

## **TITLE 24**

### **DEPARTMENT OF EDUCATION**

#### Article

- 24:01 South Dakota Board of Education, Repealed.
- 24:02 Teacher certification, Superseded.
- 24:03 School accreditation.
- 24:04 Sites for school buildings, Repealed.
- 24:05 Special education.
- 24:06 School buses.
- 24:07 Student due process.
- 24:08 Professional teachers ethics.
- 24:09 Educational cooperatives, Repealed.
- 24:10 Career and technical education.
- 24:11 Professional administrators ethics.
- 24:12 Community education, Repealed.
- 24:13 Modernizing K-12 education, Repealed.
- 24:14 Early intervention program.
- 24:15 Certification.
- 24:16 Teacher preparation program approval, Transferred or Repealed.
- 24:17 General state aid.
- 24:18 Certificate denial and discipline procedures.
- 24:19 Teacher education program approval, Repealed.
- 24:20 Board of Regents, Repealed.

24:21	University of South Dakota, Reserved.
24:22	USD - Springfield, Reserved.
24:23	South Dakota State University, Reserved.
24:24	School of Mines and Technology, Reserved.
24:25	Northern State University, Reserved.
24:26	Black Hills State University, Reserved.
24:27	Dakota State University, Reserved.
24:28 and 24:29	Reserved.
24:30	State Library.
24:31 to 24:39	Reserved.
24:40	Scholarships and grants.
24:41	Mentoring.
24:42	State accountability system, Repealed.
24:43	Accreditation and school improvement.
<u>24:44</u>	<u>Emergency safety intervention.</u>
<del>24:44</del> <u>24:45</u> to 24:49	Reserved.
24:50	South Dakota arts council.
24:53	Teacher preparation program approval.
24:54	Teacher compensation program, Repealed.
24:55	Public school accountability system.
24:56	Cooperation in education.
24:57	Teacher performance standards and evaluation.
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**ARTICLE 24:44**

**EMERGENCY SAFETY INTERVENTION**

Chapter

- 24:44:01 General provisions.
- 24:44:02 Restraint.
- 24:44:03 Seclusion.
- 24:44:04 Policies, procedures, and administrative provisions.

**CHAPTER 24:44:01**

**GENERAL PROVISIONS**

Section

- 24:44:01:01 Scope
- 24:44:01:01 Definitions

**24:44:01:01. Scope.** This article applies to the use of emergency safety intervention in a school by a school employee. If there is a conflict between any provision of this article and another law regarding emergency safety intervention which applies to a specific type of school or student, the specific law shall control.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:01:02 Definitions.** Terms used in this article mean:

(1) “Aversive behavioral intervention,” a physical or sensory behavioral intervention program intended to modify behavior that the implementer knows would cause physical trauma, emotional trauma, or both, to a student even when the substance or stimulus appears to be pleasant or neutral to others, including hitting, pinching, slapping, water spray, noxious fumes, extreme physical exercise, loud auditory stimuli, withholding of meals, or denial of reasonable access to toileting facilities;

(2) “Behavior intervention,” the implementation of strategies to address behavior that is dangerous or inappropriate or otherwise impeding the learning of students;

(3) “Behavior plan,” a plan developed for a student that lists behavior intervention strategies to be used to address and eliminate inappropriate behaviors;

(4) “Bodily injury,” physical pain, illness, or any impairment of physical or mental condition;

(5) “Chemical restraint,” the use of medication to control behavior or restrict the freedom of movement of a student, not including over the counter medications used for purposes specified on the label or medication used as prescribed by a licensed medical professional and supervised by qualified and trained individuals in accordance with professional standards;

(6) “Dangerous behavior,” behavior creating serious, probable, imminent threat of bodily injury or harm to self or others with the present ability to affect such bodily injury or harm;

(7) “Emergency safety intervention,” the use of seclusion or restraint used to protect individuals in a dangerous or emergency situation;

(8) “IDEA,” as defined in § 24:05:13:01(20);

(9) “IEP,” as defined in § 24:05:13:01(21);

(10) “IEP team,” as defined in § 24:05:13:01(22);

(11) “Mechanical restraint,” the use of any device or equipment to restrict the freedom of movement of a student, not including:

(a) A device implemented by a trained school employee or utilized by a student that has been prescribed by an appropriate medical provider or related services professional that is used for the specific and approved purposes for which the device was designed;

(b) An adaptive device or mechanical support used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of the device or mechanical support;

(c) A vehicle safety restraint as recommended for passenger use if used as intended during the transport of a student in a moving vehicle;

(d) Restraint solely for medical purposes;

(e) An orthopedically prescribed device that permits a student to participate in activities without risk of harm; or

(f) A device used to provide safety to a student while being transported or within the classroom setting;

(12) “Parent,” as defined in § 24:05:13:04;

(13) “Physical restraint” a personal restriction that immobilizes or reduces the ability of a student to move the torso, arms, legs, or head of the student freely, not including:

(a) Temporary touching or holding of the hand, wrist, arm, shoulder, or back for the purpose of encouraging a student to move voluntarily to a safe location;

(b) A behavioral intervention used as a response to calm and comfort an upset student;

(c) Less restrictive physical contact or redirection to promote student safety;

(d) Physical guidance or prompting when teaching a skill or redirecting the attention of the student; or

(e) Holding, touching, or physical contact with a student as part of the educational program or medical needs of the student when the contact is authorized by medical personnel or a related service professional, with prior approval of a parent, and administered by trained personnel with supervision by a medical provider;

(14) “Prone restraint,” 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;

(15) “School,” as defined by § 24:43:01:01(38);

(16) “Seclusion” the involuntary confinement of a student alone in a room or area from which the student is prevented from leaving but not including classroom timeouts, supervised in-school detentions, or out-of-school suspensions;

(17) “Section 504,” Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (July 22, 2014);

(18) “Student,” any person enrolled in or receiving services from a school ages birth through 21 years;

(19) “Supine restraint,” physical pressure applied to any part of the student’s body to keep the student’s back on the on the floor or other surface, but not including situations when the student is placed in a supine position for medical or other education needs authorized by medical personnel or related services professionals with prior approval of parents and administrated by trained professionals with supervision by medical personnel in compliance with 42 C.F.R. § 482.13;

(20) “Unaccompanied minor,” a student who has not reached the age of majority or has been emancipated and does not have any adult who will assume the role of parent or guardian for that student.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

Cross Reference: 42 C.F.R. § 482.13.

## **CHAPTER 24:44:02**

### **RESTRAINT**

#### Section

24:44:02:01 Use of physical restraint.

24:44:02:02 Degree of force.

24:44:02:03 Termination of physical restraint.

24:44:02:04 Prohibited purposes.

24:44:02:05 Prohibited methods.

**24:44:02:01. Use of physical restraint.** Physical restraint as an emergency safety intervention may be implemented in a school if:

- (1) The student is exhibiting dangerous behavior;
- (2) The physical restraint does not interfere with the ability of the student to communicate in the student’s primary language or mode of communication unless a school

employee implementing the restraint determines that freedom of the hands for brief periods during the restraint appears likely to result in physical harm to the student or others;

(3) The physical and psychological well-being of the student is monitored for the duration of the physical restraint;

(4) Less restrictive behavioral interventions have been ineffective in stopping the imminent danger of physical harm to self or others, except in the case of a clearly unavoidable dangerous behavior;

(5) A school employee implementing the physical restraint is appropriately trained as required by chapter 24:44:04;

(6) The administration of the physical restraint does not place excess pressure on the student's head or torso or cause positional asphyxia; and

(7) Opportunities to have the physical restraint removed are provided to a student indicating willingness to cease the dangerous behavior.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:02:02. Degree of force.** When implementing a physical restraint, the school employee shall use only the amount of force reasonably believed to be necessary to protect the student or others from dangerous behavior.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:02:03. Termination of physical restraint.** The use of physical restraint shall end as soon as the dangerous behavior ends or a medical condition puts the student at risk of harm.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:02:04. Prohibited purposes.** Physical restraint shall not be used:

- (1) As punishment or discipline;
- (2) To force compliance with the authority of a school employee;
- (3) As retaliation;
- (4) As a substitute for appropriate educational or behavioral support;
- (5) To prevent property damage not involving risk of serious, probable, imminent threat of bodily injury or harm to self or others;
- (6) As a routine school safety measure; or
- (7) As a convenience for school employees.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:02:05. Prohibited methods.** A school employee shall not impose the following on any student at any time:

- (1) Mechanical restraint;
- (2) Chemical restraint;
- (3) An aversive behavioral intervention;
- (4) Physical restraint that is life-threatening;
- (5) Prone or supine restraint; or
- (6) Physical restraint which the employee knows is contraindicated based on the disability, health care needs, or medical or physical condition of the student.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

## **CHAPTER 24:44:03**

### **SECLUSION**

#### Section

24:44:03:01 Use of seclusion.

24:44:03:02 Termination of seclusion.

24:44:03:03 Settings.

24:44:03:04 Prohibited purposes.

**24:44:03:01 Use of seclusion.** Seclusion may be implemented in a school if:

- (1) The student is exhibiting dangerous behavior;
- (2) The student is visually monitored for the duration of the seclusion;

(3) Less restrictive interventions have been ineffective in stopping the imminent danger of physical harm to self or others, except in the case of a clearly unavoidable dangerous behavior; and

(4) The school employee implementing the seclusion is appropriately trained as required by chapter 24:44:04.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:03:02 Termination of seclusion.** The use of seclusion shall end as soon as the dangerous behavior ends or a medical condition puts the student at risk of harm.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:03:03 Settings.** A setting used for seclusion shall:

(1) Be free of objects and fixtures with which a student can inflict physical harm to self or others;

(2) Provide the school employee a view of the student at all times;

(3) Provide adequate lighting and ventilation;

(4) Have an unlocked and unobstructed door; and

(5) Be subject to a fire and safety inspection at least annually.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:03:04. Prohibited purposes.** Seclusion shall not be used:

- (1) As punishment or discipline;
- (2) To force compliance with the authority of a school employee;
- (3) As retaliation;
- (4) As a substitute for appropriate educational or behavioral support;
- (5) To prevent property damage not involving risk of serious, probable, imminent threat of bodily injury or harm to self or others;
- (6) As a routine safety measure;
- (7) As a substitute for timeout; or
- (8) When a student has been self-harming or self-injurious.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

## **CHAPTER 24:44:04**

### **POLICIES, PROCEDURES, AND ADMINISTRATIVE PROVISIONS**

#### Section

24:44:04:01 Policies and procedures.

24:44:04:02 Assessment.

24:44:04:03 Notification.

24:44:04:04 Documentation.

24:44:04:05 Debriefing.

24:44:04:06 Training.

24:44:04:07 Emergency safety intervention core team members.

24:44:04:08 Reporting.

**24:44:04:01. Policies and procedures.** Each school shall establish policies and procedures regarding emergency safety interventions by July 1, 2016. The school shall ensure that school employees are aware of the policies and procedures and notify parents how to access the policies and procedures and this article. The policies and procedures shall:

- (1) Be designed to ensure the safety of all students, school employees, and visitors;
- (2) Require school employees to be trained consistent with this chapter;
- (3) Outline procedures to be followed during and after each use of emergency safety intervention;
- (4) Outline notice and documentation procedures consistent with this chapter;
- (5) Outline procedures for notifying medical providers or law enforcement if necessary; and
- (6) Outline a procedure to regularly review school data on emergency safety intervention usage and revise policies and procedures as needed.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:04:02. Assessment.** An assessment by a school employee trained consistent with this chapter must occur whenever a period of seclusion exceeds thirty minutes, an episode of physical restraint exceeds fifteen minutes, or repeated episodes of emergency safety intervention have occurred during any three hour period. The assessment shall consider the appropriateness of continuing the procedure in use, including the student's potential need for medication, nourishment, or use of a restroom, and the need for assessment by a mental health crisis team, assistance from police, transportation by ambulance, or other alternative strategies. The results of the assessment shall be in writing, and copies of this documentation shall be placed into the education record of the student and provided to school administration and parents as soon as possible.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:04:03. Notification.** The parent of the student, unless the student is emancipated or an unaccompanied minor, shall be notified of the emergency safety intervention verbally or through electronic communication, if available to the parent, within twenty-four hours after the incident requiring the use of the emergency safety intervention. If the parent cannot be reached within this time period, a written communication shall be mailed to the last known address of the parent via U.S. mail.

The school administration shall be notified of the emergency safety intervention no later than the end of the school day on which it occurred.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:04:04. Documentation.** A written record shall be made regarding each use of emergency safety intervention by the end of the next school day following the use of the emergency safety intervention and shall be maintained in the education record of the student.

The record shall include:

- (1) The student's name;
- (2) A description of the use of emergency safety intervention and the student behavior that resulted in the emergency safety intervention;
- (3) The date of the emergency safety intervention and the school employee involved;
- (4) The beginning and ending times of the emergency safety intervention;
- (5) A description of any events leading up to the use of emergency safety intervention, including possible factors contributing to the dangerous behavior;
- (6) A description of the student's behavior during emergency safety intervention and interactions between the student and the school employee during the emergency safety intervention;
- (7) A description of techniques used during the emergency safety intervention and immediately prior to implementation of emergency safety intervention;
- (8) A description of any injuries to the student, school employees, or others;
- (9) An explanation of how the student's behavior was dangerous behavior;
- (10) The date the parent was notified:

(11) A description of the effectiveness of the emergency safety intervention in de-escalating the situation;

(12) A description of the planned positive behavioral interventions which shall be used to reduce the future need for emergency safety intervention with the student; and

(13) For any student not identified as eligible for services under Section 504 or IDEA, documentation of the basis for declining to refer the student for evaluation.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:04:05. Debriefing.** If the parent, emancipated student or unaccompanied minor requests a debriefing session after the imposition of emergency safety intervention upon a student, it shall be held within five school days of the request. School employees implementing the emergency safety intervention, other school employees in the proximity of the student immediately before or during the emergency safety intervention, the parent, emancipated student or unaccompanied minor, and appropriate supervisory and administrative school employees shall be included in the meeting. If the student has an IEP, Section 504 plan, or behavioral intervention plan (BIP), the IEP team or other applicable team members shall attend the meeting. All documentation utilized in the debriefing session shall become part of the student's education record. The debriefing session shall include:

- (1) Identification of the events leading up to the emergency safety intervention;
- (2) Consideration of relevant information in the student's records and information from teachers, parents, other school district professionals and the student;

(3) Planning for the prevention and reduction of the need for emergency safety intervention, with consideration of recommended appropriate positive behavioral supports and interventions to assist school employees responsible for implementing the student's IEP, Section 504 plan, or behavior plan, if applicable, and consideration of whether positive behavioral supports and interventions were implemented with fidelity; and

(4) For any student not identified as eligible for services under either Section 504 of the Rehabilitation Act or the IDEA, consideration of a referral for evaluation and documentation of the basis for declining to refer the student.

**24:44:04:05. Behavior Plan.** If a student has experienced three incidences of emergency safety intervention and does not have a behavior plan, the school employee who initiated, monitored, or supervised the incidents shall initiate a review of the effectiveness of the procedures used and, with the assistance of parents, prepare a behavior plan for the student. The plan shall be placed in the student's record.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:04:06. Training.** All school employees who may need to administer emergency safety intervention shall be trained annually. This training shall include:

(1) Appropriate procedures for preventing the need for emergency safety intervention, including positive behavioral supports and interventions;

(2) The requirements of this article and school policies and procedures regarding emergency safety intervention;

- (3) Proper use of positive reinforcement;
- (4) The continuum of use for alternative behavioral interventions;
- (5) Crisis prevention;
- (6) De-escalation strategies for responding to inappropriate or dangerous behavior, including de-escalation, and relationship building; and
- (7) Proper use of seclusion, including instruction on monitoring physical signs of distress and obtaining medical assistance if necessary.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:04:07. Emergency safety intervention core team members.** A core team of selected school employees shall be designated to respond to dangerous behavior and to implement emergency safety intervention of students. All school employees shall receive annual written or electronic communication from the school identifying core team members in the school setting.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.

**24:44:04:08. Reporting.** The following data shall be reported annually by the school to the Department regarding incidents of emergency safety intervention:

- (1) Aggregate number of uses of physical restraint;

- (2) Aggregate number of students place in physical restraint;
- (3) Aggregate number of uses of seclusion;
- (4) Aggregate number of students placed in seclusion;
- (5) Aggregate number of instances of substantial risk of death, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ or mental faculty to a school employee related to emergency safety intervention; and
- (6) Aggregate number of instances in which a school resource officer or other sworn law enforcement officer is involved in the emergency safety intervention of a student.

Source:

General Authority: SDCL 13-1-12.1, 13-32-4, 13-37-1.1, 13-37-46, 13-37-47.

Law Implemented: SDCL 13-1-12.1, 13-32-1, 13-32-2, 13-32-4, 13-37-1.1, 13-37-1.2, 13-37-46, 13-37-47.