

CHAPTER 24:05:24.01
ELIGIBILITY CRITERIA

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24:05:24.01:01. Students with disabilities defined. Students with disabilities are students evaluated in accordance with chapter 24:05:25 and this chapter as having autism spectrum disorder, deaf-blindness, deafness, hearing loss, cognitive disability, multiple disabilities, orthopedic impairment, other health impairments, ~~emotional disturbance~~ emotional disability, specific learning disabilities, speech or language impairments, traumatic brain injury, or vision loss, including blindness, which adversely affects educational performance, and who, because of those disabilities, need special education or special education and related services. If it is determined through an appropriate evaluation, under chapter 24:05:25, that a student has one of the disabilities identified in this chapter, but only needs a related service and not special education, the student is not a student with a disability under this article. If, consistent with this chapter, the related service required by the student is considered special education, the student is a student with a disability under this article.

Source: 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 41 SDR 37, effective September 4, 2014.

General Authority: SDCL ~~13-1-12.1, 13-37-1~~, 13-37-1.1, ~~13-37-28~~, 13-37-46, 13-37-47, 13-37-52.

Law Implemented: SDCL ~~13-1-12.1~~, 13-37-1, 13-37-1.1, 13-37-1.2, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

24:05:24.01:03. Autism spectrum disorder defined. Autism spectrum disorder is a developmental disability that significantly affects verbal and nonverbal communication and social interaction and results in adverse effects, generally evident before age three, on the child's educational performance.

Other characteristics often associated with autism spectrum disorder are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

The term does not apply if the student's educational performance is adversely affected primarily because the student has an ~~emotional disturbance~~ emotional disability defined under § 24:05:24.01:16.

Source: 20 SDR 33, effective September 8, 1993; transferred from § 24:05:25:27.01, 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 41 SDR 37, effective September 4, 2014.

General Authority: SDCL ~~13-1-12.1, 13-37-1~~, 13-37-1.1, ~~13-37-28~~, 13-37-46, 13-37-47, 13-37-52.

Law Implemented: SDCL ~~13-1-12.1~~, 13-37-1, 13-37-1.1, 13-37-1.2, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

24:05:24.01:05. Evaluation team for autism spectrum disorder. When evaluating a student for autism spectrum disorder, a school district shall use a multidisciplinary team or group of persons who are trained and experienced in the diagnosis and educational evaluation of persons with autism spectrum disorder.

Source: 18 SDR 90, effective November 25, 1991; transferred from § 24:05:25:29, 23 SDR 31, effective September 8, 1996; 41 SDR 37, effective September 4, 2014.

General Authority: SDCL ~~13-1-12.1, 13-37-1,~~ 13-37-1.1, ~~13-37-28,~~ 13-37-46, 13-37-47, 13-37-52.

Law Implemented: SDCL ~~13-1-12.1,~~ 13-37-1, 13-37-1.1, 13-37-1.2, 13-37-28, 13-37-46, 13-37-47, 13-37-52.

24:05:24.01:09. Developmental delay defined. A student who is at least three, ~~four, or five~~ years ~~old of age but less than nine years of age~~ may be identified as a student with a disability if the student has one of the major disabilities listed in § 24:05:24.01:01, or if the student ~~experiences~~ has a severe delay in development, as specified in this section, and needs special education and related services.

A student with a severe delay in development functions at a developmental level two or more standard deviations below the mean in any one area of development specified listed in ~~this section~~ subdivisions 1 through 5, inclusive, or 1.5 standard deviations below the mean in two or more areas of development listed in subdivisions 1 through 5, inclusive.

The areas of development are ~~cognitive~~:

- (1) Cognitive development, ~~physical~~;
- (2) Physical development, ~~communication~~;
- (3) Communication development, ~~social~~;
- (4) Social or emotional development, ~~and~~ adaptive

(5) Adaptive development.

A district is not required to adopt and use the term developmental delay for any students within its jurisdiction. If a district uses the term developmental delay, the district must conform to both the department's definition of the term and to the age range that has been adopted by the department.

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

Source: 23 SDR 31, effective September 8, 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.

General Authority: SDCL 13-37-1.1, 13-37-52.

Law Implemented: SDCL 13-37-1.1, 13-37-52.

24:05:24.01:13. Orthopedic impairment defined. Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (~~e.g., poliomyelitis, bone tuberculosis~~), and impairments from other causes (~~e.g., cerebral palsy, amputations, and fractures or burns that cause contractures~~).

There must be evidence of the following:

(1) That the student's impaired motor functioning ~~significantly~~ interferes with educational performance;

(2) That the student exhibits deficits in muscular or neuromuscular functioning that significantly limit the student's ability to move about, sit, or manipulate materials required for learning;

(3) That the student's bone, joint, or muscle problems affect ambulation, posture, or gross and fine motor skills; and

(4) That current medical data by a qualified medical evaluator describes and confirms an orthopedic impairment.

Source: 23 SDR 31, effective September 8, 1996; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:16. ~~Emotional disturbance~~ Emotional disability defined. ~~Emotional disturbance is~~ For the purpose of this chapter, the term, emotional disability, means a condition that exhibits one or more of the following characteristics to a marked degree over a long period of time:

- (1) An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- (2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- (3) Inappropriate types of behavior or feelings under normal circumstances;
- (4) A general pervasive mood of unhappiness or depression; or
- (5) A tendency to develop physical symptoms or fears associated with personal or school problems.

The term, ~~emotional disturbance~~ emotional disability, includes schizophrenia. The term does not apply to a student who is socially maladjusted unless the ~~IEP~~ individualized education program team determines pursuant to § 24:05:24.01:17 that the student has an ~~emotional disturbance~~ emotional disability.

Source: 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.

24:05:24.01:17. Criteria for ~~emotional disturbance~~ emotional disability. A student may be identified as ~~emotionally disturbed~~ having an emotional disability if the following requirements are met:

- (1) The student demonstrates serious behavior problems over a long period of time, generally at least six months, with documentation from ~~the school and one or more other sources~~ than one source of the frequency and severity of the targeted behaviors;
- ~~(2) The student's performance falls two standard deviations or more below the mean in emotional functions, as measured in school and home or community on nationally normed technically adequate measures; and~~ The student's symptoms cause significant impairment in social, emotional, behavioral, occupational, or other areas; and
- (3) An adverse effect on educational performance is verified through the full and individual evaluation procedures as provided in § 24:05:25:04.

A student may not be identified as having an ~~emotional disturbance~~ emotional disability if common disciplinary problem behaviors, ~~such as~~ including truancy, smoking, or breaking ~~school conduct rules~~ district policy, are the sole criteria for determining the existence of an ~~emotional disturbance~~ emotional disability.

Source: 23 SDR 31, effective September 8, 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.

General Authority: SDCL 13-37-1.1, 13-37-52.

Law Implemented: SDCL 13-37-1.1, 13-37-52

24:05:24.01:18. Specific learning disability defined. Specific learning disability is a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to students who have learning problems that are primarily the result of visual, hearing, or motor disabilities; cognitive disability; ~~emotional disturbance~~ emotional disability; or environmental, cultural, or economic disadvantage.

Source: 23 SDR 31, effective September 8, 1996; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:19. Criteria for specific learning disability. A group of qualified professionals and the parent of the child may determine that a child has a specific learning disability if:

(1) The child does not achieve adequately for the child's age or does not meet state-approved grade-level standards in one or more of the following areas, if provided with learning experiences and instruction appropriate for the child's age or state-approved grade-level standards:

- (a) Oral expression;
- (b) Listening comprehension;
- (c) Written expression;
- (d) Basic reading skill;
- (e) Reading fluency skills;
- (f) Reading comprehension;
- (g) Mathematics calculation; and

(h) Mathematics problem solving;

(2)(a) The child does not make sufficient progress to meet age or state-approved grade-level standards in one or more of the areas identified in this section when using a process based on the child's response to scientific, research-based intervention; or

(b) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, consistent with this article; and

(3) The group determines that its findings under this section are not primarily the result of:

(a) A visual, hearing, or motor disability;

(b) A cognitive disability;

(c) ~~Emotional disturbance~~ Emotional disability;

(d) Cultural factors;

(e) Environmental or economic disadvantage; or

(f) Limited English proficiency.

To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation described in this article, data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel, and data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

The school district must promptly request parental consent to evaluate the child to determine whether the child needs special education and related services, and must adhere to the timeframes described in this article unless extended by mutual written agreement of the child's parents and a

group of qualified professionals. The district must request such consent if, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in this section, and whenever a child is referred for an evaluation.

Source: 23 SDR 31, effective September 8, 1996; 33 SDR 236, effective July 5, 2007.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:25. Voice disorder defined. ~~A For the purposes of this chapter, the term, voice disorder is characterized by the abnormal production or absence of vocal quality, pitch, loudness, resonance, duration which is inappropriate for an individual's age or gender, or both, means that an individual's voice quality, pitch, or loudness differs or is inappropriate for the individual's age, gender, cultural background, or geographic location.~~

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:24.01:27. Language disorder defined. A language disorder is a reduced ability, whether developmental or acquired, to comprehend or express ideas through spoken, written, or gestural language. The language disorder may be characterized by limited vocabulary, an inability to function through ~~the use of words (pragmatics) and their meanings (semantics), faulty grammatical patterns (syntax and morphology), or the faulty reproduction of speech sounds (phonology).~~ A language disorder may have a direct or indirect ~~affect~~ effect on a student's cognitive, social, emotional, or educational development or performance and deviates from accepted norms. The term, language disorder, does not include students whose communication

problems result solely from a native language other than English or from their dialectal differences.

Source: 23 SDR 31, effective September 8, 1996.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1

24:05:24.01:31. ~~IEP~~ Individualized education program team override. If the ~~IEP~~ individualized education program (IEP) team determines that a student is eligible for special education or special education and related services because the student has a disability and needs special education even though the student does not meet specific requirements in this chapter, the IEP team must include documentation in the record as follows:

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

The district director of special education shall keep a list of students on whom the IEP team override criteria were used to assist the state in evaluating the adequacy of student identification criteria.

Source: 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.