

“Student Discipline”

South Dakota School Laws and Administrative Rules



The following student discipline information is taken from selected South Dakota codified laws and the South Dakota Administrative Rules pertaining to appropriate use of discipline in the public schools as of July 5, 2007.

The document is designed as a guide for school administrators in the Cornbelt Educational Cooperative in applying appropriate discipline procedures to general education students and students with disabilities who violate a school district's code of student conduct.

South Dakota Laws

S.D. LAW CHAPTER 13-32

“SUPERVISION OF STUDENTS AND CONDUCT OF SCHOOL”

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Notice to South Dakota High School Activities Association.

13-32-1. Disciplinary authority over students on school premises. Superintendents, principals, supervisors, and teachers have disciplinary authority over all students while the students are in school or participating in or attending school sponsored activities whether on or off school premises. Superintendents and principals may also discipline students for aggressive or violent behavior that disrupts school or that affects a health or safety factor of the school or its programs.

Source: SL 1955, ch 41, ch 12, § 20; SL 1959, ch 79; SDC Supp 1960, § 15.3020; SL **1996**, ch 121.

13-32-2. Physical force authorized when reasonable and necessary--Attendance at school functions away from premises--Authority of bus drivers. Superintendents, principals, supervisors, and teachers and their aids and assistants, have the authority, to use the physical force that is reasonable and necessary for supervisory control over students. Like authority over students is given any person delegated to supervise children who have been authorized to attend a school function away from their school premises and to school bus drivers while students are riding, boarding, or leaving the buses.

Source: SL 1955, ch 41, ch 12, § 20; SL 1959, ch 79; SDC Supp 1960, § 15.3020; SL **1990**, ch 128, § 1.

13-32-3. Reference for psychiatric treatment prohibited without parents' consent. No public school administrator or teacher shall refer a student for psychiatric treatment within or outside the school without the prior written consent of such student's parent or guardian.

Source: SL **1961**, ch 91.

13-32-4. School board to assist in discipline--Suspension and expulsion of pupils--Report to local authorities--Hearings--Alternative settings. The school board of every school district shall assist and cooperate with the administration and teachers in the government and discipline of the schools. The board may suspend or expel from school any student for violation of rules or policies or for insubordination or misconduct, and the superintendent or principal in charge of the school may temporarily suspend any student in accordance with § 13-32-4.2. The rules or policies may include prohibiting the following:

- (1) The consumption or possession of beer or alcoholic beverages on the school premises or at school activities;
- (2) The use or possession of a controlled substance, without a valid prescription, on the school premises or at school activities; and
- (3) The use or possession of a firearm, as provided in § 13-32-7, on or in any elementary or secondary school premises, vehicle, or building or any premises, vehicle, or building used or leased for elementary or secondary school functions or activities.

In addition to administrative and school board disciplinary action, any violation of § 13-32-7 shall be reported to local law enforcement authorities.

The period of expulsion may extend beyond the semester in which the violation, insubordination, or misconduct occurred. Any expulsion for consumption or possession of beer or alcoholic beverages may not extend beyond ninety school days. If a student has intentionally brought a firearm onto school premises, the expulsion may not be for less than twelve months.

However, the superintendent or chief administering officer of each local school district or system may increase or decrease the length of a firearm-related expulsion on a case-by-case basis. The South Dakota Board of Education shall promulgate rules pursuant to chapter 1-26 to establish administrative due process procedures for the protection of a student's rights. The administrative due process procedures shall include a requirement that the school give notice of a student's due process rights to the parent or guardian of the student at the time of suspension or expulsion. Each school district board shall provide a procedural due process hearing, if requested, for a student in accordance with such rules if the suspension or expulsion of the student extends into the eleventh school day.

This section does not preclude other forms of discipline which may include suspension or expulsion from a class or activity.

This section does not prohibit a local school district from providing educational services to an expelled student in an alternative setting.

Source: SDC 1939, § 15.3008; SL 1955, ch 41, ch 12, § 18; SDC Supp 1960, § 15.3018; SL 1973, ch 99; SL 1975, ch 128, § 209; SL 1981, ch 145, § 1; SL 1993, ch 141, § 1; SL 1995, ch 99; SL 1996, ch 122; SL 1999, ch 88, § 1.

13-32-4.1. Attendance policy--Adoption by school board--Suspension and expulsion power unaffected. The school board of every school district may adopt an attendance policy in accordance with procedural due process rules established by the South Dakota Board of Education pursuant to § 13-32-4. Any attendance policy adopted pursuant to this section is not to be construed as limiting the powers of the school board of a school district to suspend or expel students pursuant to § 13-32- 4.

Source: SL 1981, ch 145, § 2.

13-32-4.2. Procedure for suspension--Appeal--Hearing. The school board in any district may authorize the summary suspension of pupils by principals of schools for not more than ten school days and by the superintendent of schools for not more than ninety school days. In case of a suspension by the superintendent for more than ten school days, the pupil or his parents or others having his custodial care may appeal the decision of the superintendent to the Board of Education. Any suspension by a principal shall be immediately reported to the superintendent who may revoke the suspension at any time. In event of an appeal to the board, the superintendent shall promptly transmit to the board a full report in writing of the facts relating to the suspension, the action taken by him and the reasons for such action; and the board, upon request, shall grant a hearing to the appealing party. No pupil may be suspended unless:

- (1) The pupil is given oral or written notice of the charges against him;
- (2) The pupil is given an oral or written explanation of the facts that form the basis of the proposed suspension; and
- (3) The pupil is given an opportunity to present his version of the incident.

In the event of a suspension for more than ten school days, if the pupil gives notice that he wishes to appeal the suspension to the board, the suspension shall be stayed until the board renders its decision, unless in the judgment of the superintendent of schools, the pupil's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process, in which case the pupil may be immediately removed from school, and the notice and hearing shall follow as soon as practicable.

Source: SL 1993, ch 141, § 2.

13-32-4.3. Effect of student's suspension or expulsion on enrollment. If any student is under suspension or expulsion in a school district, the student may not enroll in any school district until the suspension or expulsion has expired. The superintendent or school administrator of any school district may prohibit a student from enrolling in that school district if the student is under suspension or expulsion in a school in another state or in a nonpublic school in this state. Upon receiving a request for a student's permanent school records from the receiving district, the sending school shall provide the receiving district with written notice of any suspension or expulsion.

Source: SL 1996, ch 120, § 2; SL 2000, ch 50, § 4.

13-32-5. Injury to school property as ground for suspension or expulsion. Any student, who cuts, defaces, or otherwise injures any schoolhouse, equipment, or outbuilding thereof, is liable to suspension or expulsion.

Source: SDC 1939, § 15.3009; SL 1955, ch 41, ch 12, § 19; SDC Supp 1960, § 15.3019; SL 1975, ch 128, § 210.

13-32-6. Disturbance of school as misdemeanor. A person, whether pupil or not, who intentionally disturbs a public or nonpublic school when in session or who intentionally interferes with or interrupts the proper order or management of a public or nonpublic school by acts of violence, boisterous conduct, or threatening language, so as to prevent the teacher or any pupil from performing his duty, is guilty of a Class 2 misdemeanor.

Source: SDC 1939, § 15.9911; SL 1955, ch 41, ch 17, § 11; SL 1957, ch 74; SL 1975, ch 128, § 211; SL 1982, ch 86, § 144.

13-32-7. Possession of firearms on elementary or secondary school premises or vehicle as misdemeanor--Exceptions. Any person, other than a law enforcement officer, who intentionally carries, has in his possession, stores, keeps, leaves, places, or puts into the possession of another person, any firearm, or air gun, whether or not the firearm or air gun is designed, adapted, used, or intended primarily for imitative or noisemaking purposes, or any dangerous weapon, on or in any elementary or secondary school premises, vehicle, or building or any premises, vehicle, or building used or leased for elementary or secondary school functions, whether or not any person is endangered by such actions, is guilty of a Class 1 misdemeanor. This section does not apply to starting guns while in use at athletic events, firearms, or air guns at firing ranges, gun shows, and supervised schools or sessions for training in the use of firearms. This section does not apply to the ceremonial presence of unloaded weapons at color guard ceremonies.

Source: SL 1961, ch 49; SL 1979, ch 120; SL 1982, ch 86, § 145; SL 1990, ch 129; SL 1991, ch 147, § 1; SL 1993, ch 142; SL **2002**, ch 90, § 1.

13-32-8. School safety patrols--Insurance coverage. Any school board may establish a school safety patrol to supervise students in the directing of other students crossing public streets on their way to and from school. The board of each school district may purchase health, accident, and liability insurance to cover all adult and student safety patrol members in the operation of such safety patrol.

Source: SL **1976**, ch 119.

13-32-9. Suspension from extracurricular activities for controlled substance violation--Notice to South Dakota High School Activities Association. Any person adjudicated, convicted, the subject of an informal adjustment or court-approved juvenile diversion program, or the subject of a suspended imposition of sentence for possession, use, or distribution of controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education for one calendar year from the date of adjudication, conviction, diversion, or suspended imposition of sentence. The one-year suspension may be reduced to sixty school days if the person participates in an assessment with a certified chemical dependency counselor or completes an accredited intensive prevention or treatment program. If the assessment indicates the need for a higher level of care, the student is required to complete the prescribed program before becoming eligible to participate in extracurricular activities. Upon a subsequent adjudication, conviction, diversion, or suspended imposition of sentence for possession, use, or distribution of controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, by a court of competent jurisdiction, that person is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education. Upon such a determination in any juvenile court proceeding the Unified Judicial System shall give notice of that determination to the South Dakota High School Activities Association and the chief administrator of the school in which the person is participating in any extracurricular activity.

Upon placement of the person in an informal adjustment or court-approved juvenile diversion program, the state's attorney who placed the person in that program shall give notice of that placement to the South Dakota High School Activities Association and chief administrator of the school in which the person is participating in any extracurricular activity.

As used in this section, the term, extracurricular activity, means any activity sanctioned by the South Dakota High School Activities Association.

Source: SL 1997, ch 102, §§ 1, 4; SL 2003, ch 272, § 63; SL **2006**, ch 82, § 1.

SOUTH DAKOTA ADMINISTRATIVE RULES

ARTICLE 24:07

"STUDENT DUE PROCESS"

Chapter

24:07:01 General provisions.

24:07:02 Short-term suspension procedure.

24:07:03 Long-term suspension procedure.

24:07:04 Expulsion procedure.

CHAPTER 24:07:01

“GENERAL PROVISIONS”

24:07:01:01. Definitions. Terms used in this article mean:

- (1) "Expulsion," the action of the school board that terminates a pupil's membership in school for not more than 12 consecutive months;
- (2) "Long-term suspension," the exclusion of a pupil by the superintendent or school board from a class or classes or from school for more than 10 but not more than 90 school days;
- (3) "Parent," a parent, guardian, or person in charge of a pupil;
- (4) "Policy," a rule, regulation, or standard enacted by a school district board;
- (5) "Short-term suspension," the exclusion of a pupil by a principal or superintendent from a class or from school for not more than 10 school days.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994; 23 SDR 63, effective **November 4, 1996.**

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

CHAPTER 24:07:02

“SHORT-TERM SUSPENSION PROCEDURE”

Section

24:07:02:01 Short-term suspension procedure.

24:07:02:01. Short-term suspension procedure. If a short-term suspension from a class, classes, or school is anticipated because of a pupil's violation of a policy, the principal or superintendent shall give oral or written notice to the pupil as soon as possible after discovery of the alleged violation, stating the facts that form the basis for the suspension. The pupil must be given the opportunity to answer the charges. If a pupil is suspended, the principal or superintendent shall give the parent oral notice, if possible, and shall send the parent or a pupil who is 18 years of age or older or an emancipated minor a written notice which provides information regarding the pupil's due process rights. A pupil who is an unemancipated minor may not be removed from the school premises before the end of the school day without contacting a parent unless the pupil's presence poses a continuing threat or danger, in which case the pupil may be immediately removed from the school and transferred into the custody of a parent or law enforcement.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994; 23 SDR 63, effective **November 4, 1996.**

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

CHAPTER 24:07:03

“LONG-TERM SUSPENSION PROCEDURE”

Section

24:07:03:01

Written report required.

24:07:03:02

Right to request hearing -- Notice of hearing.

24:07:03:03

Right of waiver.

24:07:03:04

Hearing procedure.

24:07:03:05

Repealed.

24:07:03:06

Right of appeal.

24:07:03:07

Attendance policies.

24:07:03:08

Referral to placement committee of pupils in need of special education.

24:07:03:01. Written report required. The superintendent must file a sealed, written report with the school board by the end of the fifth school day following the first day of the long-term suspension and may request that a hearing be held before the school board. The report must include the facts of the situation, the action taken, the reasons for the action, and the superintendent's decision or recommendation. The report must remain in the possession of the school board secretary or business manager, sealed and unavailable for review by individual school board members, until the time set for a hearing. The superintendent must send a copy of the report to the pupil's parent or to the pupil if the pupil is 18 years of age or older or an emancipated minor at the same time the report is filed with the school board's secretary or business manager.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994; 23 SDR 63, effective **November 4, 1996.**

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

24:07:03:02. Right to request hearing -- Notice of hearing. If the superintendent finds grounds for a long-term suspension from a class or classes, the superintendent may exclude the pupil from a class or classes by using the short-term suspension procedure in § 24:07:02:01. The superintendent shall give a written notice to the pupil's parent or to a pupil who is 18 years of age or older or an emancipated minor and may schedule a hearing. The notice shall contain the following minimum information:

- (1) The policy allegedly violated;
- (2) The reason for the disciplinary proceedings;
- (3) Notice of the right to request a hearing or waive the right to a hearing.
- (4) A description of the hearing procedure;
- (5) A statement that the pupil's records are available at the school for examination by the pupil's parent or authorized representative; and
- (6) A statement that the pupil may present witnesses.

If a hearing is requested, the superintendent shall give notice to each school board member of an appeal to the board for a hearing. The superintendent shall set the date, time, and place for the hearing and send notice by first class mail to each school board member and by certified mail, return receipt requested, to the pupil's parent or to a pupil who is 18 years of age or older or an emancipated minor.

If no hearing is requested or the hearing is waived, the action of the superintendent is final.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994; 23 SDR 63, effective **November 4, 1996.**

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

24:07:03:03. Right of waiver. The pupil, if of the age of majority or emancipated, or the pupil's parent may waive the right to a hearing in writing to the superintendent. If the hearing is not waived, the hearing shall be held on the date, time, and place set in the notice unless a different date, time, and place are agreed to by the parties.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective **July 1, 1985.**

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4.

24:07:03:04. Hearing procedure. The school board is the hearing board and shall conduct the hearing in the following manner:

- (1) The school board shall appoint a school board member or a person who is not an employee of the school district as the hearing officer;
- (2) Each party may make an opening statement;
- (3) Each party may introduce evidence, present witnesses, and examine and cross-examine witnesses;
- (4) Each party may be represented by an attorney;
- (5) The school administration shall present its case first;
- (6) The hearing is closed to the public. A verbatim record of the hearing will be made and will be sealed pending court order;
- (7) Witnesses may be present only when testifying. All witnesses must take an oath or affirmation administered by the school board president or business manager;
- (8) Each party may raise objections; however, objections are limited to relevancy and scope of the question;
- (9) All relevant evidence must be admitted; however, unproductive or repetitious evidence may be limited by the hearing officer;
- (10) The hearing officer may ask questions of witnesses and may allow other school board members to interrogate witnesses;
- (11) Each party may make a closing statement;
- (12) After the hearing, the school board shall continue to meet in executive session for deliberation. No one other than the hearing officer may meet with the school board during deliberation. The school board may seek advice during deliberation from an attorney. Consultation with any other person during deliberation may occur only if a representative of the pupil is present; and

(13) The decision of the school board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The motion must omit the name of the pupil and must state the reason for the board's action. The school board shall notify the pupil or the pupil's parents in writing of the decision. The notice must state the length of the suspension or expulsion.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective **July 7, 1994**.

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

24:07:03:05. Decision must be based on evidence. Repealed.

Source: 1 SDR 24, effective September 5, 1974; 8 SDR 15, repealed August 19, 1981.

24:07:03:06. Right of appeal. The student may appeal an adverse decision by the school board to the circuit court.

Source: 1 SDR 24, effective September 5, 1974; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994.

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

24:07:03:07. Attendance policies. The attendance policy of a school district may not exclude a pupil from a class or from school for more than ten days without providing due process procedures pursuant to this chapter.

Source: 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective **July 7, 1994**.

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.1, 13-32-4.2.

24:07:03:08. Referral to placement committee of pupils in need of special education. If a pupil identified as in need of special education or special education and related services pursuant to SDCL 13-37-1 is expelled or subjected to long-term suspension, the procedure in § 24:05:26:09 applies.

Source: 8 SDR 15, effective August 19, 1981; 11 SDR 96, 11 SDR 112, effective July 1, 1985; 20 SDR 223, effective July 7, 1994; 23 SDR 63, effective **November 4, 1996**.

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

CHAPTER 24:07:04

“EXPULSION PROCEDURE”

Section	
24:07:04:01	Written report required.
24:07:04:02	Notice of hearing.
24:07:04:03	Right of waiver.
24:07:04:04	Hearing procedure.
24:07:04:05	Right of appeal.
24:07:04:06	Attendance policies.
24:07:04:07	Referral to placement committee of students in need of special education or special education and related services.

24:07:04:01. Written report required. If expulsion is anticipated because of a student's violation of a rule or policy or for insubordination or misconduct, the superintendent must file a sealed written report with the school board no later than the end of the fifth school day following the first day of the student's removal from one or more classes or from school and schedule a hearing before the school board. The report must include the facts of the situation, the action, the reasons for the action and the superintendent's recommendation. The report must remain in the possession of the school board secretary sealed and unavailable for review by individual school board members, until the time set for a hearing.

At the same time that the report is filed with the school board's secretary, the superintendent must send a copy of the report to the student's parent or to the student if the student is 18 years of age or older or is an emancipated minor.

Source: 23 SDR 179, effective **April 29, 1997.**

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

24:07:04:02. Notice of hearing. If the superintendent finds grounds for expulsion from one or more classes or from school, the superintendent may exclude the student immediately by using the short-term suspension procedure in § 24:07:02:01. The superintendent shall give a written notice to one or both of the student's parents or to a student who is 18 years of age or older or an emancipated minor. The notice must contain the following information at a minimum:

- (1) The rule, regulation, or policy allegedly violated;
- (2) The reason for the disciplinary proceedings;
- (3) Notice of the right to request a hearing;
- (4) A description of the hearing procedure;
- (5) A statement that the student's records are available at the school for examination by the student's parent or parents or another authorized representative;
- (6) A statement that the student may present witnesses; and
- (7) A statement that the student may be represented by an attorney.

The superintendent shall set the date, time, and place for the school board hearing. The superintendent shall send notice of the hearing to each school board member by first class mail and to the student's parent or to a student who is 18 years of age or older or an emancipated minor by certified mail, return receipt requested. If the superintendent recommends expulsion, the school board must act on the recommendation before it is implemented.

Source: 23 SDR 179, effective **April 29, 1997.**

General Authority: SDCL 13-32-4.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

24:07:04:03. Right of waiver. The student, if of the age of majority or emancipated, or the student's parent may waive the right to a hearing in writing to the superintendent. If the hearing is not waived, the hearing shall be held on the date and at the time and place set in the hearing notice unless a different date, time, and place are agreed to by the parties. If the hearing is waived in writing, the school board may consider the matter at a regular or special meeting without further notice to the student or the student's parents.

Source: 23 SDR 179, effective **April 29, 1997.**

General Authority: SDCL 13-1-12.1.

Law Implemented: SDCL 13-32-1, 13-32-4.

24:07:04:04. Hearing procedure. The school board is the hearing board and shall conduct the hearing in the following manner:

- (1) The school board shall appoint a school board member or a person who is not an employee of the school district as the hearing officer;
- (2) Each party may make an opening statement;
- (3) Each party may introduce evidence, present witnesses, and examine and cross-examine witnesses;
- (4) Each party may be represented by an attorney;
- (5) The school administration shall present its case first;
- (6) The hearing is closed to the public. The school board shall make a verbatim record of the hearing by means of an electronic or mechanical device or by court reporter. This record and any exhibits must be sealed and must remain with the hearing officer until the appeal process has been completed;
- (7) Witnesses may be present only when testifying. All witnesses must take an oath or affirmation administered by the school board president, hearing officer or other person authorized by law to take oaths and affirmations;
- (8) Each party may raise any legal objection to evidence;
- (9) The hearing officer shall admit all relevant evidence; however, the hearing officer may limit unproductive or repetitious evidence;
- (10) The hearing officer may ask questions of witnesses and may allow other school board members to interrogate witnesses;
- (11) Each party may make a statement;

(12) After the hearing, the school board shall continue to meet in executive session for deliberation. No one other than the hearing officer may meet with the school board during deliberation. The school board may seek advice during deliberation from an attorney who has not represented any of the parties to the hearing. Consultation with any other person during deliberation may occur only if a representative of the student is present; and

(13) The decision of the school board must be based solely on the evidence presented at the hearing and

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL 13-1-12.1.

Law Implemented: SDCL 13-32-1, 13-32-4.

24:07:04:05. Right of appeal. The student may appeal an adverse decision by the school board to the circuit court.

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL 13-1-12.1.

Law Implemented: SDCL 13-32-1, 13-32-4.

24:07:04:06. Attendance policies. The attendance policy of a school district may not exclude a student from one or more classes or from a school for more than ten consecutive school days without providing the due process procedures in this chapter or chapter 24:07:03.

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL 13-1-12.1.

Law Implemented: SDCL 13-32-1, 13-32-4.

24:07:04:07. Referral to placement committee of students in need of special education or special education and related services. If a student identified as in need of special education or special education and related services pursuant to SDCL 13-37-1 is the subject of proposed expulsion, the procedure in § 24:06:26.01:08 applies.

Source: 23 SDR 179, effective April 29, 1997.

General Authority: SDCL 13-32-4, 13-37-1.1.

Law Implemented: SDCL 13-32-4, 13-32-4.2.

CHAPTER 24:05:26 Special Education Rules

“SUSPENSION OF SPECIAL EDUCATION STUDENTS”

Section

24:05:26:01 **Suspension from school.**

24:05:26:01.01 **Suspension from school**

Definitions.

24:05:26:01.02 **Case-by-case determination.**

24:05:26:02 **Short-term suspension procedure.**

24:05:26:02.01 **Change of placement for disciplinary removals.**

24:05:26:02.02 **Removals**

Ten school days or less.

24:05:26:02.03 **Required services**

No change of placement.

24:05:26:03 **Written report required.**

24:05:26:04 **Right to request hearing**

Notice of hearing.

24:05:26:05 **Right of waiver.**

24:05:26:06 **Hearing procedure.**

24:05:26:07 **Right of appeal.**

24:05:26:08 **Attendance policies.**

24:05:26:08.01 **Authority of school personnel**

Weapons, drugs, and serious bodily injury.

24:05:26:08.02 **Authority of hearing officer.**

24:05:26:08.03 **Parental notification.**

- 24:05:26:09** Referral to IEP team for long-term suspension of pupils.
- 24:05:26:09.01** Repealed.
- 24:05:26:09.02** Determination of interim alternative educational setting.
- 24:05:26:09.03** Manifestation determination review requirement.
- 24:05:26:09.04** Determination that behavior was a manifestation.
- 24:05:26:09.05** Determination that behavior was not manifestation of disability
Additional authority of school personnel.
- 24:05:26:09.06** Appeal.
- 24:05:26:09.07** Placement during appeals.
- 24:05:26:09.08** Expedited hearing
Procedures.
- 24:05:26:10 to 20:05:26:13** Repealed.
- 24:05:26:14** Protections for students not yet eligible.
- 24:05:26:15** Referral to and action by law enforcement and judicial authorities.

24:05:26:01. Suspension from school. The suspension of pupils in need of special education or special education and related services includes the general due process procedures used for all pupils and the additional steps in the process specified in this chapter that a district must take if the student is receiving special education or special education and related services under an individualized education program.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; 26 SDR 150, effective **May 22, 2000.**

General Authority: SDCL 13-37-1.1, 13-32-4.

Law Implemented: SDCL 13-37-1.1, 13-32-4.

Cross-Reference: Student due process, art 24:07.

24:05:26:01.01. Suspension from school -- Definitions. Terms used in this chapter and chapter 24:05:26.01 mean:

- (1) "Controlled substance," a drug or other substance identified under SDCL [34-20B-11](#) to [34-20B-26](#) , inclusive;
- (2) "Dangerous weapon," a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury. The term does not include a pocket knife with a blade of less than 2 1/2 inches in length;
- (3) "Illegal drug," a controlled substance, but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under SDCL [34-20B-11](#) to [34-20B-26](#) , inclusive, or under any provision of federal law; and
- (4) "Serious bodily injury," bodily injury that involves:
 - (a) A substantial risk of death;
 - (b) Extreme physical pain;
 - (c) Protracted and obvious disfigurement; or
 - (d) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

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](#).

24:05:26:01.02. Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this chapter, is appropriate for a student with a disability who violates a code of student conduct.

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

General Authority: SDCL [13-37-1.1](#).

Law Implemented: SDCL [13-37-1.1](#).

24:05:26:02. Short-term suspension procedure. If a short-term suspension from a class, classes, or school is anticipated because of a pupil's violation of a policy, the procedure in § 24:07:02:01 applies.

Source: 16 SDR 41, effective September 7, 1989; 22 SDR 97, effective January 22, 1996; 23 SDR 31, effective **September 8, 1996.**

General Authority: SDCL [13-37-1.1](#).

Law Implemented: SDCL [13-37-1.1](#).

24:05:26:02.01. Change of placement for disciplinary removals. For purposes of removal of a student with a disability from the student's current educational placement under this chapter, a change of placement occurs if:

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

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

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.](#)

24:05:26:02.02. Removals -- Ten school days or less. To the extent removal would be applied to students without disabilities, including alternative settings, school personnel may order the removal of a student with a disability from the student's current placement to an appropriate interim alternative educational setting or another setting, or they may order suspension for not more than ten consecutive school days, for any violation of a code of student conduct. Additional removals of not more than ten consecutive school days in that same school year may be ordered for separate incidents of misconduct if those removals do not constitute a change of placement under § 24:05:26:02.01.

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.](#)

24:05:26:02.03. Required services -- No change of placement. A school district need not provide services during periods of removal under § 24:05:26:02.02 to a student with a disability who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed. If a student with a disability has been removed from his or her current placement for more than ten school days in that school year, and the removal is not for more than ten consecutive school days and is not a change in placement, the district, for the remainder of the removals, shall provide services to the extent necessary to enable the student to participate in the general curriculum and to progress toward meeting the goals set out in the student's IEP. School personnel, in consultation with at least one of the student's teachers, shall determine the extent to which services are necessary to enable the student to participate in the general curriculum and to progress toward meeting the goals set out in the student's IEP.

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.](#)

24:05:26:03. Written report required. If a long-term suspension is anticipated because of a pupil's violation of a policy, the procedure in § 24:07:03:01 applies.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective **November 4, 1996.**

General Authority: SDCL [13-37-1.1](#) , [13-32-4.](#)

Law Implemented: SDCL [13-37-1.1](#) , [13-32-4.](#)

24:05:26:04. Right to request hearing -- Notice of hearing. If the superintendent finds grounds for a long-term suspension from a class or classes, the procedure in § 24:07:03:02 applies.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective **November 4, 1996.**

General Authority: SDCL [13-37-1.1](#) , [13-32-4.](#)

Law Implemented: SDCL [13-37-1.1](#) , [13-32-4.](#)

24:05:26:05. Right of waiver. The pupil, if of the age of majority or emancipated, or the pupil's parent may waive the right to a hearing in writing to the superintendent. If the hearing is not waived, the hearing shall be held on the date, time, and place set in the notice unless a different date, time, and place are agreed to by the parties.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective **November 4, 1996.**

General Authority: SDCL [13-37-1.1](#) , [13-32-4.](#)

Law Implemented: SDCL [13-37-1.1](#) , [13-32-4.](#)

24:05:26:06. Hearing procedure. The school board is the hearing board and shall conduct the hearing in the following manner:

- (1) The school board shall appoint a school board member or a person who is not an employee of the school district as the hearing officer;
- (2) Each party may make an opening statement;
- (3) Each party may introduce evidence, present witnesses, and examine and cross-examine witnesses;
- (4) Each party may be represented by an attorney;
- (5) The school administration shall present its case first;
- (6) The hearing is closed to the public. The school board shall make a verbatim record of the hearing by means of an electronic or mechanical device;
- (7) Witnesses may be present only when testifying. All witnesses must take an oath or affirmation administered by the school board president or business manager;
- (8) Each party may raise objections; however, objections are limited to relevancy and scope of the question;
- (9) The hearing officer shall admit all relevant evidence; however, the hearing officer may limit unproductive or repetitious evidence;
- (10) The hearing officer may ask questions of witnesses and may allow other school board members to interrogate witnesses;
- (11) Each party may make a closing statement;
- (12) After the hearing, the school board shall continue to meet in executive session for deliberation. No one other than the hearing officer may meet with the school board during deliberation. The school board may seek advice during deliberation from an attorney who has not represented any of the parties to the hearing. Consultation with any other person during deliberation may occur only if a representative of the pupil is present; and

(13) The decision of the school board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The motion shall omit the name of the pupil and shall state the reason for the board's action. The school board shall notify the pupil's parents or a pupil who is 18 years of age or older or an emancipated minor in writing of the decision. The notice shall state the length of the suspension.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective **November 4, 1996.**

General Authority: SDCL [13-37-1.1](#) , [13-32-4.](#)

Law Implemented: SDCL [13-37-1.1](#) , [13-32-4.](#)

24:05:26:07. Right of appeal. The pupil may appeal an adverse decision by the school board to the circuit court.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective **November 4, 1996.**

General Authority: SDCL [13-37-1.1](#) , [13-32-4.](#)

Law Implemented: SDCL [13-37-1.1](#) , [13-32-4.](#)

24:05:26:08. Attendance policies. The attendance policy of a school district may not exclude a pupil from a class or from a school for more than ten days without providing due process pursuant to this chapter.

Source: 16 SDR 41, effective September 7, 1989; 22 SDR 97, effective January 22, 1996; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective **November 4, 1996.**

General Authority: SDCL [13-37-1.1](#) , [13-32-4.](#)

Law Implemented: SDCL [13-37-1.1](#) , [13-32-4.](#)

24:05:26:08.01. Authority of school personnel -- Weapons, drugs, and serious bodily injury. School personnel may remove a student to an appropriate interim alternative setting for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if:

(1) The student carries a weapon to or possesses a weapon at school, on school premises, or at school or to a school function under the jurisdiction of a state or local education agency;

(2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency; or

(3) The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state education agency or a school district.

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.](#)

24:05:26:08.02. Authority of hearing officer. A hearing officer under this article hears and makes a determination regarding an appeal under this chapter. In making the determination under this section, the hearing officer may:

(1) Return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of this chapter or that the student's behavior was a manifestation of the student's disability; or

(2) Order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others. The procedures under this section may be repeated if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

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](#).

24:05:26:08.03. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the school district shall notify the parents of that decision and provide the parents the procedural safeguards notice described in chapter 24:05:30.

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

General Authority: SDCL [13-37-1.1](#).

Law Implemented: SDCL [13-37-1.1](#).

24:05:26:09. Referral to IEP team for long-term suspension of pupils. If a pupil identified as in need of special education or special education and related services pursuant to SDCL [13-37-1](#) is the subject of long-term suspension, a referral shall be made by the superintendent or chief administering officer to the district's IEP team.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; 26 SDR 150, effective **May 22, 2000**.

General Authority: SDCL [13-37-1.1](#) , [13-32-4](#).

Law Implemented: SDCL [13-37-1.1](#) , [13-32-4](#).

24:05:26:09.02. Determination of interim alternative educational setting. The student's IEP team shall determine the interim alternative educational setting in which a student is placed under §§ 24:05:26:08.01, 24:05:26:02.01, and 24:05:26:09.05.

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](#).

24:05:26:09.03. Manifestation determination review requirement. Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team, as determined by the parent and the district, shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(1) Whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or

(2) Whether the conduct in question was the direct result of the school district's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the district, the parent, and relevant members of the student's IEP team determine that a condition in either subdivision (1) or (2) of this section was met.

If the district, the parent, and relevant members of the student's IEP team determine that the condition described in subdivision (2) of this section was met, the district shall take immediate steps to remedy those deficiencies.

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.](#)

24:05:26:09.04. Determination that behavior was a manifestation. If the school district, the parent, and relevant members of the IEP team determine that the conduct was a manifestation of the student's disability, the IEP team shall either:

(1) Conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(2) If a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior.

In addition, and except as provided in § 24:05:26:08.01, the IEP team shall return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

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.](#)

24:05:26:09.05. Determination that behavior was not manifestation of disability -- Additional authority of school personnel. For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to this chapter, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except as provided in this section.

A student with a disability who is removed from the student's current placement pursuant to this section or § 24:05:26:08.01 must:

(1) Continue to receive educational services, as provided in this article, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(2) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

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.](#)

24:05:26:09.06. Appeal. The parent of a student with a disability who disagrees with any decision regarding placement under this chapter or with the manifestation determination, or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to this article.

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.](#)

24:05:26:09.07. Placement during appeals. If an appeal under this chapter has been made by either the parent or the school district, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § 24:05:26:08.01 or 24:05:26:09.05, whichever occurs first, unless the parent and the state education agency or school district agree otherwise.

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.](#)

24:05:26:09.08. Expedited hearing -- Procedures. If a hearing is requested under this chapter, the parents or the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of this article, except as provided in this section. The department shall arrange the expedited due process hearing, which must occur within 20 school days of the date of the complaint requesting the hearing is filed. The hearing officer shall make a determination within ten school days after the hearing.

Unless the parents and school district agree in writing to waive the resolution meeting described in this section, or agree to use the mediation process described in chapter 24:05:30:

(1) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

The decisions on expedited due process hearings are appealable consistent with chapter 24:05:30.

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.](#)

24:05:26:14. Protections for students not yet eligible. A student who has not been determined to be eligible for special education and related services under this article and who has engaged in behavior that violated any rule or code of conduct of the school district, including any behavior described in this chapter, may assert any of the protections provided for in this article if the school district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. A school district is deemed to have knowledge that a student is a student with a disability if:

(1) The parent of the student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(2) The parent of the student has requested an evaluation of the student pursuant to this article; or

(3) The teacher of the student, or other personnel of the district or other public agency has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the district or to other supervisory personnel of the district.

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

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

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

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](#)

24:05:26:15. Referral to and action by law enforcement and judicial authorities. Nothing in Part B of the Individuals with Disabilities Education Act prohibits a school district or other public agency from reporting a crime committed by a student with a disability to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

A school district or other public agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime. A school district reporting a crime under this chapter may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act, as amended to January 1, 2007.

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.](#)

CHAPTER 24:05:26.01 Special Education Rules

“EXPULSION”

Section

<u>24:05:26.01:01</u>	Expulsion from school.
<u>24:05:26.01:01.01</u>	Case-by-case determination.
<u>24:05:26.01:02</u>	Written report required.
24:05:26.01:03	Request and notice of hearing.
24:05:26.01:04	Right of waiver.
24:05:26.01:05	Hearing procedure.
24:05:26.01:06	Right of appeal.
24:05:26.01:07	Attendance policies.
24:05:26.01:07.01	Authority of school personnel Weapons, drugs, and serious bodily injury.
24:05:26.01:07.02	Authority of hearing officer.
24:05:26.01:07.03	Parental notification.
24:05:26.01:08	Referral to IEP team for expulsion of students.
24:05:26.01:08.01	Applicability of suspension procedures.
24:05:26.01:09 to 24:05:16.01:12	Repealed.
24:05:26.01:13	Protections for students not yet eligible.
24:05:26.01:14	Referral to and action by law enforcement and judicial authorities.

24:05:26.01:01. Expulsion from school. The expulsion of students in need of special education or special education and related services includes the general due process procedures used for all students and the additional steps in the process specified in this chapter that a district must take when the student is receiving special education or special education and related services under an individual education program.

Source: 23 SDR 179, effective April 29, 1997; 26 SDR 150, effective **May 22, 2000**.

General Authority: SDCL [13-32-1](#) , [13-32-4](#) , [13-37-1.1](#).

Law Implemented: SDCL [13-32-1](#) , [13-32-4](#) , [13-37-1.1](#).

Cross-Reference: Student due process, art 24:07.

24:05:26.01:01.01. Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this chapter, is appropriate for a student with a disability who violates a code of student conduct.

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

General Authority: SDCL [13-37-1.1](#).

Law Implemented: SDCL [13-37-1.1](#).

24:05:26.01:02. Written report required. If an expulsion is anticipated because of a student's violation of rules or policies or for insubordination or misconduct, the procedure in § 24:07:04:01 applies.

Source: 23 SDR 179, effective **April 29, 1997**.

General Authority: SDCL [13-32-4](#) , [13-37-1.1](#).

Law Implemented: SDCL [13-32-4](#) , [13-37-1.1](#).

24:05:26.01:03. Request and notice of hearing. If the superintendent finds grounds for expulsion from school, the procedure in § 24:07:04:02 applies.

Source: 23 SDR 179, effective **April 29, 1997**.

General Authority: SDCL [13-32-4](#) , [13-37-1.1](#).

Law Implemented: SDCL [13-32-4](#) , [13-37-1.1](#).

24:05:26.01:04. Right of waiver. A competent student, if of the age of majority or emancipated, or the student's parent may waive the right to a hearing in writing to the superintendent. If the hearing is not waived, the hearing shall be held on the date and at the time and place set in the hearing notice unless a different date, time, and place are agreed to by the parties. If the hearing is waived in writing, the school board may consider the matter at a regular or special meeting without further notice to the student or the student's parents.

Source: 23 SDR 179, effective **April 29, 1997**.

General Authority: SDCL [13-1-12.1](#).

Law Implemented: SDCL [13-32-4](#) , [13-37-1.1](#).

24:05:26.01:05. Hearing procedure. The school board is the hearing board and shall conduct the hearing in the following manner:

- (1) The school board shall appoint a school board member or a person who is not an employee of the school district as the hearing officer;
- (2) Each party may make an opening statement;
- (3) Each party may introduce evidence, present witnesses, and examine and cross-examine witnesses;
- (4) Each party may be represented by an attorney;
- (5) The school administration shall present its case first;
- (6) The hearing is closed to the public. The school board shall make a verbatim record of the hearing by means of an electronic or mechanical device or by court reporter. This record and any exhibits must be sealed and must remain with the hearing officer until the appeal process has been completed;
- (7) Witnesses may be present only when testifying. All witnesses must take an oath or affirmation administered by the school board president, hearing officer, or other person authorized by law to take oaths or affirmations;
- (8) Each party may raise any legal objections to evidence;
- (9) The hearing officer shall admit all relevant evidence; however, the hearing officer may limit unproductive or repetitious evidence;
- (10) The hearing officer may ask questions of witnesses and may allow other school board members to interrogate witnesses;
- (11) Each party may make a closing statement;
- (12) After the hearing, the school board shall continue to meet in executive session for deliberation. No one other than the hearing officer may meet with the school board during deliberation. The school board may seek advice during deliberation from an attorney who has not represented any of the parties to the hearing. Consultation with any other person during deliberation may occur only if a representative of the student is present; and
- (13) The decision of the school board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The motion shall omit the name of the student and shall state the reason for the board's action. The school board shall notify the student's parent or parents or a student who is 18 years of age or older or who is an emancipated minor in writing of the decision. The notice shall state the length of the expulsion.

Source: 23 SDR 179, effective **April 29, 1997**.

General Authority: SDCL [13-32-4](#) , [13-37-1.1](#).

Law Implemented: SDCL [13-32-4](#) , [13-37-1.1](#).

24:05:26.01:06. Right of appeal. The student may appeal an adverse decision by the school board to the circuit court.

Source: 23 SDR 179, effective **April 29, 1997**.

General Authority: SDCL [13-32-4](#) , [13-37-1.1](#).

Law Implemented: SDCL [13-32-4](#) , [13-37-1.1](#).

24:05:26.01:07. Attendance policies. The attendance policy of a school district may not exclude a student from one or more classes or from a school for more than ten consecutive school days without providing the due process procedures in this chapter or chapter 24:07:03.

Source: 23 SDR 179, effective **April 29, 1997**.

General Authority: SDCL [13-32-4](#) , [13-37-1.1](#).

Law Implemented: SDCL [13-32-4](#) , [13-37-1.1](#).

24:05:26.01:07.01. Authority of school personnel -- Weapons, drugs, and serious bodily injury. School district personnel shall follow the procedures under § 24:05:26:08.01 if an expulsion is anticipated because of a student's violation of rules or policies pertaining to weapons and drugs.

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](#).

24:05:26.01:07.02. Authority of hearing officer. The authority of a hearing officer, in an expedited due process hearing, described under § 24:05:26:08.02, applies if an expulsion is anticipated because a student's behavior is substantially likely to result in injury to the student or to others.

Source: 26 SDR 150, effective **May 22, 2000**.

General Authority: SDCL [13-37-1.1](#).

Law Implemented: SDCL [13-37-1.1](#).

24:05:26.01:07.03. Parental notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the school district must notify the parents of that decision and provide the parents the procedural safeguards notice described in chapter 24:05:30.

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

General Authority: SDCL [13-37-1.1](#).

Law Implemented: SDCL [13-37-1.1](#).

24:05:26.01:08. Referral to IEP team for expulsion of students. If a student identified in need of special education or special education and related services pursuant to SDCL [13-37-1](#) is the subject of proposed expulsion, the superintendent or chief administering officer shall refer the matter to the IEP team.

Source: 23 SDR 179, effective April 29, 1997; 26 SDR 150, effective **May 22, 2000**.

General Authority: SDCL [13-32-4](#) , [13-37-1.1](#).

Law Implemented: SDCL [13-32-4](#) , [13-37-1.1](#).

24:05:26.01:08.01. Applicability of suspension procedures. The suspension procedures described in §§ 24:05:26:09.02 to 24:05:26:09.08, inclusive, apply if an expulsion is anticipated.

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](#).

24:05:26.01:13. Protections for students not yet eligible. The procedures under § 24:05:26:14 apply for students who have not been determined eligible for special education or special education and related services if an expulsion is anticipated.

Source: 26 SDR 150, effective **May 22, 2000**.

General Authority: SDCL [13-37-1.1](#).

Law Implemented: SDCL [13-37-1.1](#).

24:05:26.01:14. Referral to and action by law enforcement and judicial authorities. Reporting a crime committed by a student with a disability and the transmission of student records shall be implemented consistent with § 24:05:26:15.

Source: 26 SDR 150, effective **May 22, 2000**.

General Authority: SDCL [13-37-1.1](#).

Law Implemented: SDCL [13-37-1.1](#).

FUNCTIONAL BEHAVIOR ASSESSMENT WORKSHEET
TO BE COMPLETED BY STUDENT'S IEP TEAM

Student's Name: _____	Date: _____
Birth Date/Age: _____	Grade: _____
Address: _____	Home Phone : _____
City: _____	School: _____
Parent's/Guardian(s) Name: _____	

The IEP team should collect the most current student behavioral data available. Sources of student data may include: teacher/counselor interviews; direct observations; contents of referrals; evaluation reports; parental in-put; BASC Parent/Teacher/Student Rating Scales; and/or school files that reflect incident reports.

CLASSROOM INTERVENTION COMPONENTS:

I. PREVENTATIVE/PROACTIVE COMPONENTS: (√ Check all that apply)

- Clearly posted rules; frequently revisited.
- Instructional level/methods appropriate for the student.
- Predictable routine – posted and reviewed each day.
- Classroom setting/schedule set up to promote positive behavior.
- Behavior monitoring system in place; frequent feedback given to all students for positive and negative behavior.
- Other: _____
 - o List or attach rules/expectations posted in the classroom.

 - o List or attach the motivators/incentives the teacher is using to create positive student behavior (i.e., free time, privileges).

II. CONSEQUENCES: What is the teacher's consistent response to the following negative behaviors? (√ Check all that apply)

- Non-compliance (failure to follow a reasonable request):

- Physical aggression (i.e., hitting, kicking):

- Other:

PRO-SOCIAL BEHAVIORS:		
What does the student do well?	Where does it occur?	What is or can be done to reinforce this behavior?

STUDENT'S MOST SIGNIFICANT INAPPROPRIATE BEHAVIOR(S): (✓ Check all that apply)

- Tardy Inappropriate Language Disrupts class activity Hyperactivity Work completion Verbal harassment
 Inattentive Fighting/aggression Insubordinate/disrespect Vandalism Sleeping Under achievement
 Theft Other (Describe) _____

Identify the two (2) most significant, **inappropriate behaviors** that are interfering with the student's classroom performance. Estimate or directly observe the frequency (how often), intensity (high, med., low), and duration of each:

Behavior: (baseline levels)	Frequency (How often)	Intensity (High, med, or low)	Duration (How long)

From the list below indicate the triggers (antecedents), concurrent events, and consequences that seem to be supporting the inappropriate behavior(s).

TRIGGERS

- Lack of social attention
 Demand/Request
 Difficult Task
 Transition (task)
 Interruption in routine
 Negative social interaction
 Consequences imposed for negative behavior

CONCURRENT EVENTS

- Independent seat work
 Group instruction
 Crowded setting
 Unstructured activity
 Unstructured setting
 Peer attention
 Adult attention

CONSEQUENCES

- Behavior ignored
 Reprimand/Warning
 Time-out
 Loss of privileges
 Communicate with home
 Sent to office
 Out-of-School suspension
 In-School suspension

What is/are the function(s) or the purpose(s) of the student's behavior?

ESCAPE

- Avoid a demand or request Escape the classroom/setting
 Avoid an activity/task Escape the school
 Avoid a person Other: (Identify) _____

ATTENTION/CONTROL

- Get desired item/activity Get sent to preferred adult
 Gain adult attention Other: (Identify) _____
 Gain peer attention _____

IEP TEAM DETERMINATION (✓ Check one)

The IEP Team Does Does Not recommend a behavior plan be completed at this time. (Place this FBA form in the student's IEP file).

This Functional Behavioral Assessment reflects the IEP team's consensus determination regarding the student's behavior. Person(s) in disagreement may indicate by checking no after their signature and attaching a statement summarizing their reason for disagreement.

IEP Team Members Signatures:	Date	Team Decision Agreement
Administrator _____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Sp. Ed. Teacher _____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Reg. Ed. Teacher _____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Parent(s)/Guardian _____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other _____ Title _____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____ Title _____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
_____ Title _____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

The parent(s)/guardian have received notification and a copy of their Parental Rights including the right to request a hearing, if in disagreement with the IEP Team consensus determination.

Parent's/Guardian Signature Verifying Notification:

BEHAVIORAL INTERVENTION PLAN

Check one: **Initial Plan** **Revised Plan**

To be completed by student's IEP Team

Student's Name: _____	Date: _____
Birth date/Age: _____	Grade: _____
Address: _____	Home Phone: _____
City: _____	School: _____
Parent(s)/Guardian Name: _____	

STUDENT'S PROBLEM BEHAVIOR(S):

- | | | | | | |
|--------------------------------------|---|---|--|--|--|
| <input type="checkbox"/> Tardy | <input type="checkbox"/> Inappropriate Language | <input type="checkbox"/> Disrupts class activity | <input type="checkbox"/> Hyperactivity | <input type="checkbox"/> Work completion | <input type="checkbox"/> Verbal harassment |
| <input type="checkbox"/> Inattentive | <input type="checkbox"/> Fighting/aggression | <input type="checkbox"/> Insubordinate/disrespect | <input type="checkbox"/> Vandalism | <input type="checkbox"/> Sleeping | <input type="checkbox"/> Underachievement |
| <input type="checkbox"/> Theft | <input type="checkbox"/> Other: _____ | | | | |

(Describe)

What is/are the function(s) or the purpose(s) of the student's behavior?

ESCAPE

ATTENTION/CONTROL

- | | | | |
|--|---|--|--|
| <input type="checkbox"/> Avoid a demand or request | <input type="checkbox"/> Escape the classroom/setting | <input type="checkbox"/> Get desired item/activity | <input type="checkbox"/> Get sent to preferred adult |
| <input type="checkbox"/> Avoid an activity/task | <input type="checkbox"/> Escape the school | <input type="checkbox"/> Gain adult attention | <input type="checkbox"/> Other: (Identify) |
| <input type="checkbox"/> Avoid a person | <input type="checkbox"/> Other: (Identify) | <input type="checkbox"/> Gain peer attention | |

BEHAVIORAL GOAL(S): State in observable and **measurable** terms the desired **REPLACEMENT** behavior(s) for the student.

1.

2.

METHODS OF TEACHING THE DESIRED REPLACEMENT BEHAVIOR:

<input type="checkbox"/> Direct instruction	<input type="checkbox"/> Social skills training	<input type="checkbox"/> Anger management	<input type="checkbox"/> Use of mentors	<input type="checkbox"/> Teach alternate behaviors
<input type="checkbox"/> Providing cues	<input type="checkbox"/> Role playing	<input type="checkbox"/> Modeling	<input type="checkbox"/> Teach self-monitoring	<input type="checkbox"/> Use differential reinforcement
<input type="checkbox"/> Behavior contract	<input type="checkbox"/> Stress management	<input type="checkbox"/> Decision-making training		
<input type="checkbox"/> Other: (Identify) _____				

ACCOMMODATIONS TO ASSIST THE STUDENT IN DISPLAYING THE REPLACEMENT BEHAVIOR:

<input type="checkbox"/> Clear, concise directions	<input type="checkbox"/> Supervise free time	<input type="checkbox"/> Provide alternate recess
<input type="checkbox"/> Frequent reminders/prompts	<input type="checkbox"/> Avoid strong criticism	<input type="checkbox"/> Avoid physical contact
<input type="checkbox"/> Frequent breaks/Allow to escape	<input type="checkbox"/> Predictable, routine schedule	<input type="checkbox"/> Provide cooling off period
<input type="checkbox"/> Teacher/staff proximity	<input type="checkbox"/> Specified study area	<input type="checkbox"/> Provide highly structured setting
<input type="checkbox"/> Reprimand the student privately	<input type="checkbox"/> Preferential seating	<input type="checkbox"/> Minimize/Structure transition time
<input type="checkbox"/> Modify assignments	<input type="checkbox"/> Avoid power struggles	<input type="checkbox"/> Communicate regularly with parents
<input type="checkbox"/> Review rules and expectations	<input type="checkbox"/> Specifically define limits	
<input type="checkbox"/> Other: (Identify) _____		

POSITIVE REINFORCEMENTS FOR DISPLAYING THE DESIRED REPLACEMENT BEHAVIOR:

<input type="checkbox"/> Verbal praise	<input type="checkbox"/> Computer Time	<input type="checkbox"/> Immediate Feedback	<input type="checkbox"/> Earned Privileges
<input type="checkbox"/> Positive Phone Calls Home	<input type="checkbox"/> Free Time	<input type="checkbox"/> Tangible Rewards	<input type="checkbox"/> Positive Visits to Administrator
<input type="checkbox"/> Other(s): _____			

METHODS OF MEASURING THE STUDENT'S PROGRESS:		
<input type="checkbox"/> Direct Observation	<input type="checkbox"/> Weekly behavior sheet	<input type="checkbox"/> Self-monitoring
<input type="checkbox"/> Daily behavior sheet	<input type="checkbox"/> Charting/graphing	<input type="checkbox"/> Number of discipline referrals
<input type="checkbox"/> Other: (Identify) _____ (Identify)		

NEGATIVE CONSEQUENCES FOR DISPLAYING INAPPROPRIATE BEHAVIOR:				
<input type="checkbox"/> Phone call home	<input type="checkbox"/> Level drop/Loss of points	<input type="checkbox"/> Verbal reprimand	<input type="checkbox"/> Planned ignoring	<input type="checkbox"/> In-school suspension
<input type="checkbox"/> Send to office	<input type="checkbox"/> Loss of privileges	<input type="checkbox"/> Physical management	<input type="checkbox"/> Exclusion from extra-curricular activity	<input type="checkbox"/> Out-of-school suspension
<input type="checkbox"/> Time out/Cool off	<input type="checkbox"/> Detention	<input type="checkbox"/> Escort to another area		
<input type="checkbox"/> Other: (Identify) _____				

The student will follow the District's School Wide Discipline Policy. (If NO, complete next statement.)

Yes
 No

Because of the nature of the student's disability (i.e., inability to understand and/or follow directions) the following adaptations will be applied to the District's School Wide Discipline Policy: Student's Primary disability is: _____

Identify the Interim Alternative Educational Setting (IAES) to be used if the student's suspension may exceed ten (10) consecutive school days:

PERSON(S) RESPONSIBLE FOR IMPLEMENTING THIS BEHAVIOR INTERVENTION PLAN:			
<input type="checkbox"/> Gen ed teacher(s)	<input type="checkbox"/> School administrator(s)	<input type="checkbox"/> Classroom assistant(s)	<input type="checkbox"/> Related service provider(s)
<input type="checkbox"/> Sp ed teacher(s)	<input type="checkbox"/> Parent(s)/Guardian	<input type="checkbox"/> Behavior intervention specialist(s)	<input type="checkbox"/> School Counselor
<input type="checkbox"/> Other: (Identify) _____			

Indicate the number of instructional weeks before this Behavioral Intervention Plan is evaluated: _____.

This Behavioral Intervention Plan reflects the IEP team's consensus determination regarding appropriate behavioral intervention services. Person(s) in disagreement may indicate by checking no after their signature and attaching a statement summarizing their reason for disagreement.

<u>IEP TEAM</u>	<u>SIGNATURE</u>	<u>Team Decision Agreement</u>	
Administrator _____		_____ Yes	_____ No
Sp. Ed. Teacher _____		_____ Yes	_____ No
Reg. Ed. Teacher _____		_____ Yes	_____ No
Parent(s)/Guardian _____		_____ Yes	_____ No
Other _____	Title _____	_____ Yes	_____ No
Other _____	Title _____	_____ Yes	_____ No
Other _____	Title _____	_____ Yes	_____ No

The parent(s)/guardian have received notification and a copy of their Parental Rights including the right to request a hearing, if in disagreement with the IEP Team consensus determination.

Parent's/Guardian Signature Verifying Notification:

7. Upon completion of its review, the student's IEP team consensus determination is:

Yes No The conduct in question was caused by, or had a direct and substantial relationship to, the student's disability.

Yes No The conduct in question was the direct result of the district's failure to implement the student's IEP.

If the members of the IEP team determine that the answer is **YES** to either of the above questions, the conduct shall be determined **to be a manifestation of the student's disability.**

 The conduct in question **WAS** a manifestation of the student's disability.

 The conduct in question **WAS NOT** a manifestation of the student's disability.

A child with a disability **who is removed** from his/her educational setting for disciplinary reasons for more than **10 consecutive school days** (or who is removed for **45 school days** for weapons, drugs or serious bodily injury) must continue to receive the services in his/her IEP as well as access to the general education curriculum. Such student **must** also receive, as appropriate, a **functional behavioral assessment and a behavior intervention plan with modifications** that are designed to address the behavior violation so that it does not recur.

If school personnel seek to order a change in placement that would exceed 10 consecutive school days and the behavior that gave rise to the violation of the school code is determined **not** to be a manifestation of the student's disability, **the relevant school wide disciplinary procedures for nondisabled students may be applied to the student with a disability in the same manner and for the same duration as would be applied to a nondisabled student.** When removal is for more than 10 consecutive school days, the student must continue to receive the services in his/her IEP as well as access to the general education curriculum.

If appropriate, a plan has been developed for the child in order to receive the services in his/her IEP as well as access to the general education curriculum while in an alternative setting.

Plan is attached. **Plan is not required.**

The following persons, as indicated by their signatures, have participated in this Manifestation Determination: **IEP team members in disagreement with the consensus determination may attach a summary statement identifying their reason(s) for disagreement.**

<u>IEP TEAM</u>	<u>SIGNATURE</u>	<u>Agreement with IEP team determination</u>	
Administrator _____	_____	_____ Yes	_____ No
Sp. Ed. Teacher _____	_____	_____ Yes	_____ No
Reg. Ed. Teacher _____	_____	_____ Yes	_____ No
Parent/Guardian _____	_____	_____ Yes	_____ No
Other _____	Title _____	_____ Yes	_____ No
Other _____	Title _____	_____ Yes	_____ No
Other _____	Title _____	_____ Yes	_____ No

The parent(s)/guardian have received notification and a copy of their Parental Rights including the right to request a hearing, if in disagreement with the IEP Team consensus determination.

Parent's/Guardian Signature Verifying Notification: