

Ensuring Compliance and Supporting Students: A Leader's Guide to Special Education Law

South Dakota Department of Education

Session Overview



Comprehensive Plan



Fiscal Duties



Proactive Behavior Policies



A Deep Dive into Discipline

The Comprehensive Plan: Your District's Playbook

Your public commitment to meeting the state and federal requirements for special education

Must outline the policy for the district, may also include the procedures to complete each component or reference the procedures which are documented and maintained separately.

The Comprehensive Plan: Your District's Playbook

- **State template organized into sections:**

- SECTION I: Free and Appropriate Public Education (FAPE)
- SECTION II: Full educational opportunity goal
- SECTION III: Child Find
- SECTION IV: Individualized Education Program (IEP)
- SECTION V: Least Restrictive Environment (LRE)
- SECTION VI: Procedural Safeguards
- SECTION VII: Evaluation
- SECTION VIII: Confidentiality
- SECTION IX: Transition from Part C to Part B
- SECTION X: Private School Placements

- SECTION XI: Compliance with SEA General Supervision Requirements and Implementation of Procedural Safeguards
- SECTION XII: FAPE Methods of Ensuring Services
- SECTION XIII: Hearings Related to LEA Eligibility
- SECTION XIV: Personnel Qualifications
- SECTION XV: Performance Goals and Indicators
- SECTION XVI: Participation in Assessments
- SECTION XVII: Supplementation of State, local, and other Federal Funds
- SECTION XVIII: Public Information
- SECTION XIX: State Advisory Panel
- SECTION XX: Other Required Provisions

The Comprehensive Plan: Your District's Playbook

Role of Leadership

- Annually review and update if needed.
- Train administration and staff.
- Ensure the plan is followed with fidelity.

Role of the Board:

- Review and annually approve the plan.
- Federal IDEA funds are contingent upon annual approval of the plan.

Fiscal Responsibilities

- Fiscal Oversight: Strategic & Allowable Costs
 - Special education funds have allowable costs which may differ when expending federal or state/local funds.
 - Posted on DOE website: Allowable Costs for IDEA
 - Resources must be allocated to meet student needs as defined in their IEPs.
- IEP teams include a representative of the district who is knowledgeable about the availability of resources

Fiscal Responsibilities

- Proactive planning and training is an investment and can prevent more costly outcomes like litigation or out-of-district placements.
- Consider:
 - Paraprofessional training
 - PBIS (Positive Behavioral Interventions and Supports)
 - Behavioral specialists
 - Tuition for Special Education degree and specialty areas

Fiscal Responsibilities

- Districts can set aside 15% of federal and/or state and local funds for coordinated early intervening services (CEIS)
 - Can be used for programming for students not yet eligible for special education to implement strategies to reduce the need for special education referral and services.
 - Must track for two years students that benefitted and whether they were referred or became eligible.
 - Limits district's ability to apply for Extraordinary Cost Funds
 - Not to be confused with mandatory comprehensive coordinated early intervening services required to be set aside if the district is identified with significant disproportionality.

Bullying Policy. Authorized by SDCL 13-32-16.

- Each school district, board approved policy developed pursuant to §§ 13-32-14 to 13-32-19, inclusive, shall contain the following provisions:
 - A statement prohibiting bullying and a definition of bullying that includes the definition listed in § 13-32-15;
 - A description of the type of behavior expected from each student of the school district, and the consequences for a student of the school district who commits an act of bullying;
 - A procedure for reporting an act of bullying, including provisions that permit a person to anonymously report such an act, although formal disciplinary action may not be based solely on an anonymous report; and
 - A procedure for the prompt investigation and response to any report of bullying, including a requirement that an investigation be conducted on any alleged incident of bullying committed against a child while the child is aboard a school bus, at a school bus stop, or at a school-sponsored event.

Special Consideration for Special Education Students Who Have Been Bullied

- **Convene the IEP Team:** Meet to assess if the student's needs have changed.
 - Determine if the bullying is disability based
- **Evaluate FAPE Impact:** Determine if bullying has caused a decline in academic or social performance.
- **Amend the IEP:** Add goals, counseling services, or specialized staff training.
- **Avoid Placement Changes:** Do not move the victim to a more restrictive environment to "protect" them.

Special Consideration for Special Education Students Who Are Bullying

- **Convene the IEP Team:**

- Determine if additional supports and services are needed to address the behavior.
- Consider examining the environment in which the bullying occurred to determine if changes to the environment are warranted.

Restraint and Seclusion Policy

- Seclusion and Restraint are EMERGENCY Interventions
 - NOT for punishment, convenience, or behavioral management.
- Can ONLY be used for imminent danger of SERIOUS physical harm.
- Documentation and parent notification are required by law.
- Board Responsibility: Ensure district policy is established and implemented.
- Administrator Responsibility: Train staff on policy and in de-escalation strategies. Identify and train a team on emergency interventions.

Restraint and Seclusion SDCL 13-32-20

The policy shall contain the following provisions:

- (1) A **procedure for notifying the parent or guardian** of the student, unless the student is emancipated, of an incident requiring the use of restraint or seclusion;
- (2) A **prohibition on the use of prone restraint**, defined as physical pressure applied to any part of the student's body to keep the student in a face down position on the floor or other surface, except when the use is necessary and reasonable in manner and moderate in degree; and
- (3) A **prohibition on the use of involuntary confinement of a student locked alone in a room**, unless there is a clear and present danger.

Discipline: Rules for ALL Students (SDCL 13-32 and ARSD 24:07)

- Baseline Due Process applies to EVERY student, with or without an IEP.
 - Give oral or written notice to the pupil stating the facts that form the basis for the suspension.
 - The pupil must be given the opportunity to answer the charges.
 - If a pupil is suspended, the principal or superintendent shall give the parent information regarding due process rights.
- For suspension of more than ten school days, if the pupil gives notice to appeal, formal due process is followed.

Discipline: Impact of Alternative Setting Law (HB 1017; SDCL 13-28-19.2 & 13-28-19.3)

13-28-19.2. Assignment to alternative setting--Grounds--Applicability.

A school board may assign a student to receive instruction in an alternative setting **for aggressive or violent behaviors that disrupt the school or that affect a health or safety factor of the school or its program**. Nothing herein may be construed to limit enrollment options provided in § 13-28-40 or conflict with provisions of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794.

Source: SL 2026, ch 81, § 1.

Discipline: Impact of Alternative Setting Law (HB 1017; SDCL 13-28-19.2 & 13-28-19.3)

- Alternative Settings for Aggressive Behaviors
 - Allows assignment to an alternative setting without standard disciplinary due process.
- CRITICAL WATCH OUT FOR SPED:
 - Federal IDEA law trumps state law.
 - Time in this "alternative setting" COUNTS toward the 10-day IDEA limit for students with IEPs.
 - You MUST continue to provide FAPE (IEP services).
 - An MDR is still required if you cross the 10-day threshold.
- **Alternative Settings for Aggressive Behaviors FAQ** – sent in DOE Weekly Update Aug 3

Discipline: The Special Education Overlay

- IDEA adds a critical layer of protection.
- Key Number: 10 Cumulative Days
- What counts as a removal?
- IEP considerations

Status Check



Do you have **written** procedures for special education suspension?



Where are the written procedures located?



Are all staff trained on them?



Do you currently use a data collection system?



How often do you review suspensions?

Documentation: The Number of Days Matters!

Suspending a student on an IEP for greater than 10 consecutive days initiates a Change of Placement

Suspending a student on an IEP for greater than 10 cumulative days requires the school team to decide if a change of placement has occurred.

A procedure for documenting days and communicating with special education staff is necessary to avoid being out of compliance

Discipline: Manifestation Determination Review

- Triggered when a removal is a "change in placement" (e.g., exceeds 10 days).
- The IEP team must meet within 10 school days of the decision to remove.
- The Two MDR Questions:
 - Was the conduct caused by, or substantially **related to, the child's disability?**
 - Was the conduct a direct result of the school's **failure to implement the IEP?**
- If YES to either, the student generally returns to their placement.

What about In School Suspensions (ISS)?

According to the federal rules, a TRUE ISS follows these rules:

1. Student is afforded the opportunity to participate in the general curriculum
2. Student continues to receive the services specified on IEP
3. Student continues to participate with nondisabled peers to the extent they would have in their current placement
 - a. If your current procedure for ISS does not include all three of these components=OSS
 - b. What is your WRITTEN procedure for ISS?

What about bus suspensions?

If student has transportation written into the IEP-

Yes, a bus suspension counts as OSS and should be counted as part of the 10 days UNLESS the transportation is provided by the district in another way and the student is able to attend school.

If student does not have transportation written into the IEP-

No, parents are then responsible to transport student to school. However, the District should consider whether behavior on bus is similar to behaviors in classroom and should be addressed through the IEP.



Individual IEP Supports

1. What does the IEP say for behavior supports? (Behavior Impedes Learning, Behavior Intervention Plan (BIP), behavior accommodations, behavior goals)
2. Are all staff aware of behavior supports?
3. What is our written procedure for ensuring all staff are aware of supports in all areas?
4. Does the IEP team need to meet to discuss new supports?

Be proactive with Functional Behavior Assessments(FBA)

- What is your procedure for deciding when an FBA should be done?
- What data does the team need to collect before having an IEP meeting to discuss writing or making changes to a BIP
- What is your procedure for calling a meeting?
- What forms are you using for the FBA?
- What is your procedure for writing the BIP
- What is your procedure for informing all staff?

ABC Data Collection Sheet

Instructions at the top for staff members

Learner: _____

Staff Member: _____

A-B-C Data Collection Sheet

For each instance of the target behavior record the information below. When describing antecedent, record what was happening before the behavior (e.g., was a demand placed? Was access to something preferred denied? A combination of the two?) When describing behavior specify topography (e.g., used a closed fist to make light physical contact with caregivers leg from a distance of 3 inches away). When describing consequence record what happened after the target behavior occurred (e.g., demand was removed, access to preferred item was given, caregiver reprimanded learner, combinations of the previous).

Date	Time	Setting	Antecedent (What happened before the behavior)	Behavior (Describe behavior of concern)	Consequence (What were the results/reactions of the behavior)	Notes

Conclusion & Key Takeaways

- Count the Days: Track every ISS, OSS, and alternative setting day for students with IEPs. 10 is the magic number.
- Train Your Staff: Policies are only effective if your team knows and uses them.
- Proactive > Reactive: Use your planning and fiscal powers to build systems that prevent crises.

Resources and Trainings

- **Discipline Guidance Document**

- <https://doe.sd.gov/sped/documents/DISCIPLINE-1221.pdf>

- An updated document will be coming soon.

School-Wide Proactive Trainings Available

- Positive Behavioral Interventions and Supports (PBIS) <https://doe.sd.gov/sped/pbis.aspx>
 - PBIS creates a system for teaching positive behavior,
 - Develops a common language across grade levels and buildings,
 - Proactively supports student behavior at all levels of intensity and
 - Uses data to make decision on which students need extra supports
- Information on applying to be part of the next five-year cohort will be sent out in December 2026
 - Initial team training and yearly team training provided
 - On-site assistance provided
 - Small grants provided to help cover initial staff training costs

School-Wide Proactive Trainings

- Preventing Behavior Escalation in Schools Trainings
 - 9:00-4:00, in person only
 - Aberdeen: September 15
 - Sioux Falls: September 22
 - Rapid City: October 1
 - Book Study: Teaching Behavior-Managing Classrooms Through Effective Instruction by Dr. Terry Scott
 - October 11-November 22
 - Virtual
- Registration is open at: <https://doe.sd.gov/SEED/index.aspx>

Individual Supports Training

- Check and Connect Mentor Training <https://checkandconnect.umn.edu/>
 - Building relationships with students, families, and school personnel
 - Using data to determine interventions
 - Reflective listening and Problem-solving
 - Engaging with families
- Two-day training, 9:00-4:00 each day
 - Sioux Falls: September 23-24
 - Rapid City: September 29-30
- Registration is open at: <https://doe.sd.gov/SDED/index.aspx>

Questions & Discussion

