," the federal Individuals with Disabilities Education Act as codified at 20 U.S.C. §§ 1411 to 1420, inclusive, December 3, 2004, and 34 C.F.R. Part 300, published in the Federal Register on August 14, 2006, December 1, 2008, and February 14, 2013;

(21) "Individual educational program," "IEP," a written statement for a specific child with a disability, in accordance with chapter 24:05:27, based on a full and individual evaluation of the child and developed by an IEP team;

(22) "Individualized education program team," "IEP team," as used in this article, the term, individualized education program team, or, IEP team, means the group of individuals described in § 24:05:27:01.01 that is responsible for developing, reviewing, or revising an IEP for a child with a disability;

(23) "Least restrictive environment," a learning environment for a child in need of special education or special education and related services, including a child placed in a public or private institution or another care facility, that includes to the maximum extent appropriate children who

are not in need of special education or special education and related services, as determined through the child's individual educational program;

(24) "Limited English proficient," as the term is defined in section 9101(25) of the ESEA;

(25) "Local education agency," a school district or other public authority under supervision of the department established by state law for the purpose of providing free public education on a regional basis which also provides special education and related services to children with disabilities within the state of South Dakota;

(26) "National Instructional Materials Access Center," "NIMAC," the center established pursuant to section 674(e) of the IDEA;

(27) "National Instructional Materials Accessibility Standard," "NIMAS," as the term is defined in section 674(e)(3)(B) of the IDEA;

(28) "Policy," a rule, regulation, or standard enacted by a school district board;

(29) "Physical education," the development of physical and motor fitness and fundamental motor skills and patterns through individual and group games and sports, including intramural and lifetime sports, special physical education, adapted physical education, movement education, and motor development;

(30) "Related services," services that support the provision of special education, including transportation and those developmental, corrective, and other supportive services determined by an IEP team to be required for an eligible child to benefit from special education;

(31) "Residential school program," an approved specialized program provided in a facility that a child attends 24 hours a day;

(32) "Scientifically based research," as the term is defined in ~~section 9101(37) of the ESEA~~ ESSA;

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

(34) "Self-contained program," a specialized instructional environment for eligible children in need of special education or special education and related services who require intensive instructional procedures;

(35) "Special education," instruction specially designed to meet the unique needs of a student with disabilities at no cost to parents or guardians, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, and other settings;

(36) "Specially designed instruction," adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction;

(37) "Standard deviation," a statistical measure of variation derived by squaring each deviation in a set of scores, taking the average of these scores, and then taking the square root of the results;

(38) "Supplemental aid," a program in which:

(a) Students have been identified as eligible for special education and related services;

(b) Each student in the program has an IEP; and

(c) The cost of providing special education instructions and related services is in excess of the total revenues credited to the special education fund of the school district referenced in SDCL 13-37-8.10;

(39) "Travel training," instruction provided, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction to enable them to develop an awareness of the environment in which they live and to learn the skills

necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community);

(40) "Vocational education," organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career requiring other than a baccalaureate or advance degree;

(41) "Universal design," as the term is defined in section 3 of the Assistive Technology Act of 1998, 29 U.S.C. 3002, as amended to January 1, 2009; and

(42) "Ward of the state," a child who, as determined by the state where the child resides, is a foster child, a ward of the state, or in the custody of a public child welfare agency. Ward of the state does not include a foster child who has a foster parent who meets the definition of a parent in § 24:05:13:04.

Source: 16 SDR 41, effective September 7, 1989; 18 SDR 158, effective March 31, 1992; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 36 SDR 96, effective December 8, 2009; 40 SDR 40, effective September 11, 2013; 40 SDR 102, effective December 4, 2013; 40 SDR 202, effective June 2, 2014.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1, 13-37-1.2, 13-37-40, 13-37-41.

24:05:16:05. Staff development component in school district's comprehensive plan. The staff development section of each school district's comprehensive plan shall include information to demonstrate that:

(1) All personnel necessary to carry out Part B of the Individuals with Disabilities Education Act within the jurisdiction of the district are appropriately and adequately prepared; and

(2) District policies and procedures are consistent with the requirements of this chapter and the federal ~~Elementary and Secondary Education Act, as amended to January 1, 2007.~~ Every Student Succeeds Act, as amended on December 10, 2015.

Each school district shall take measurable steps to recruit, hire, train, and retain ~~highly~~ qualified personnel to provide special education and related services under this article to children with disabilities.

Source: 16 SDR 41, effective September 7, 1989; 19 SDR 29, effective August 30, 1992; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:16:16.03. Requirements for highly qualified special education teachers -- Teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term, highly qualified, has the meaning given the term in ~~ESEA~~ ESSA, except that the requirements for highly qualified also include:

(1) The requirements described in § 24:05:16:16.04; and

(2) The option for teachers to meet the requirements of ~~ESEA~~ ESSA by meeting the requirements of §§ 24:05:16:16.05 and 24:05:16:16.06.

~~— A teacher who is highly qualified under this section is considered highly qualified for purposes of ESEA.~~

The requirements in this section do not apply to teachers hired by private elementary schools or secondary schools, including private school teachers hired or contracted by school districts to provide equitable services to parentally-placed private school children with disabilities under chapter 24:05:32.

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:16:16.05. Requirements for ~~highly~~ qualified special education teachers -- Teaching to alternate achievement standards. For any special education teacher who teaches core academic subjects exclusively to children who are assessed against alternate achievement standards, being ~~highly~~ qualified means the teacher, whether new or not new to the profession, may either:

(1) Meet the applicable requirements of the ~~ESEA~~ ESSA for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(2) Meet the requirements of the ~~ESEA~~ ESSA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of the ~~ESEA~~ ESSA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those standards, as determined by the state.

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:16:16.06. Requirements for ~~highly~~ qualified special education teachers -- Teaching multiple subjects. For any special education teacher, who teaches two or more core academic subjects exclusively to children with disabilities, being ~~highly~~ qualified means that the teacher may either:

(1) Meet the applicable requirements of the ~~ESEA~~ ESSA;

~~— (2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession, which may include a single, high objective uniform state standard of evaluation covering multiple subjects; or~~

~~— (3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher, which may include a single highly objective uniform state standard of evaluation covering multiple subjects.~~

~~A fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.~~

~~— (2) Meet the applicable certification requirements of ARSD 24:28.~~

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:19:05.09. Schoolwide programs under title I of ESEA -- General. Notwithstanding the provisions of excess cost and maintenance of effort, or any other provision of Part B of the IDEA, a school district may use funds received under Part B of the IDEA for any fiscal year to carry out a schoolwide program ~~under section 1114 of the ESEA~~, except that the amount used in any schoolwide program may not exceed the amount received by the district under Part B of the IDEA for that fiscal year divided by the number of children with disabilities in the jurisdiction of the district and multiplied by the number of children with disabilities participating in the schoolwide program.

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:19:05.10. Schoolwide programs ~~under title 1 of ESEA~~ -- Funding. The funds described in § 24:05:19:05.09 are subject to the following conditions:

(1) The funds must be considered as federal Part B IDEA funds for purposes of the calculations required under excess cost, supplementing, and supplanting; and

(2) The funds may be used without regard to the other requirements of this chapter.

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:19:05.11. Schoolwide programs ~~under title 1 of ESEA~~ -- Meeting other Part B requirements. Except as provided in § 24:05:19:05.10, all other requirements of Part B of the IDEA must be met by a school district using Part B funds in accordance with § 24:05:19:05.09, including ensuring that children with disabilities in schoolwide program schools:

- (1) Receive services in accordance with a properly developed IEP; and
- (2) Are afforded all of the rights and services guaranteed to children with disabilities

under the IDEA.

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:21:05. Records regarding migratory children with disabilities. A school district shall cooperate in the U.S. Secretary of Education's efforts under ~~section 1308 of the ESEA~~ ESSA 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.

Source: 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:25:04.03. Determination of eligibility. 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~~ ESSA, 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.

Source: 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:28:10. Preschool programs. The requirements of this chapter apply to all eligible preschool children, ages three ~~to~~ through five, inclusive, who are entitled to receive a free appropriate public education.

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