south dakota
DEPARTMENT OF EDUCATION
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Revised 2025

SOUTH DAKOTA

Parental Rights and Procedural Safeguards



Your School District Contact for Special Education

District: *Please add the following information in this box or place Sticker here.*

District Contact:

Phone Number:

Email Address:

Education is one of the most important responsibilities a parent has when raising a child. ***Special education*** services, for students ages 3-21 may be available as an option for parents when their children are struggling with learning because of a disability. If you see your child struggling academically, socially or emotionally, you are encouraged to work with school personnel to determine ways to help your child. Not all children who struggle in school are eligible for special education services.

The purpose of this document is to provide you with important basic information regarding your rights as a parent of a ***child with a disability*** in South Dakota. Please review carefully. If you have questions or need assistance in understanding the State's special education rules, contact any of the organizations listed at the end of this document, your local school district's superintendent, or designee.

The ***Individuals with Disabilities Education Act (IDEA)*** is the federal law that requires schools to provide special education services and specifies procedures schools must follow. State law also contains requirements for providing services to special education students. If you are a parent of a child with a disability under the IDEA, this handbook is your notice of procedural safeguards and explains the principles and requirements of special education to you.

***** The words in bold throughout this document can be found in the acronyms and definitions page at the end.***

The parental rights available to you, as a parent of a child with a disability, are described in this document and are also contained in the South Dakota Special Education ***Administrative Rules of South Dakota (ARSD)***, Article 24:05. Specific citations to the Administrative Rules are listed as appropriate. Since these procedural safeguards are required under the IDEA, specific regulatory citations to Part B of the IDEA (34 CFR Part 300) are provided throughout this document as an additional reference point.

This is intended as a summary of the special education provisions in South Dakota State law and ***Part B*** of the IDEA (34 ***CFR*** Part 300), a federal law. Please see the statutory and regulatory provisions for the exact language that applies.

RESOURCES

SD Department of Education	SD Parent Connection	Disability Rights of SD
Special Education Programs 800 Governors Drive Pierre, SD 57501-2294 voice - (605) 773-3678 fax - (605) 773-3782 https://doe.sd.gov/sped/	3701 W. 49th Street, Suite 102 Sioux Falls, SD 57106 1-800-640-4553 www.sdparent.org	2520 East Franklin Pierre, SD 57501 1-800-658-4782 (voice/TTY) or (605) 224-8294 https://drsdlaw.org/

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General Information

Availability of Procedural Safeguard Notice

34 CFR 300.504(a) & (b); ARSD 24:05:30:06.01

A copy of the procedural safeguards notice must be given to you, the parent of a child with a disability, at least once every school year. A copy must also be given to you:

1. Upon initial referral or request by you for an evaluation of your child;
2. Upon request by you;
3. When your child may be disciplined in a manner that changes your child's placement;
4. After the first filing by you of a State complaint or ***Due Process*** hearing complaint in a school year.

A copy of the procedural safeguards notice may also be posted on the school district's website.

What are Procedural Safeguards?

- Procedural safeguards lay out the ground rules of how you interact with the school.
- One of the most important procedural safeguards is the right to participate in your child's education.
- If you disagree with a school's decision, you have dispute resolution options, including due process (see page 26).

Parent Participation

34 CFR 300.322; ARSD 24:05:25:16

"***Participation***" means that you have been provided the opportunity to participate in decision making and attending the IEP team meeting. Notice has been provided by the district early enough for parents to be able to attend, scheduling at a mutually agreed-upon time.

- Parents have the right to participate in meetings related to the evaluation, identification, educational placement of their child and provision of free appropriate public education (FAPE).
- Parents have the right to request an IEP meeting at any time to review and revise the IEP, as needed.

IEP Team

ARSD 24:05:27:01.01

Each school district shall ensure that the IEP team for each student with disabilities include the following members:

(1) The parents of the student;

(2) Not less than one regular education teacher of the student if the student is, or may be, participating in the regular education environment;

(3) Not less than one special education teacher of the student or, if appropriate, at least one special education provider of the student;

(4) A representative of the school district who:
(a) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities;
(b) Is knowledgeable about the general education curriculum; and
(c) Is knowledgeable about the availability of resources of the school district;

(5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in subdivisions 2 to 6, inclusive, of this section;

(6) At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student including related services personnel as appropriate;

(7) If appropriate, the student; and

(8) Transition services participants as described in §§ 24:05:25:16.01 and 24:05:25:16.02.

The determination of the knowledge or special education expertise of any individual described in this section shall be made by the party (parents or district) who invited the individual to be a member of the IEP team. A district

Parental Consent

34 CFR 300.9; ARSD 24:05:25:02.01, 24:05:25:02.02

"***Consent***" means that you have received all of the necessary information in order for you to understand the described activity, and you agree in writing to complete the activity. In this way, you are able to give your permission. The information must be provided in your native language or mode of communication. If the activity for which your consent is requested involves sharing your child's records, you will be informed about what records will be shared and with whom those records may be shared. Your consent is voluntary and can be revoked by you at any time.

If you revoke consent, it only applies to future activities and not activities that have already occurred. If you revoke consent in writing for your child to receive special education and ***related services*** after your child has begun receiving special education and related services, the school district is not required to remove any information from your child's education records about the special education and related services that your child received before you revoked consent. After you give the school district written revocation (cancellation) of your consent, the school district must give you prior written notice and then discontinue special education and related services to your child.

Consent for initial evaluation

34 CFR 300.300(a); 34 CFR 300.45; ARSD 24:05:25:02.01; ARSD 24:05:15:06

Your school district must provide prior written notice in writing and have your consent before starting an initial evaluation of your child to determine if your child is eligible under Part B of the IDEA to receive special education and related services.

1. Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation.
2. Your consent for an initial evaluation does not mean that you have consented to special education and related services for your child.
3. If your child is enrolled or attempting to enroll in public school and you refuse to consent to an initial evaluation or do not respond to a request for consent for an initial evaluation, your school district may, but does not have to, use the IDEA dispute resolution procedures (i.e., mediation, due process complaint) to address your lack of consent for an initial evaluation of your child.

may designate another district member of the IEP team to also serve as the district representative, if the criteria in this section are satisfied.

Native Language

34 CFR 300.29

(a) Native language, when used with respect to an individual who is limited English proficient, means the following:

The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).

Definition of a Parent

34 CFR 300.30; ARSD 24:05:13:04

1. A biological or adoptive parent of a child;
2. A foster parent unless restricted by state law, regulation or contract;
3. A guardian appointed by the court and authorized to act as the child's parent, or to make educational decisions for the child;
4. An individual acting as the parent in the absence of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;
5. A surrogate parent who has been appointed in accordance with special education rules; **or**
6. A specific person or persons the Court orders to act as the "parent" of a child or to make educational decisions on behalf of a child.

4. If your school district does not request an evaluation through the IDEA dispute resolution procedures (i.e., mediation, due process complaint), it will not be in violation of its child find obligations to locate, identify and evaluate your child or the requirements regarding parental consent, evaluation, and reevaluation.

If a child is a ward of the State and is not residing with his/her parent, the school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. The school district cannot discover the whereabouts of the parent after making reasonable efforts to do so;
2. The parental rights have been terminated in accordance with State law; **or**
3. A judge has assigned the right to make educational decisions, including consent for an initial evaluation, to an individual other than the parent, and that individual has given consent.

Consent for services

34 CFR 300.300(b); ARSD 24:05:27:04.01

Your school district must have your permission before providing special education to your child for the first time.

1) The school district must make reasonable efforts to obtain your informed consent before providing special education and related services to your child **for the first time**.
2) If you do not respond to a request to consent for your child to receive special education and related services for the first time, or if you refuse to give such consent, or later revoke your consent in writing, your school district **may not** use the IDEA dispute resolution procedures (i.e. mediation, due process complaint) in order to override your lack of consent for special education and related services to be provided to your child.
3) If you refuse to give your consent, fail to respond to a request for consent for your child to receive special education and related services for the first time, or you later revoke your consent in writing, and the school district stops providing special education and related services to your child, your school district:

If you are your child's biological or adoptive parent, you are presumed to be the parent unless you do not have legal authority to make educational decisions for your child.

The State cannot be a parent if the child is a ward of the State.

Definition of a Ward of the State
34 CFR 300.45; ARSD 24:05:13:01

Ward of the State, as used in the IDEA, means a child who is:

1. A foster child;
2. Considered a ward of the State under State law; **or**
3. In the custody of a public child welfare agency.

Except: Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent.

Definition of Surrogate Parent
34 CFR 300.519; ARSD 24:05:30:15

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

(1) The identification of staff members at the district or building level responsible for referring students in need of a surrogate parent;

(2) The provision of in-service training on the criteria in this section for determining whether a child needs a surrogate parent; and

(3) The establishment of a referral system within the district for the appointment of a surrogate parent.

(a) Is not in violation of the requirement to make a ***free appropriate public education (FAPE)*** available to your child because it failed to provide those services to your child; **and**

(b) Is not required to have ***an individualized education program (IEP)*** meeting or develop an IEP for your child to determine special education and related services.

If you revoke your consent in writing after your child first receives special education and related services, then the school district must provide you with prior written notice, as described under the heading **Prior Written Notice**, and must stop services to your child after providing you with prior written notice.

Consent for reevaluations

34 CFR 300.300(c) and (d); ARSD 24:05:25:06.01

Your school district must obtain your consent before it reevaluates your child, unless your school district can demonstrate and document that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; **and**
2. You did not respond.

As with initial evaluations, your school district does not violate its child find and other obligations under Part B of the IDEA, if it does not pursue the reevaluation when you refuse to consent.

Your school district must maintain records of its reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, to reevaluate, and to locate parents of children who are wards of the state for initial evaluations. The documentation must include a record of the school district's attempts in the following areas:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; **and**
3. Detailed records of visits made to your home or place of employment and the results of those visits.

Other Consent Requirements

34 CFR 300.300(d); ARSD 24:05:25:02.04

Your consent is **not** required before your school district may:

1. Review existing data as part of your child's evaluation or reevaluation; **or**
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation is given, consent is required from all parents of all children.

Your school district may not use your refusal to consent to an evaluation or services under the IDEA to deny you or your child any other service, benefit, or activity, except as required under Part B of the IDEA.

If you have enrolled your child in a private school at your own expense or if you are providing alternative instruction to your child, and you do not provide your consent for an initial evaluation or reevaluation of

your child, or you fail to respond to a request to provide your consent, the school district cannot use the IDEA dispute resolution procedures (i.e., mediation, due process hearing) to override your lack of consent. Under these circumstances, the school district is not required to consider your child eligible to receive equitable services .

Prior Written Notice

34 CFR 300.503; 34 CFR 300.505; 34 CFR 300.304; ARSD 24:05:30:04

At least five calendar ***days*** before recommending or refusing to begin or change the identification, evaluation, educational placement, or the provision of a FAPE to your child, the school district must provide you with **prior written notice.** You may waive the 5-day prior written notice requirement if you want the change to go into effect prior to five days required.

The prior written notice must:

1. Describe the action that your school district plans or refuses to take;
2. Explain why your school district is planning or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to plan or refuse to take the action;
4. Include a statement that you have protections under the procedural safeguard provisions in Part B of the IDEA;
5. Tell you where you can find more about the procedural safeguards if the planned or refused action is not an initial referral for evaluation;
6. Include contact information for resources to help you understand Part B of the IDEA;
7. Describe any other options that your child's ***IEP Team*** considered and why those options were rejected;
8. Provide a description of other factors that the school district used in its decision to plan or refuse the action; **and**
9. If your school district is planning to conduct an evaluation, describe any evaluation procedures your school district is planning to conduct.

The prior written notice must be:

1. Written in easily understood language; **and**
2. Provided in your native language or other mode of communication, unless not feasible to do so.

If your native language or other mode of communication is not a written language, your school district must take steps to ensure that:

1. The notice is translated for you orally or by other means in your native language or other mode of communication;
2. You understand the content of the notice; **and**
3. There is written documentation that 1 and 2 have been met.

You may choose to receive prior written notices, procedural safeguards notices, and notices related to a due process hearing complaint by an electronic mail communication (email), if available. Your school district will verify that you wish to receive notices by electronic mail.

Independent Education Evaluation

34 CFR 300.502; ARSD 24:05:30:03

You have the right to have an ***IEE*** of your child at public expense, if you disagree with an evaluation obtained by the school district.

An IEE means an evaluation conducted by a qualified examiner who is not employed by the school district.

Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you consistent with the provisions of Part B of the IDEA.

If you request an IEE, the school district may ask you for the reason why you object to the school's evaluation. You do not have to explain why you object.

When you request an IEE, the school district will provide you with information about where an IEE may be obtained, and the applicable school district criteria for IEEs.

If an IEE is at public expense, the school district criteria for the evaluation, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation. Except for the criteria described above, the school district may not impose additional conditions or timelines for obtaining an IEE.

The school district must either grant the IEE at public expense, or the school district must file a due process hearing complaint to demonstrate that the school district's evaluation was appropriate or that the IEE you are requesting or have obtained does not comply with the school district's criteria.

If the school district files a due process complaint to request a hearing, and the final decision of the hearing officer is that the school district's evaluation is appropriate, you still have the right to an IEE, but not at public expense.

You are entitled to only one IEE of your child at public expense each time the school district conducts an evaluation of your child.

If you obtain an IEE at public expense or share with the school district an evaluation obtained at private expense, the IEP Team **must consider** any IEE or other evaluations shared by you that comply with the school district criteria for IEEs in any decision made about the provision of a FAPE to your child.

The results of the IEE may be presented by any party as evidence at a due process hearing regarding your child.

If a hearing officer requests an IEE as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

Educational Records

Confidentiality of Information and Access to Educational Records

34 CFR 300.611-617; 34 CFR 300.622-625; 34 CFR 300.32; ARSD 24:05:29

The Family Educational Rights and Privacy Act (FERPA) gives parents and students who are 18 years of age or older ("eligible students") certain rights with respect to the student's records including the right to access (inspect and review) the records and further protects the confidentiality of these records. The IDEA also addresses access and confidentiality of records.

Notice to parents about and access to confidential information

Under FERPA, a school must annually notify parents of students in attendance of their rights under FERPA. The annual notification must include information regarding a parent's right to inspect and review his or her child's education records, the right to seek to amend the records, the right to consent to disclosure of ***personally identifiable information (PII)*** from the records (except in certain circumstances), and the right to file a complaint with the Family Policy Compliance Office of the U.S. Department of Education regarding an alleged failure by a school to comply with FERPA. The school must also inform parents of its definitions of the terms "school official" and "legitimate educational interest."

FERPA does not require a school to notify parents individually of their rights under FERPA. Instead, the school may provide the annual notification by any means likely to inform parents of their rights.

Under both FERPA and the IDEA, the school district:
Must permit you to inspect and review any education records relating to your child which are collected, maintained, or used by the school district under Part B of the IDEA;

Education Records
34 CFR 300.611(b), 34 CFR Part 99.;
Authority: 20 U.S.C. 1232g(a)(4))

FERPA
The Family Educational Rights and Privacy Act (FERPA) is a federal law that affords parents the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of personally identifiable information from the education records. When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student ("eligible student").

(a) The term means those records that are:

1. Directly related to a student; and
2. Maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

1. Records of instructional, supervisory, and administrative personnel and educational personnel ancillary to those persons that are kept in the sole possession of the maker of the record and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
2. Records of a law enforcement unit of an educational agency or institution, subject to the provisions of § 99.8.
3. Records related to an individual who is employed by an educational agency or institution that:
   (a) Are made and maintained in the normal course of business;
   (b) Relate exclusively to the individual in that individual's capacity as an employee;

1. Must comply with your request to inspect and review your child's records without unnecessary delay and before any IEP meeting, resolution session, or due process hearing (concerning identification, evaluation, educational placement, discipline or provision of a FAPE); **and**
2. May not take more than 45 calendar days to comply after the request has been made.

Your right to inspect and review education records includes:

1. The right to a response from the school district to reasonable requests for explanations and interpretations of the records.
2. The right to request that the school district provide copies of the records containing the information if failure to provide these copies would effectively prevent you from exercising your right to inspect and review the records; **and**
3. The right to have your representative review the records.

The school district may presume that you have authority to review records relating to your child unless the school district has been informed that you do not have the authority.

The school district must keep a record of parties that obtain access to education records collected, maintained, or used under Part B of the IDEA (except access by you or authorized employees of the school district) including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. You or your eligible student may request to inspect the record of access.

If any education records include information on more than one child, each parent has the right to inspect and review only the information relating to his or her child or be informed of the specific information relating to his or her child.

The school district must provide you, upon request, a list of the types of education records and the locations of those records collected, maintained, or used by the school district.

A fee may be charged by the school district for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from reviewing those records. The school district may not charge a fee to search for or retrieve information under Part B of the IDEA.

Your consent must be obtained before personally identifiable information is shared with others, unless otherwise permitted by FERPA or the IDEA.

(c) Are not available for use for any other purpose. Records relating to an individual in attendance at the agency or institution who is employed as a result of the individual's status as a student are educational records and not excepted under this subdivision;

4. Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are:

   a) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity;
   b) Made, maintained, or used only in connection with treatment of the student; and
   c) Disclosed only to individuals providing the treatment. For the purpose of this definition, "treatment" does not include remedial educational activities or activities that are part of the program of instructions at the agency or institution; and

5. Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student; and

6. Grades on peer-graded papers before they are collected and recorded by a teacher.

7. Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student; and

8. Grades on peer-graded papers before they are collected and recorded by a teacher.

Under the IDEA, your consent is not required before personally identifiable information is released to officials of participating agencies collecting or using the information under Part B of the IDEA, except that:

1. Your consent, or consent of your eligible student, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for ***transition services***; and
2. If your child is in, or is going to go to, a private school, your consent must be obtained before any personally identifiable information about your child is released between officials in your child's public school district where the private school is located and officials in your child's resident school district.

Under FERPA, your consent is not required before personally identifiable information is released:

1. To other school officials, including teachers, within your school district whom the school has determined to have legitimate educational interests. This includes contractors, consultants, volunteers, or other parties to whom the school has outsourced institutional services or functions, if applicable requirements are met.

2. To officials of another school, school system, or institution of postsecondary education where your child seeks or intends to enroll, or where your child is already enrolled if the disclosure is for purposes related to your child's enrollment or transfer, if applicable requirements are met (specifically, if the annual notice informs parents that the school releases records under this exception, or the school makes a reasonable attempt to notify you or your eligible student at your last known address, or the disclosure is initiated by you or your eligible student).

3. To authorized representatives of the U. S. Comptroller General, the U. S. Attorney General, the U.S. Secretary of Education, or State and local educational authorities, such as the South Dakota Department of Education. Disclosures under this provision may be made, subject to applicable requirements, in connection with an audit or evaluation of Federal- or State-supported education programs, or for the enforcement of or compliance with Federal legal requirements that relate to those programs. These entities may make further disclosures of personally identifiable information to outside entities that are designated by them as their authorized representatives to conduct any audit, evaluation, or enforcement or compliance activity on their behalf, if applicable requirements are met.

4. In connection with financial aid for which your child has applied or which your child has received, if the information is necessary for such purposes as to determine eligibility for the aid, determine the amount of the aid, determine the conditions of the aid, or enforce the terms and conditions of the aid.

5. To State and local officials or authorities to whom information is specifically allowed to be reported or disclosed by a State statute that concerns the juvenile justice system and the system's ability to effectively serve, prior to adjudication, the student whose records were released, subject to applicable requirements.

6. To organizations conducting studies for, or on behalf of, the school, in order to: (a) develop, validate, or administer predictive tests; (b) administer student aid programs; or (c) improve instruction, if applicable requirements are met.

7. To accrediting organizations to carry out their accrediting functions.

8. To you if your child is an eligible student, as long as your eligible student is a dependent for IRS tax purposes.

9. To comply with a judicial order or lawfully issued subpoena, if applicable requirements are met.

10. To appropriate officials in connection with a health or safety emergency, subject to applicable requirements.

11. That has been designated by the school as "directory information," as long as applicable requirements are met.

12. To an agency caseworker or other representative of a State or local child welfare agency or tribal organization who is authorized to access a student's case plan when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student in foster care placement.

13. To the Secretary of Agriculture or authorized representatives of the Food and Nutrition Service for purposes of conducting program monitoring, evaluations, and performance measurements of programs authorized under the Richard B. Russell National School Lunch Act or the Child Nutrition Act of 1966, under certain conditions.

An educational agency receiving personally identifiable information from another educational agency or institution may make further disclosures of the information on behalf of the educational agency without the prior written consent of you or your eligible student if the IDEA or FERPA conditions for disclosure without parental consent are met and if the educational agency informs the party to whom disclosure is made of these requirements.

Personally Identifiable Information (PII)

The school district must protect the confidentiality of ***PII*** at the collection, storage, disclosure and destruction stages.

1. One official at the school district must assume responsibility for ensuring the confidentiality of any personally identifiable information.

2. All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures regarding confidentiality of personally identifiable information under Part B of the IDEA and FERPA.

3. The district must maintain, for public inspection, a current listing of the names and positions of those employees within the district who may have access to personally identifiable information.

4. The district must inform you when personally identifiable information collected, maintained or used for special education and related services is no longer needed to provide educational services to your child.

5. The information no longer needed must be destroyed at your request; however, a permanent record of your child's name, address, phone number, his or her own grades, attendance record, classes attended, and grade level completed may be maintained indefinitely.

Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), your rights regarding education records are transferred to the student at age 18. A student who is 18 or older is referred to as an "eligible student" under FERPA.

Age of Majority (student turning age 18)
When your rights under Part B of the IDEA are transferred to a student who reaches the age of majority, the rights regarding educational records must also be transferred to the student. However, the school district must provide any notice required under Part B of the IDEA to you and the student. (See additional information under the heading "Transfer of Parental Rights at Age of Majority" on page 38).

Amendment of records at parent request

34 CFR 300.618-621; ARSD 24:05:29:04

If you believe that the information in the education records about your child is inaccurate, misleading, or violates the privacy or other rights of your child, you may request that the school district correct or remove the information (i.e. amend the record).

The school district must decide whether to correct or remove the information within a reasonable period of time following your request. If the school district decides to refuse to correct or remove the information, it must inform you of the refusal, and advise you of your right to a Family Education Rights and Privacy Act (***FERPA)*** hearing.

The school district must, on request, provide you with a FERPA hearing so that you can challenge the information in your child's education records that you believe is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the FERPA.

Family Education Rights and Privacy Act (FERPA)

At a minimum, a school district's FERPA hearing procedures must afford you the following:

1. The hearing must be held within 30 days after the school district received your request for a hearing, and you or your eligible student must be given notice of the date, place, and time five days in advance of the hearing;

2. The hearing may be conducted by any individual, including an official of the school district, who does not have a direct interest in the outcome of the hearing;

3. You or your eligible student must be given a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or be represented by individuals of your choice at your own expense, including an attorney;

4. The school district must make its decision in writing within 30 days after the conclusion of the hearing; **and**

5. The decision of the school district must be based solely upon the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision.

If, as a result of the hearing, the school district decides that the information is correct and not in violation of your child's privacy, but you disagree, you have the right to make a statement in the record. However, if as a result of the hearing, the school district decides that the information in your child's file is inaccurate they must remove the information and inform you in writing.

Any decisions placed in your child's records must be maintained by the school district as part of your students' records. If the disputed records of your child are disclosed by the school district to any party, the decision must also be disclosed to the party.

Referral to & action by law enforcement & judicial authorities & transmittal of records

34 CFR 300.535(a) & (b); ARSD 24:05:26:15

A school district may report a crime committed by a child with a disability to appropriate authorities. Nothing in the IDEA prevents State law enforcement and judicial authorities from exercising their responsibilities to apply Federal and State law to crimes committed by a child with a disability.

A school district reporting a crime committed by a child with a disability shall provide copies of the special education and disciplinary records of the child for consideration by the appropriate authorities to whom it reported the crime, but only to the extent allowed by FERPA.

Placement of Children by their Parents in Private School

Children placed in private schools by their parents if a FAPE is not a concern

34 CFR 300.504(a) & (b); ARSD 24:05:31.01

If you placed your child in a private school or facility and there is no dispute about the provision of a FAPE, your placement decision is voluntary. If the school district made a FAPE available to your child within the school district, the school district does not have to pay for special education or other costs of your child's private education. However, public schools do have certain duties with respect to voluntarily placed private school children with disabilities who are attending private schools located within their geographic boundaries.

If your child's private school meets the IDEA and State definition of a private school, the public school where the private school is located must:

1. Count your child in its population of parentally-placed private school children.

2. With your consent, conduct the periodic reevaluations of your child required by the IDEA.

3. Consult with you and your child's private school to obtain input regarding how the proportionate share of the IDEA Part B funds should be equitably spent on special education and related services to parentally-placed private school children including your child.

4. After consulting with private school officials and representatives of parents of parentally-placed private school children, make a final decision regarding services to be provided to eligible parentally-placed private school children with disabilities.

Decisions about which services and the amounts of services children with disabilities enrolled by their parents in private schools will receive are made through the consultation process and are based on the needs of the children designated to receive services. Children parentally placed in private schools have no individual entitlement to receive some or all of the special education and related services they would receive if enrolled in a public school.

Children placed in private schools by their parents if a FAPE is a concern

34 CFR 300.148; ARSD 24:05:31:05

Disagreements between you and the school district regarding the availability of an appropriate program for your child and the question of payment for private school placement may be decided at a due process hearing. A hearing officer or court may require your child's school district (where you reside) to reimburse you for the cost of the private school if the hearing officer or court finds that the public school did not make a FAPE available to your child and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by public schools.

Reimbursement amounts may be reduced or denied by the hearing officer or court if:

1. You did not, at the most recent IEP Team meeting you attended before you placed your child in a private school, tell the IEP Team that you disagreed with the school district's proposed placement to provide a FAPE to your child, including stating your concerns and intent to enroll your child at a private school at public expense; **or** in the alternative, you did not, at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of your child from the public school, give written notice to the school district of your disagreement with the proposed placement by the school district, including listing your concerns and intent to enroll your child in a private school at public expense; **or**

2. Before your child stopped attending the public school, the school district provided prior written notice to you of its proposal to evaluate your child, and included a statement of the purpose of the evaluation,

but you did not make the child available for an appropriate and reasonable evaluation by the school district; **or**

3. The hearing officer or court makes a judicial finding that you acted unreasonable.

However, the cost of reimbursement shall not be reduced or denied for your failure to provide the required notice to the school district of your disagreement and your intent to enroll your child in a private school, if:

1. The school prevented you from providing the notice;
2. You were not given your South Dakota Parental Rights and Procedural Safeguards as required, informing you of your responsibility to provide the notice to the school district; **or**
3. Compliance with the notice requirements by you would likely result in physical harm to your child.

Additionally, the cost of reimbursement may, at the discretion of the hearing officer or court, not be reduced or denied for your failure to comply with the notice requirements, if:

1. You are not literate or cannot write in English; **or**
2. Compliance with the notice requirements by you would likely result in serious emotional harm to your child.

Discipline of Students with Disabilities

Discipline of Students with Disabilities

General Authority 34 CFR 300.530(a)-(d); ARSD 24:05:26; ARSD 24:05:26.01

When your child with a disability violates a code of student conduct, school personnel may remove your child from his or her current placement to an appropriate ***interim alternative educational setting (IAES)*** or another setting, or suspend your child, **for not more than 10 consecutive *school days***, to the extent these consequences are applied to children without disabilities. Additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct may occur as long as those removals do not constitute a change of placement (see **Disciplinary Change of Placement** below).

For any day of **removal beyond 10 school days in the same school year** that does not constitute a change of placement, school personnel, in consultation with at least one of the child's teachers, must determine the extent to which services are needed, to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. The school district must provide your child with the services determined by school personnel in consultation with at least one of the child's teachers.

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for your child when he or she violates a code of student conduct. When making a case-by-case determination regarding whether a disciplinary change in placement is appropriate,

factors such as your child's disciplinary history, ability to understand consequences, expression of remorse, and supports provided to your child prior to the violation of a school code could be unique circumstances considered by school personnel.

Disciplinary Change of Placement

34 CFR 300.536, 34 CFR 300.530(h) ARSD 24:05:26:02.01

A removal of your child from his or her current educational placement is a **change of placement** if:

1. The removal is for more than 10 consecutive school days; **or**
2. Your child has been subjected to a series of removals that constitute a pattern because:
    a. The series of removals total more than 10 school days in a school year;
    b. Your child's behavior is substantially similar to his or her behavior in previous incidents that resulted in the series of removals; **and**
    c. Other additional factors such as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

The school district determines whether a pattern of removals constitutes a change of placement on a case-by-case basis. When the school district decides to remove your child because of a violation of a code of conduct in a manner that will result in a change of placement, the school district must notify you that same day, and provide you with this procedural safeguard notice.

This determination of whether a removal is a change of placement is subject to review through due process hearing and judicial proceedings.

A meeting must be held to conduct a Manifestation Determination review before making a disciplinary change of placement of your child. The LEA, the parent, and relevant members of the IEP team (as determined by the parent and the LEA) are involved in conducting the review and participating in the Manifestation Determination meeting.

Manifestation of Determination and Possible Outcomes

34 CFR 300.530(c) and (e); 34 CFR 300.531; ARSD 24:05:26:09.02-05

Within 10 school days of any decision to change the placement of your child because of a violation of a code of student conduct, your child's IEP Team (as determined by you and the school district) must review all relevant information in your child's file, including his or her IEP, any teacher observations, and any relevant information provided by you to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, your child's disability; **or**

2. If the conduct in question was the direct result of the school district's failure to implement your child's IEP.

If your child's IEP Team determines that either (1) or (2) above were met, the conduct is a manifestation of your child's disability.

If the violation of the code of conduct was a manifestation of your child's disability, the school district must take immediate steps to remedy those deficiencies. Additionally, the IEP Team must:

1. Conduct a ***functional behavior assessment (FBA)***, unless the school district has conducted an FBA, and implement a ***behavioral intervention plan (BIP)*** for your child; **or**
2. If a BIP has already been developed, review the BIP, and modify it, as necessary, to address the behavior; **and**
3. Except as provided in cases of "special circumstances" (i.e. weapons, drugs, serious bodily injury) your child must be returned to his or her original placement, unless you and the school district agree to a change of placement as part of the modification of your child's BIP.

Please note: Your child is subject to the same discipline and rules as any student at the school and will continue to receive services described in the IEP, but those services may not be in the same location.

If the violation of the code of conduct was not a manifestation of your child's disability, the child may be disciplined in the same manner and for the same length of time as children without disabilities (except that services must be provided to your child). Since the removal is a change of placement, the IEP Team must:

1. Ensure that your child receives as appropriate, a FBA, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not happen again;
2. Decide the services to be provided to your child to enable him or her to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP; **and**
3. Decide the interim alternative educational setting for delivering services to your child.

Special Circumstances and Possible Outcomes

34 CFR 300.530(g); 34 CFR 300.531; ARSD 24:05:26:09.02

Even if your child's behavior is determined to be a manifestation of your child's disability, school personnel may remove your child to an interim alternative educational setting (IAES) for not more than **45 school days**, if your child:

1. Carries a weapon to or possesses a weapon at school, on school premises, or at a school function;
2. 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; **or**
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

Before changing the child's placement due to these special circumstances, the IEP Team must:

1. Ensure that your child receives as appropriate, a FBA, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not happen again;
2. Decide the services to be provided to your child to enable him or her to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP; **and**
3. Decide the interim alternative educational setting for delivering services to your child.

If the behavior is determined to not be a manifestation of the child's disability, the child may be disciplined in the same manner and for the same length of time as children without disabilities as described above under Manifestation Determination.

For further information on the above issues, please see the definitions in Appendix.

Due Process Hearing Complaints Regarding Discipline of Students with Disabilities

34 CFR 300.532(a); ARSD 24:05:26:09.06; 34 CFR 300.532(b); ARSD 24:05:26:08.02; 34 CFR 300.532(c); ARSD 24:05:26:09.08; 34. CFR 300.533; ARSD 24:05:26:09.07

If you disagree with any decision regarding manifestation determination **or** placement of your child under the discipline procedures of the IDEA, you **may** request a hearing by filing a due process hearing complaint.

Additionally, if a school district believes that maintaining the current placement of your child is substantially likely to result in injury to your child or others, the school district **may** request a hearing by filing a due process hearing complaint.

A hearing officer hears, and makes a determination regarding, an appeal requested under the discipline appeals section of the IDEA. The hearing officer may:

1. Return your child to the original placement if the hearing officer determines that the removal was a violation of the discipline procedures or that your child's behavior was a manifestation of the child's disability; **or**
2. Order a change of placement of your child 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 your child is substantially likely to result in injury to the child or to others.

The school district may repeat the process of requesting a hearing to extend the change of placement for another 45-school day period if the school district believes your child is substantially likely to injure him or herself or other children if returned to the original placement.

Whenever a hearing is requested under the discipline appeals section of the IDEA, you or the school district involved in the dispute must have an opportunity for a quick impartial due process hearing. These are referred to as **expedited due process hearings**.

The State Special Education Programs Office is responsible for assigning an impartial hearing officer. The hearing officer is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date that the hearing request is filed. The hearing officer must make a decision within 10 school days after the date of the hearing.

Unless you and the school district agree in writing to waive the Resolution Meeting, or agree to use the mediation process:

1. A Resolution Meeting must occur within seven days of receiving notice of the due process hearing complaint; **and**

2. The due process hearing may proceed unless the matter has been resolved within 15 days of the receipt of the due process hearing complaint.

You or the school district may appeal the decision of the hearing officer in an expedited due process hearing in the same way as you appeal decisions in other due process hearings.

When a hearing is requested under the discipline appeals section of the IDEA by either the parent or the school district, the child must remain in the ***Interim Alternative Educational Setting*** until the appeal is resolved unless there are special circumstances and/or you and the school district agree otherwise.

Protections for Students not Yet Eligible

34 CFR 300.534; ARSD 24:05:26:14

A child who has violated the code of conduct but has not yet been determined eligible for special education and related services may claim any of the IDEA protections, if the school district had knowledge that the child may be a child with a disability.

For purposes of extending the IDEA protections, a school district is presumed to have knowledge that a child is potentially a child with a disability before the behavior occurred that resulted in disciplinary action if:

1. You expressed concern in writing to supervisory, administrative personnel or a teacher of your child, that your child is in need of special education and related services;
2. You requested an evaluation of your child; **or**
3. Your child's teacher, or other personnel of the local educational agency (LEA), expressed specific concerns directly to the director of special education of the school district or to other supervisory personnel of the school district about a pattern of behavior demonstrated by your child.

A school district is not presumed to know that your child is a child with a disability if you did not allow an evaluation of your child, or you refused to consent to your child receiving special education or related services under Part B of the IDEA, or your child was previously evaluated and determined to not be a child with a disability under Part B of the IDEA.

If the school district did not know that your child was potentially a child with a disability before disciplining your child, the IDEA protections do not extend to your child. Instead, the regular disciplinary measures that non-disabled children receive for violations of code of conduct apply to your child. However, if a request is made by you or the school district to evaluate your child during the disciplinary period, the evaluation must be completed by the school district in an expedited manner. During this **expedited evaluation** period, until the evaluation is completed, your child will remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. Considering information from the evaluation conducted by the school district and information provided by you, if your child is ultimately determined to be a child with a disability, the school district must provide special education and related services to your child in

accordance with all the provisions of Part B of the IDEA including the disciplinary provisions and the FAPE requirements.

State Dispute Resolution Procedures

Written State Complaints

34 CFR 300.151-153; ARSD 24:05:15

A State complaint is a written signed statement by an individual or organization, including out of state complainants, alleging that the South Dakota Department of Education, State Special Education Programs Office or a school district has violated a requirement of Part B of the IDEA or its implementing federal or State statutes, rules or regulations that apply to special education programs. The complaint must also include the facts of the situation.

	State Complaint
When is it used	A state complaint is filed when it is believed that that a public school district or agency has not followed the IDEA, and complainant is requesting the State Educational Agency (SEA) investigate.
Who may file	Any person or organization may file a state complaint.
How to file	The party filing the State complaint must forward a copy of the complaint to the school district serving the child at the same time the party files the complaint with the State Special Education Programs Office. The State Special Education Programs Office has developed a model form to assist parents and other parties in filing a state complaint; however, you are not required to use this model form. You may use the appropriate model form or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements for filing a State complaint. Sample forms may be located at https://doe.sd.gov/sped/complaints.aspx.
Outcome or Desired Result	Written decision that includes findings, conclusion, and a final decision. Also includes corrective actions the district must take, if applicable.
Benefits	Written decision within 60 calendar days after filing, unless timeline is extended. Written state complaint is relatively easy to file. If findings are issued, individual student or district-wide systemic issues may be changed.
Decision Maker	The state is responsible for ensuring the investigation is completed and a final report is issued.
Time Frame for filing, meeting, and decision	The complaint must allege a violation that occurred **not more than one year before the date that the complaint is received by the department.** A written decision must be issued within 60 calendar days from the date the complaint request is filed, unless the timeline is extended (extension may not exceed 30 days).

What must be included in the request?	1. A statement that the South Dakota Department of Education, State Special Education Programs Office or a school district has violated a requirement of Part B of the IDEA, or its implementing federal or State statutes, rules or regulations that apply to the special education program; 2. The facts on which the statement is based; 3. The signature and contact information for the complainant; **and** 4. If alleging violations with respect to a specific child: (a) The name and address of the residence of the child; (b) The name of the school the child is attending; (c) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; (d) A description of the nature of the problem of the child, including facts relating to the problem; **and** (e) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
What happens after filing?	The State Director of Special Education Programs appoints a complaint investigator and any consultants necessary to investigate the complaint. The investigator may conduct an independent on-site investigation, if necessary. The investigator must allow the complainant to submit additional information beyond what was included in the written State complaint, either orally or in writing, about the allegations in the complaint. The investigator shall allow the school district to respond to the complaint, including, at a minimum: 1. At the discretion of the school district, offering a proposal to resolve the complaint; **and** 2. Affording an opportunity for a parent who has filed a complaint and the school district to voluntarily engage in mediation. The investigator shall make a recommendation to the State Director of Special Education Programs; After reviewing all relevant information, the State Director of Special Education Programs shall make an independent determination as to whether the complaint is valid, what corrective action is necessary to resolve the complaint and the time limit when corrective action is to be completed. The State Director of Special Education Programs shall submit a written report of the final decision to all parties involved. The written report shall address each allegation in the complaint, contain findings of fact and conclusions, and include reasons for the final decision.

	Documentation supporting the corrective actions taken by a school district shall be maintained by the State Special Education Programs Office and incorporated into the State's monitoring process.
Things to consider	An issue cannot simultaneously be the subject of both a State complaint and due process hearing complaint. If this occurs, the State shall set aside any part of the State complaint that is being addressed in the due process hearing until the conclusion of the hearing. Any other issues in the State complaint that are not a part of the due process hearing complaint shall be resolved in a timely manner through the State complaint process. If an issue is raised in a State complaint has previously been decided in a due process hearing involving the same parties, the hearing decision is binding on that issue and the State Special Education Programs Office must inform the complainant to that effect. A State complaint alleging a school district's failure to implement a due process hearing decision must be resolved by the State Special Education Programs Office.
Cost	No cost to party filing

Mediations

34 CFR 300.506; ARSD 24:05.30.09

Parties may resolve disputes involving any matter under the federal and state's special education rules through the mediation process.

Mediation provides a positive, less adversarial approach to resolving disputes between parents and school systems. With the assistance of a skilled and impartial facilitator (the mediator), the parties involved in the dispute are encouraged to communicate openly and respectfully about their differences and to come to an agreement. The decision-making power always resides with the participants in mediation.

	Mediation Process
When is it used	Anytime there is a disagreement between parents and public school districts about special education and related services. Both parties must agree to mediation and it is voluntary.
Who may file	Parent or Public School District
How to file	The party filing the mediation request should email, mail, or fax the request to the State Special Education Programs Office. The State Special Education Programs Office has developed a model form to assist parents and other parties in filing a mediation request; however, you are not required to use this model form. You may use the appropriate model form or another form or other document. Sample forms may be located at https://doe.sd.gov/sped/complaints.aspx.
Outcome or Desired Result	Develop a written, signed mediation agreement that is enforceable in any State court or in a district court of the United States.

	Successful mediation agreements are considered binding between the parties. The State or a hearing officer may determine to dismiss the complaint or hearing request if the parties have successfully mediated all issues.
Benefits	Discussions are confidential. Conversations may not be used as evidence in a due process hearing. The agreement must be signed by both you and a representative of the school district who has the authority to sign for the school district.
Decision Maker	Parent and public school district work together, are in control of the outcome and develop the solutions.
Time Frame for filing, meeting, and decision	Available at any time, even if a state complaint or due process hearing has been filed. The state must make sure that each mediation session is scheduled in a timely manner and held in a location that is convenient to the parties to the dispute [§300.506(b)(5)].
What must be included in the request?	There are no regulated requirements; however, you may use the sample form mentioned above as a guide.
What happens after filing?	Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. Mediators are selected on a random, rotational, or other impartial basis. SEP maintains a list of individuals who are qualified and knowledgeable in laws and regulations relating to the provision of special education and related services. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to you and the school district. Mediation is an informal process, conducted in a non-adversarial atmosphere.
Things to consider	Mediation may not be used to deny or delay a parent's right to a hearing on the parent's due process hearing complaint or to deny any other rights afforded under Part B of the IDEA. If you choose not to use the mediation process, the State Special Education Programs Office or the school district may offer you an opportunity to meet, at a time and location convenient to you, with a disinterested party, to encourage the use of, and explain the benefits of, the mediation process to you. This party is under contract with a parent training and information center or a community parent resource center established in the state or an appropriate alternative dispute resolution entity.
Cost	The State will bear the cost of the mediation process, including meetings with a disinterested party.

Due Process Hearing Complaint

34 CFR 300.507; 34 CFR 300.508-509; ARSD 24:05:30:07.01–07

You or a school district may file a due process hearing complaint on any matter relating to the identification, evaluation, educational placement, or provision of a FAPE to your child.

Impartial due process hearing

34 CFR 300.511-515; ARSD 24:05:30:09.04

Whenever a due process hearing complaint is received, including a due process hearing complaint relating to disciplinary procedures, unless satisfactorily resolved prior to the due process hearing, you or the school district involved in the dispute must have an opportunity for a due process hearing. The State Special Education Programs Office is responsible for ensuring that an impartial due process hearing is held.

	Due Process Hearing Complaint
When is it used	Used to resolve disagreements related to the identification, evaluation, placement or provision of a Free Appropriate Public Education (FAPE).
Who may file	A parent or school district may file for a due process hearing. An attorney or advocate on behalf of parent or public school district.
How to file	The State Special Education Programs Office has developed a model form to assist you and school districts in filing a due process hearing complaint notice. You are not required to use the model forms. A party requesting a due process hearing may use the State developed model form, another form, or other document as long as the form or document that is used meets the content requirements for filing a due process hearing complaint. Sample forms may be located at https://doe.sd.gov/sped/complaints.aspx. The party filing the due process hearing complaint must also forward a copy of the due process hearing complaint to the State Special Education Programs Office. The due process hearing complaint must include the following information**:** 1. The name of the child; 2. The address of the residence of the child; 3. The name of the school the child is attending; 4. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending; 5. A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; **and** 6. A proposed resolution of the problem. You or the school district may not have a hearing on a due process complaint until the party requesting the due process hearing submits a due process complaint that meets the IDEA Part B requirements listed above.
Participant Rights at Hearing	Hearing Rights - ARSD 24:05:30:12 Any party to a hearing has the right to:

	1. Be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities except that neither party has the right to be represented by a non-attorney at a hearing; 2. Present evidence and confront, cross-examine, and compel the attendance of witnesses; 3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing; 4. Obtain a written, or, at your option, an electronic, verbatim record of the hearing; **and** 5. Obtain written, or, at your option, electronic findings of fact and decisions. Additional Disclosure of Information - ARSD 24:05:30:12.01 At least five business days prior to a hearing, you and the school district shall disclose to the other all evaluations completed by that date and recommendations based on evaluations that you or the school district intend to use at the hearing. A hearing officer may exclude the relevant evaluation or recommendation at the hearing for failure to comply with disclosure requirements. Parental Rights at Hearings As a parent involved in a hearing, you have the right to: 1. Have the child who is the subject of the hearing present; 2. Open the hearing to the public; and 3. Have the record of the hearing and the findings of fact and decisions provided at no cost to you.
Outcome or Desired Result	Written decision of findings of fact, conclusions of law, and corrective actions the district must take if applicable.
Benefits	From the date a due process hearing is filed the student stays in his or her current educational placement unless the parent and public school district agree otherwise. The decision is legally binding on the parties. The State Special Education Programs Office is responsible for ensuring the decision is followed, unless it is appealed.
Decision Maker	Hearing Decisions - ARSD 24:05:30:10.01 A hearing officer's decision that a child was denied a FAPE must be based on substantive grounds unless the procedural violation meets the criteria for a denial of a FAPE. In matters alleging a procedural violation, a hearing officer may find that your child did not receive a FAPE only if the procedural inadequacies: 1. Impeded your child's right to a FAPE;

	2. Significantly impeded your opportunity to participate in the IEP decision-making process regarding the provision of a FAPE to your child; or 3. Caused a deprivation of educational benefit to your child. Nothing in this section shall be construed to preclude a hearing officer from ordering a school district to comply with the IDEA procedural requirements. Impartial Hearing Officer - ARSD 24:05:30:10 At a minimum, a hearing officer must: 1. Be impartial (i.e. not be an employee of the South Dakota Department of Education or the local school district, and not have a personal or professional interest that conflicts with the person's objectivity in the hearing); 2. Possess knowledge of, and the ability to understand, the provisions of the IDEA, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; 3. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; 4. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. The State Special Education Programs Office and school district shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.
Time Frame for filing, meeting, and decision	The due process hearing complaint must allege a **violation that occurred not more than two years before** the date you or the school district (if the school district is requesting the hearing) knew or should have known about the alleged basis of the due process hearing complaint. This timeline described above does not apply to you if you were prevented from filing a due process hearing complaint due to: 1. Specific misrepresentations by the school district that it had resolved the problem; **or** 2. The school district not sharing required information under Part B of the IDEA with you. Hearing Timelines Not later than 45 days after the expiration of the 30 day resolution period or adjusted time period, if applicable, the State Special Education Programs Office shall ensure that: 1. A final decision is reached in the hearing; **and** 2. A copy of the decision is mailed to you and the school district. A hearing officer may grant specific extensions of this timeline at the request of you or the school district. Each hearing must be conducted at a time and place that is reasonably convenient to you and child involved.

What happens to my child's services after filing?	Child's Status During Proceedings ("Stay-Put") - 34 CFR 300.518; ARSD24:05:30:14 During any due process hearing or judicial proceeding regarding a due process complaint, unless the State Special Education Programs Office or your school district and you agree otherwise, the child involved in the due process complaint shall stay in his or her current educational placement. If you are applying for initial admission to a public school, your child shall, with your consent, be placed in the public school program until all such proceedings have been completed. If the due process hearing complaint involves a request for initial services under Part B from a child who is transitioning from ***Part C*** of the IDEA to Part B and is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child had been receiving. If the child is eligible for special education and related services under Part B and you consent to the initial provision of special education and related services, then the school district must provide those special education and related services that are not in dispute between you and the school district. When a hearing is requested under the discipline procedures of the IDEA by either the parent or the school district, the child must remain in the Interim Alternative Educational Setting until the appeal is resolved unless there are special circumstances, and/or you and the school district agree otherwise. If a hearing officer in a due process hearing agrees with you that a change of placement is appropriate, that placement must be treated as an agreement between the State Special Education Programs Office and you until the completion of the hearing.
What happens after filing?	Sufficiency of the complaint - ARSD 24:05:30:08.04 The due process hearing complaint will be considered **sufficient** unless the party receiving the due process hearing complaint, notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process hearing complaint, that the **receiving party** believes the due process hearing complaint does not meet the content requirements of the IDEA. Within five days of receipt of such notification, the hearing officer must make a determination on the face of the due process hearing complaint of whether the due hearing process hearing complaint meets the content requirements of the IDEA and must immediately notify the parties in writing of that determination. A party may amend its due process hearing complaint only if: 1. The other party consents in writing to the amendment and is given the opportunity to resolve the amended due process hearing complaint through a Resolution Meeting; **or**

2. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

The applicable timeline for a due process hearing under Part B shall restart at the time the party files an amended due process hearing complaint, including the timeline for a Resolution Meeting.

You may file another due process hearing complaint on an issue that is separate from a due process hearing complaint already filed by you or the school district

District Response to a Due Process Hearing Complaint Filed by a Parent

If you are the party requesting the due process hearing and the school district has **not** sent a prior written notice under Part B of the IDEA to you regarding the subject matter in your due process hearing complaint, the school district must, within 10 days of receiving the due process hearing complaint, send to you a response that includes:

1. An explanation of why the school district proposed or refused to take the action(s) raised in your due process hearing complaint;
2. A description of other options that the IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action(s); **and**
4. A description of the other factors that are relevant to the school district's proposed or refused action(s).

A response by a school district under this section must not prevent the school district from asserting that your due process hearing complaint was insufficient.

Other Party Response to a Due Process Hearing Complaint

If the school district is the party requesting the due process hearing, the parent receiving a due process hearing complaint must, within 10 days of receiving the due process hearing complaint, send to the school district a response that specifically responds to the issues raised in the due process hearing complaint.

Resolution Meeting - 34 CFR 300.510; ARSD 24:05:30:08.12

If you are the party requesting a due process hearing, within 15 days of receiving notice of your due process hearing complaint, and prior to the initiation of a due process hearing, **the school district** must convene a Resolution Meeting that:

1. Includes you and the relevant members of the IEP Team who have **specific knowledge** of the facts identified in your due process hearing complaint;
2. Includes a representative of the school district who has decision-making authority on behalf of the school district; **and**
3. Does not include an attorney of the school district unless you attend with an attorney.

You and the school district determine the relevant members of the IEP Team to attend the Resolution Meeting.

The purpose of the Resolution Meeting is for you to discuss your due process hearing complaint, and the facts that form the basis of your due process hearing complaint, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing complaint.

This Resolution Meeting is required unless:

1. You **and** the school district agree in writing to waive the meeting; **or**
2. You **and** the school district agree to use the mediation process described in this document.

30-Day Resolution Period

If the school district has not resolved the due process hearing complaint to your satisfaction within 30 days of the receipt of a due process hearing complaint filed by you, the due process hearing may occur. Except as provided below, the timeline for issuing a final decision under a due process hearing begins at the expiration of this 30-day resolution period.

Unless you and the school district have both agreed to waive the Resolution Meeting or to use mediation rather than a Resolution Meeting, your failure to participate in the Resolution Meeting will delay the timelines for the resolution process and due process hearing until after the Resolution Meeting is held.

If the school district is unable to obtain your participation in the Resolution Meeting after reasonable efforts have been made and documented, the school district may, at the conclusion of the 30-day resolution period, request that a hearing officer **dismiss your due process hearing complaint.**

Documentation of the school district's efforts to obtain your participation in the Resolution Meeting must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; **and**
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the school district **fails to hold** the Resolution Meeting within 15 days of receiving notice of your due process hearing complaint or **fails to participate** in the Resolution Meeting, you may seek the intervention of a hearing officer to begin the due process hearing timeline.

Adjustments to the 30-day Resolution Period - ARSD 24:05:30:08.14

The 30-day resolution period is adjusted, and the 45-day timeline for the due process hearing starts, the day after one of the following events occurs:

	1. Both you and the school district agree in writing to waive the Resolution Meeting; 2. After either the mediation or Resolution Meeting starts but before the end of the 30-day period, you and the school district agree in writing that no agreement is possible; or 3. If both you and the school district agree in writing to continue the mediation at the end of the 30-day resolution period, but later, you or the district withdraws from the mediation process. Written Settlement Agreement - ARSD 24:05:30:08.15 If a resolution to the dispute is reached at the Resolution Meeting, you and the school district must execute a legally binding agreement that is: 1. Signed by both you and a representative of the school district who has the authority to sign for the school district; and 2. Enforceable in any State court or in a district court of the United States. If you and the school district execute a written settlement agreement at a Resolution Meeting, either you or the school district may cancel the agreement within 3 business days of the agreement's signing
Things to consider	Subject Matter of Due Process Hearings - ARSD 24:05:30:09.05 You or the school district requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees. The decision is legally binding, even if you do not agree with the decision. If a decision is appealed, it may not be carried out until the appeal is final. School districts are typically represented by an attorney.
Cost	The school district must inform you of any free or low-cost legal and other relevant services available in the area if: 1. You request the information; **or** 2. You or the school district file a due process hearing complaint If a parent hires an attorney, it is at their own expense. See below for additional attorney fees information.
Additional information	Finality of Decision A decision made in a hearing is **final**, except that any party involved in the hearing may appeal the decision through civil action. Civil Actions - 34 CFR 300.516; ARSD 24:05:30:11 Either party to a due process hearing (you or the school district) who is not satisfied with the findings and decisions of the hearing officer (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the due process hearing complaint. The action may be brought in any State court that has the authority to hear this type of case or in a district court of the United States without regard to the amount in controversy.

The party bringing the action has 30 days from the date of the decision of the hearing officer to file a civil action.

In the civil action, the court:

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

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures for filing a due process hearing complaint must be exhausted to the same extent as would be required had the action been brought under Part B of the IDEA.

Attorneys' Fees - 34 CFR 300.517; ARSD 24:05:30:11.01

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you **which the school district must pay**, if you are the prevailing party.

A Resolution Meeting is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court, in its discretion, may award reasonable attorneys' fees as part of costs to a prevailing State Department of Education Programs or the school district, which **the court may require your attorney to pay**, if your attorney files a due process hearing complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, **or** if your attorney continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

The court, in its discretion, may also award reasonable attorneys' fees as part of costs to a prevailing State Department of Education or the school district, which **the court may require either you or your attorney to pay**, if your request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

If you are the prevailing party, the court will reduce the amount of the attorney's fees awarded to you under Part B of the IDEA, if the court finds that you, or your attorney, during the course of the action or proceeding:

1. Unreasonably delayed the final resolution of the dispute;

	2. Your attorney's fees unreasonably exceed the hourly rate charged by similar attorneys in the community for similar services; 3. The time spent, and legal services delivered by your attorney is excessive given the nature of the proceeding; **or** 4. Your attorney did not give the school the appropriate information in the due process hearing complaint. These reduction provisions do not apply in any action or proceeding if the court finds that the State Department of Education or the district unreasonably delayed the final resolution of the action or proceeding or there was a violation of Part B of the IDEA.
Expedited Due Process Hearings	The expedited due process hearing requirements come into play only when dealing with a hearing request pertaining to 1) disciplinary placement; or 2) manifestation determination; or 3) an LEA believes maintaining the current placement of the child is substantially likely to result in injury to the child or others. The expedited timelines cannot be waived by the hearing officer.

Findings and decisions to advisory panel and general public

The State Special Education Programs Office, after deleting any personally identifiable information, shall transmit the findings and decisions of the hearing officer to the State advisory panel, and make those findings and decisions available to the public.

Transfer of Parental Rights

Transfer of Parental Rights at Age of Majority

34 CFR 300.520; ARSD 24:05:30:16.01

When a child with a disability reaches eighteen, the age of majority, (except for a child with a disability whose rights have been terminated or assigned to another party), all rights under Part B of the IDEA transfer from you to your adult child except that the school district shall provide any notice required under special education to both your adult child and you.

If your child is incarcerated in an adult or juvenile, State, or local correctional institution, all rights under Part B of the IDEA transfer to your child upon turning 18, the age of majority.

The school district shall notify the child and you of the transfer of rights.

If, consistent with State law, an eligible child whose rights have not been terminated or assigned to another party by a court is determined ***not*** to have the ability to provide informed consent with respect to their educational program, the school district shall appoint the parent or, if the parent is not available, a surrogate parent to represent the educational interests of the child throughout the child's eligibility under Part B of the IDEA.

Acronyms and Definitions

ARSD – Administrative Rules of South Dakota located at South Dakota Legislature Legislative Research Council website: http://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=24:05.

Behavior Intervention Plan (BIP)– or behavior support plan is a plan that teacher replacement skills and manages consequences by positively reinforcing desired behaviors.

Child with a disability – Child with a disability means a child evaluated in accordance with §300.304 through 300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in this part as "emotional disability"), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

CFR – Code of Federal Regulations

Consent – informed consent means that you have been fully informed of all information relative to an activity for which consent is being requested.

Day – means calendar day unless otherwise indicated as a business day or school day.

Due Process – a legal term referring to procedures that protect a person's rights. In special education, being provided due process means that the required procedural safeguards are followed, and also describes the administrative hearing process (i.e. 'Due Process Complaint' and '**Due Process Hearing'**).

Family Education Rights and Privacy Act (FERPA) – is a federal law that protects the privacy of student education records.

Free Appropriate Public Education (FAPE) – The term 'Free Appropriate Public Education' or 'FAPE' means special education and related services that: are provided at public expense, under public supervision and direction, and without charge; meet the standards of the ***State Education Agency (SEA)***; include an appropriate preschool, elementary school, or secondary school education in the State involved; and are provided in conformity with an individualized education program (IEP).

Functional Behavioral Assessment (FBA) – A process for gathering information to understand the function (purpose) of behavior in order to write an effective behavior intervention plan.

Independent Educational Evaluation - You have the right to have an ***IEE*** of your child at public expense, if you disagree with an evaluation obtained by the school district.

Individual Education Plan (IEP) – The document parents jointly develop at least annually with school personnel that contains services provided to a child with a disability.

IEP Team – The group of individuals who make decisions regarding a child with a disability's identification, evaluation, placement, and provision of a free appropriate public education and who develop, review, and revise the child's IEPs.

Interim Alternative Educational Setting (IAES) – A placement different from that called for in the child's IEP wherein the child must continue to have access to the general education curriculum and receive services that allow the child to progress toward meeting the child's annual IEP goals. A child is placed in an interim alternative educational setting in situations involving discipline.

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

Part B - The portion of IDEA applying to services provided to children with disabilities ages 3-21.

Part C – The portion of IDEA applying to services provided to children from birth to age 3.

Personally Identifiable Information (PII) – is any data that could potentially identify a specific individual.

Related Services – Transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education.

School Day – Any day, including a partial day that children are in attendance at school for instructional purposes. School day has the same meaning for all children in school, including children with and without disabilities.

SDCL – South Dakota Codified Laws

State Educational Agency (SEA) - The State board of education or other agency or officer primarily responsible for the State supervision of public elementary school and secondary schools.

Special Education – Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and instruction in physical education. Special education also includes each of the following: speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards; travel training; and vocational education.

Transition Services – A coordinated set of activities for a child with a disability that (1) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (2) is based on the individual child's needs, taking into account the child's strengths, preferences, and interests; and includes: instruction; related services; community experiences; the development of employment and other post-school adult living objectives; and if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.