



Eligibility Guide

Revised AUGUST 2016



south dakota
DEPARTMENT OF EDUCATION

Learning. Leadership. Service.

TABLE OF CONTENTS

CONTENTS

Evaluation Procedures	2
Disability Categories.....	4
DEAF-BLINDNESS-500	4
EMOTIONAL DISTURBANCE-505	4
COGNITIVE DISABILITY-510	5
HEARING LOSS-515	5
SPECIFIC LEARNING DISABILITY-525	6
MULTIPLE DISABILITIES-530.....	9
ORTHOPEDIC IMPAIRMENT-535.....	9
VISION LOSS-540.....	10
DEAFNESS-545	10
SPEECH OR LANGUAGE IMPAIRMENT-550	11
OTHER HEALTH IMPAIRMENT-555.....	13
AUTISM SPECTRUM DISORDER-560.....	14
TRAUMATIC BRAIN INJURY-565.....	16
DEVELOPMENTAL DELAY-570.....	16
Related Services Eligibility.....	17
RELATED SERVICES OF OCCUPATIONAL THERAPY.....	17
AND PHYSICAL THERAPY	17
IEP TEAM OVERRIDE.....	18
Resources	18
Appendix A.....	19
Background Information.....	19

EVALUATION PROCEDURES

ARSD 24:05:25:04 Evaluation procedures. States that school districts shall ensure, at a minimum, that evaluation procedures include the following:

- (1) Tests and other evaluation materials are provided and administered in the child's native language or by another mode of communication that the child understands, unless it is clearly not feasible to do so. Any standardized tests that are given to a child:
 - (a) Have been validated for the specific purpose for which they are used; and
 - (b) Are administered by trained and knowledgeable personnel in conformance with the instructions provided by their producer;
- (2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;
- (3) Tests are selected and administered so as best to ensure that a test administered to a child with impaired sensory, manual, or speaking skills accurately reflects the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than the child's impaired sensory, manual, or speaking skills except where those skills are the factors which the test purports to measure;
- (4) No single procedure is used as the sole criterion for determining eligibility or an appropriate educational program for a child;
- (5) A variety of assessment tools and strategies are used to gather relevant functional and development information about the child, including information provided by the parents, that may assist in determining:
 - (a) Whether the child is a child with a disability; and
 - (b) The content of the child's IEP, including information related to enabling the child:
 - (i) To be involved in and progress in the general curriculum; or
 - (ii) For a preschool child, to participate in appropriate activities;
- (6) Technically sound instruments, assessment tools, and strategies are used that:
 - (a) May assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors; and
 - (b) Provide relevant information that directly assists persons in determining the educational needs of the child;
- (7) The child is assessed in all areas related to the suspected disability, including, as applicable, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(8) The evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified;

(9) Materials and procedures used to assess a child with limited English proficiency are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills; and

(10) If an assessment is not conducted under standard conditions, a description of the extent to which it varied from standard conditions (e.g., the qualifications of the person administering the test, or the method of test administration) must be included in the evaluation report.

ARSD24:05:25:05. Eligibility and placement procedures. In interpreting evaluation data for the purpose of determining eligibility and determining the educational needs of the child, in making placement decisions, including decisions regarding preschool children, each school district shall do the following:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Ensure that information obtained from all of these sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;

(4) Ensure that the placement decision is made in conformity with the least restrictive environment rules in chapter 24:05:28; and

(5) Ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

If a determination is made that a child is disabled and needs special education and related services, an individual education program must be developed for the child in accordance with this article.

DISABILITY CATEGORIES

DEAF-BLINDNESS-500

ARSD 24:05:24.01:07. Deaf-blindness defined. Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

EMOTIONAL DISTURBANCE-505

ARSD 24:05:24.01:16. Emotional disturbance defined. Emotional disturbance is a condition that exhibits one or more of the following characteristics to a marked degree over a long period of time:

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

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

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

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

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

COGNITIVE DISABILITY-510

ARSD 24:05:24.01:11. Cognitive disability defined. Cognitive disability is significantly below-average general intellectual functioning that exists concurrently with deficits in adaptive behavior skills, that is generally manifested before age eighteen, and that adversely affects a student's educational performance. The required evaluative components for identifying a student with a cognitive disability are as follows:

- (1) General intellectual functioning two standard deviations or more below the mean as determined by the full scale score on an individual cognitive evaluation, plus or minus standard error of measurement, as determined in accordance with § 24:05:25:04; and
- (2) Exhibits deficits in adaptive behavior and academic or preacademic skills as determined by an individual evaluation in accordance with § 24:05:25:04.

HEARING LOSS-515

ARSD 24:05:24.01:10. Hearing loss defined. A student may be identified as having a hearing loss if an unaided hearing loss of 35 to 69 decibels is present that makes the acquisition of receptive and expressive language skills difficult with or without the help of amplification

SPECIFIC LEARNING DISABILITY-525

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

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

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

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

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

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

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

- (a) A visual, hearing, or motor disability;
- (b) A cognitive disability;
- (c) Emotional disturbance;
- (d) Cultural factors;
- (e) Environmental or economic disadvantage; or
- (f) Limited English proficiency.

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

The school district must promptly request parental consent to evaluate the child to determine whether the child needs special education and related services, and must adhere to the timeframes described in this article unless extended by mutual written agreement of the child's parents and a group of qualified professionals. The district must request such consent if, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided instruction, as described in this section, and whenever a child is referred for an evaluation.

ARSD 24:05:25:07. Additional procedures for evaluating specific learning disabilities. In order for a school district to certify a child as learning disabled for purposes of the federal child count, requirements in §§ [24:05:24.01:19](#) and [24:05:25:08](#) to [24:05:25:13](#), inclusive, must be met and documented in a child's record.

ARSD 24:05:25:08. Additional group members for specific learning disabilities. The determination of whether a child suspected of having a specific learning disability is a child with a disability shall be made by the child's parents and a team of qualified professionals, which shall include:

- (1) The child's regular teacher;
- (2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of that age;
- (3) If the child is less than school age, an individual certified by the department to teach a child of that age; and
- (4) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, remedial reading teacher, or special education teacher.

ARSD 24:05:25:11. Observation for specific learning disabilities. The school district shall ensure that the child is observed in the child's learning environment, including the regular classroom setting, to document the child's academic performance and behavior in the areas of difficulty.

The group described in this section, in determining whether a child has a specific learning disability, shall:

- (1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation, as in a response to intervention model; or
- (2) Have at least one member of the group conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with this chapter, is obtained, as in a discrepancy model.

If a child is less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

ARSD 24:05:25:12. Documentation of eligibility for specific learning disabilities. For a child suspected of having a specific learning disability, the documentation of the determination of eligibility shall contain a statement of:

- (1) Whether the child has a specific learning disability;
- (2) The basis for making the determination, including an assurance that the determination has been made in accordance with this section;
- (3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;
- (4) The educationally relevant medical findings, if any;
- (5) Whether:
 - (a) The child does not achieve adequately for the child's age or does not meet state-approved grade-level standards; and
 - (b) he child does not make sufficient progress to meet age or state-approved grade-level standards; or the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state-approved grade level standards or intellectual development;
- (6) The determination of the group concerning the effects of a visual, hearing, or motor disability; cognitive disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level;
- (7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
 - (a) The instructional strategies used and the student-centered data collected; and
 - (b) The documentation that the child's parents were notified about:
 - (i) The state's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - (ii) Strategies for increasing the child's rate of learning; and
 - (iii) The parent's right to request an evaluation;
- (8) If using the discrepancy model, the group finds that the child has a severe discrepancy of 1.5 standard deviations between achievement and intellectual ability in one or more of the eligibility areas, the group shall consider regression to the mean in determining the discrepancy; and
- (9) If using the response to intervention model for eligibility determination, the group shall demonstrate that the child's performance is below the mean relative to age or state approved grade level standards.

ARSD 24:05:25:13. Group members to certify report in writing. Each group member shall certify in writing whether the report reflects the group member's conclusion. If it does not reflect the group member's conclusion, the group member must submit the conclusion in a separate statement.

ARSD 24:05:25:13.01. Response to intervention model. School districts that elect to use a response to intervention model as part of the evaluation process for specific learning disabilities shall submit to the state for approval a formal proposal that at a minimum addresses the provisions in § 24:05:25:12.

MULTIPLE DISABILITIES-530

ARSD 24:05:24.01:12. Multiple disabilities defined. Multiple disabilities means concomitant impairments (such as a cognitive disability-blindness or a cognitive disability-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.

ORTHOPEDIC IMPAIRMENT-535

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

There must be evidence of the following:

- (1) That the student's impaired motor functioning significantly interferes with educational performance;
- (2) That the student exhibits deficits in muscular or neuromuscular functioning that significantly limit the student's ability to move about, sit, or manipulate materials required for learning;
- (3) That the student's bone, joint, or muscle problems affect ambulation, posture, or gross and fine motor skills; and
- (4) That current medical data by a qualified medical evaluator describes and confirms an orthopedic impairment.

VISION LOSS-540

ARSD 24:05:24.01:30 Vision loss including blindness defined. Vision loss including blindness is an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

A student with a vision loss has a deficiency in visual acuity that, even with the use of lenses or corrective devices, requires special education or special education and related services.

Partial sight is one or more deficiencies in visual acuity, as follows:

- (1) Visual acuity of no better than 20/70 in the better eye after correction;
- (2) Restricted visual field;
- (3) Limited ability to move about safely in the environment because of visual disability;

Blindness is a deficiency in visual acuity of 20/200 or less in the better eye with correcting lenses or a limited field of vision in which the widest diameter subtends an angular distance of no greater than twenty degrees or has a medically indicated expectation of visual deterioration.

DEAFNESS-545

ARSD 24:05:24.01:08. Deafness defined. Deafness is a hearing loss that is so severe that the student is impaired in processing linguistic information through hearing, even with amplification, and that adversely affects a student's educational performance.

A student may be identified as deaf if the unaided hearing loss is in excess of 70 decibels and precludes understanding of speech through the auditory mechanism, even with amplification, and the student demonstrates an inability to process linguistic information through hearing, even with amplification.

SPEECH OR LANGUAGE IMPAIRMENT-550

ARSD 24:05:24.01:20. Speech or language disorder defined. Speech or language impairment is a communication disorder such as stuttering, impaired articulation, a language disorder, or a voice disorder that adversely affects a child's educational performance.

ARSD 24:05:24.01:21. Articulation disorder defined. Articulation disorders include all non-maturational speech deviations based primarily on incorrect production of speech sounds. Articulation disorders include omissions, substitutions, additions, or distortions of phonemes within words. Articulation patterns that can be attributed to cultural or ethnic background are not disabilities.

ARSD 24:05:24.01:22. Criteria for articulation disorder. A student may be identified as having an articulation disorder if one of the following criteria exist:

- (1) Performance on a standardized articulation test falls two standard deviations below the mean and intelligibility is affected in conversation;
- (2) Test performance is less than two standard deviations below the mean but the student is judged unintelligible by the speech and language clinician and one other adult;
- (3) Performance on a phonological assessment falls in the profound or severe range and intelligibility is affected in conversation; or
- (4) Performance on a phonological assessment falls in the moderate range, intelligibly is affected in conversation, and during a tracking period of between three and six months there was a lack of improvement in the number and type of errors; or
- (5) An error persists six months to one year beyond the chronological age when 90 percent of students have typically acquired the sound based on developmental articulation norms.

ARSD 24:05:24.01:23. Fluency disorder defined. A fluency disorder is an interruption in the flow of speaking characterized by atypical rate, rhythm, and repetitions in sounds, syllables, words, and phrases. This may be accompanied by excessive tension, struggle behavior, and secondary mannerisms.

ARSD 24:05:24.01:24. Criteria for fluency disorder. A student may be identified as having a fluency disorder if:

- (1) The student consistently exhibits one or more of the following symptomatic behaviors of dysfluency:
 - (a) Sound, syllable, or word repetition;
 - (b) Prolongations of sounds, syllables, or words;
 - (c) Blockages; or

(d) Hesitations.

(2) There is a significant discrepancy from the norm as measured by speech sampling in a variety of contexts. A significant discrepancy from the norm is five dysfluencies a minute; or

(3) The disruption occurs to the degree that the individual or persons who listen to the individual react to the manner of speech and the disruptions in a way that impedes communication.

ARSD 24:05:24.01:25. Voice disorder defined. A voice disorder is characterized by the abnormal production or absence of vocal quality, pitch, loudness, resonance, duration which is inappropriate for an individual's age or gender, or both.

ARSD 24:05:24.01:26. Criteria for voice disorder. A student may be identified as having a voice disorder if:

(1) Consistent deviations exist in one or more of the parameters of voice: pitch, quality, or volume;

(2) The voice is discrepant from the norm for age, gender, or culture and is distracting to the listener; and

(3) The disorder is not the result of a temporary problem, such as normal voice changes, allergies, colds, or similar conditions.

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

ARSD 24:05:24.01:28. Criteria for language disorder. A student may be identified as having a language disorder as a primary disability if:

(1) Through age eight, performance falls 1.5 standard deviations below the mean on standardized evaluation instruments; beginning at age nine, a difference is present of 1.5 standard deviations between performance on an individually administered standardized language assessment instrument and measured expected potential as measured by an individually administered intelligence test; and

(2) The student's pragmatic skills, as measured by checklists, language samples, or observation, adversely affect the student's academic and social interactions.

OTHER HEALTH IMPAIRMENT-555

ARSD 24:05:24.01:14. Other health impaired defined. Other health impaired means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment, because of a chronic or acute health problem, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, attention deficit disorder or attention deficit hyperactivity disorder, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, Tourette Syndrome, or diabetes, that adversely affects a student's educational performance.

Adverse effects in educational performance must be verified through the full and individual evaluation process as defined in subdivision 24:05:13:01 (18).

AUTISM SPECTRUM DISORDER-560

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

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

The term does not apply if the student's educational performance is adversely affected primarily because the student has an emotional disturbance as defined under Part B of Individuals with Disabilities Education Act.

ARSD 24:05:24.01:04. Diagnostic criteria for autism spectrum disorder. An autism spectrum disorder is present in a student if the student expresses all three of the characteristics from subdivision (A), at least two characteristics from subdivision (B), and all of the characteristics in subdivision (C) through (E), inclusive:

- A) Persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of the following, currently or by history (examples are illustrative, not exhaustive; see text):
1. Deficits in social-emotional reciprocity, ranging, for example, from abnormal social approach and failure of normal back-and-forth conversation; to reduced sharing of interests, emotions, or affect; to failure to initiate or respond to social interactions.
 2. Deficits in nonverbal communicative behaviors used for social interaction, ranging, for example, from poorly integrated verbal and nonverbal communication; to abnormalities in eye contact and body language or deficits in understanding and use of gestures; to a total lack of facial expressions and nonverbal communication.
 3. Deficits in developing, maintaining, and understand relationships, ranging, for example, from difficulties adjusting behavior to suit various social contexts; to difficulties in sharing imaginative play or in making friends; to absence of interest in peers.
- B) Restricted, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following, currently or by history (examples are illustrative, not exhaustive; see text):
1. Stereotyped or repetitive motor movements, use of objects, or speech (e.g., simple motor stereotypes, lining up toys or flipping objects, echolalia, idiosyncratic phrases).
 2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior (e.g., extreme distress at small changes, difficulties with transitions, rigid thinking patterns, greeting rituals, need to take same route or eat same food every day).

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests).
 4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment (e.g. apparent indifference to pain/temperature, adverse response to specific sounds or textures, excessive smelling or touching of objects, visual fascination with lights or movement).
- C) Symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capacities, or may be masked by learned strategies in later life.)
- D) Symptoms cause clinically significant impairment in social, occupational, or other important areas of current functioning.
- E) These disturbances are not better explained by intellectual disability (intellectual development disorder) or global development delay. Intellectual disability and autism spectrum disorder frequently co-occur; to make comorbid diagnoses of autism spectrum disorder and intellectual disability; social communication should be below that expected for general developmental level.

If the above criteria are met, the student meets the definition of a student with autism spectrum disorder.

ARSD 24:05:24.01:04.01. Evaluation report and documentation for autism spectrum disorder. The evaluation report and documentation of eligibility for autism spectrum disorder must:

- (1) Be provided to the parent at no cost;
- (2) Address each of the criteria referenced in section 24:05:24.01:04; and
- (3) For criteria in section 24:05:24.01:04(1) and (2), address the severity level of social communication impairments and restricted, repetitive patterns of behavior as referenced on page fifty-two, table two of the manual.

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

TRAUMATIC BRAIN INJURY-565

ARSD 24:05:24.01:29. Traumatic brain injury defined. A traumatic brain injury is an acquired injury to the brain caused by an external physical force, resulting in a total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

Adverse effects in educational performance must be verified through the multidisciplinary evaluation process as defined in §24:05:13:01 (18).

DEVELOPMENTAL DELAY-570

ARSD 24:05:24.01:09. Developmental delay defined. A student three, four, or five years old may be identified as a student with a disability if the student has one of the major disabilities listed in § 24:05:24.01:01 or if the student experiences a severe delay in development and needs special education and related services.

A student with a severe delay in development functions at a developmental level two or more standard deviations below the mean in any one area of development specified in this section or 1.5 standard deviations below the mean in two or more areas of development.

The areas of development are cognitive development, physical development, communication development, social or emotional development, and adaptive development.

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

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

RELATED SERVICES ELIGIBILITY

RELATED SERVICES OF OCCUPATIONAL THERAPY AND PHYSICAL THERAPY

ARSD 24:05:27:22. Occupational therapy defined. Occupational therapy, as a related service, includes the development of fine motor coordination; sensory motor skills; sensory integration; visual motor skills; use of adaptive equipment; consultation and training in handling, positioning, and transferring students with physical impairments; and independence in activities of daily living.

ARSD 24:05:27:23. Criteria for occupational therapy. A student may be identified as in need of occupational therapy as a related service if:

- (1) The student has a disability and requires special education;
- (2) The student needs occupational therapy to benefit from special education; and
- (3) The student demonstrates performance on a standardized assessment instrument that falls at least 1.5 standard deviations below the mean in one or more of the following areas: fine motor skills, sensory integration, and visual motor skills.

ARSD 24:05:27:24. Physical therapy defined. Physical therapy, as a related service, includes gross motor development; mobility; use of adaptive equipment; and consultation and training in handling, positioning, and transferring students with physical impairments.

ARSD 24:05:27:25. Criteria for physical therapy. A student may be identified as in need of physical therapy as a related service if:

- (1) The student has a disability and requires special education;
- (2) The student needs physical therapy to benefit from special education; and
- (3) The student demonstrates a delay of at least 1.5 standard deviations below the mean on a standardized motor assessment instrument.

IEP TEAM OVERRIDE

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

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

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

RESOURCES

Tools and Resources Related to Special Education Eligibility – <http://www.doe.sd.gov/oess/sped-IEP.aspx> (Documents section) – includes sample charts and documents as well as resource information.

Evaluation Instruments – <http://www.doe.sd.gov/oess/sped-IEP.aspx> – include a list of evaluation instruments that could be used for assessment student for eligibility purposes.

APPENDIX A

Background Information

When the 1995 Legislature adopted its new funding system for special education, it also required DOE to develop administrative rules which “further define special education processes regarding student identification, the placement committee process and create an extraordinary cost oversight board.” Following this directive, DOE convened a special education task force. The task force, chaired by Representative Janice Nicolay, consisted of legislators, educational cooperative directors, superintendents, higher education representatives, local district special education directors and a parent representative. After more than a year of study, expert consultation and public testimony, the special education task force proposed a set of administrative rules which set forth identification criteria in major categories of disability.

Regarding student identification, or eligibility criteria, the task force decided to adopt the disability categories as defined in the federal Individuals with Disabilities Education Act (IDEA) and quantify, to the extent possible, the federal definitions. For example, the federal definition of specific learning disabilities speaks to a student exhibiting a “severe discrepancy between achievement and intellectual ability.” The task force defined “severe discrepancy” for South Dakota students at 1.5 standard deviations between achievement and intellectual ability.

While the task force reviewed student eligibility criteria from surrounding states, members focused on criteria currently used by several South Dakota school districts. Thus, administrative rules reflect, in large part, a criterion that is used, and seems to work for many of our school districts.

The task force proposed a revised definition of children in need of “prolonged assistance.” This is a state-specific category pertinent to infants and toddlers, ages birth through two years, in need of early intervention. The category is important to school districts because districts are responsible for providing these children with early intervention services. The definition would narrow the scope of school district responsibility.

The task force also proposed definitions for occupational therapy and physical therapy as related service necessary to support special education. Due to a wide variability across the state of children receiving these therapies, the task force felt that criteria would bolster consistency in service provision.

Finally, the task force proposed a method of local IEP team override of eligibility criteria. The override is important because there are children who will not “fit” certain criteria, yet their need for special education instruction remains. Further, the federal Office of Special Education Programs requires this flexibility at the local level, particularly for students with specific learning disabilities. The IEP team override is to be used cautiously, not in a routine manner.

On June 28, 1996, the South Dakota Board of Education held a public hearing regarding proposed administrative rule for eligibility criteria, and passed those rules. However, the proposed definitions for occupational therapy and physical therapy were not adopted due to concerns expressed by parents and professionals to the board. The definitions were revisited at a later date. The final definitions for occupational therapy and physical therapy were adopted by the South Dakota Board of Education on January 27, 1997.

The definition for mental retardation was called into question during the in-service training for the eligibility criteria. A revised definition for mental retardation was adopted by the South Dakota Board of Education on January 27, 1997.

Regardless of the category under which a student is eligible for special education, the disabling condition does not affect the way the special education program is developed or where the services occur. Eligibility determination is a separate process from developing an individual education program and determining placement.

In August 2006, OSEP (Office of Special Education Programs) reauthorized IDEA. Through this reauthorization, OSEP reviewed and changed eligibility criteria, nomenclature and procedures. The Office of Education Services and Support (OESS), in conjunction with experts throughout the state, have reviewed and modified our ARSDs and eligibility criteria to match the updated federal regulations.

Among the changes, the use of the RtI (Response to Intervention) model for determining eligibility for specific learning disability has been addressed. This multi-tiered process allows for the use of scientifically-based research methods and highly effective teaching strategies to intervene with an individual student who may be experiencing learning difficulties in the classroom. This early intervening process allows educators to address issues early rather than the previous “wait-to-fail” process.

In addition to the policy changes, the workgroups evaluated terminology in order to be more sensitive to our ever changing society and populations. For example, the term “Mentally Retarded” has now been changed to “Cognitive Disability”. This type of sensitivity is an acknowledgement of individuals with special needs and a sign of respect.

Throughout this guide, parents, students and educators alike will find some answers for the most appropriate plan for children with suspected disabilities.