

South Dakota School Law Deskbook

2016-2017 EDITION

SWIER LAW FIRM, PROF. LLC

SOUTH DAKOTA SCHOOL LAW DESKBOOK

2016-2017 School Year Edition

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FOREWORD

by Thomas J. Oster

Former South Dakota Secretary of Education and District Superintendent

It has never been more important for school administrators, teachers, school board members and legislators to have a readable common sense resource for understanding South Dakota school law. The South Dakota School Law Deskbook that Scott Swier and Swier Law Firm have developed will most definitely serve that need.

School districts are faced with challenging situations on a daily basis and they need a reliable and useful tool to perform their jobs efficiently. Those demands add to the pressure on school leaders and teachers to respond effectively and within the framework of the law. Having the School Law Deskbook available will certainly afford district personnel with a valuable and current resource guide.

South Dakota has never had the luxury of having a school law text specific to our state laws. Scott Swier was able to write the South Dakota School Law Deskbook from a host of varied experiences. He serves as legal counsel for the South Dakota School Administrators organization as well as numerous school districts and teaches the school law class at the University of South Dakota School of Law. Knowing the specific issues that school administrators and school districts deal with on a regular basis has allowed Scott to write this text from a uniquely qualified perspective.

ABOUT THE AUTHOR

Scott Swier is the Founder and Managing Member of Swier Law Firm. He also leads the law firm's Education Law Practice Group and Business Litigation Practice Group.

Scott is a recognized authority in state and federal legal matters. While serving in private legal practice and the South Dakota Attorney General's Office, he has represented individuals, businesses, and government entities before state and federal trial courts, state and federal appellate courts, and state and federal regulatory agencies.

As Assistant Attorney General, Scott served as counsel for the State of South Dakota in many high-profile cases and his clients included the Governor's Office, the Attorney General's Office, the Secretary of State's Office, the Department of Education, the Department of Revenue and Regulation, the Department of the Environment and Natural Resources, and the South Dakota Commission on Gaming. Scott is also well-versed in the South Dakota legislative process, having coordinated legislative initiatives on behalf of the Attorney General's Office.

Scott serves as legal counsel for the School Administrators of South Dakota and its membership of over 800 school administrators. He also serves as legal counsel for many school districts and other educational entities throughout South Dakota.

Scott is an adjunct professor at the University of South Dakota School of Law where he teaches the popular "Education and the Law" course. He is also the author of numerous legal publications and serves as Editor for the School Administrators of South Dakota's monthly publication – *South Dakota School Law Notes*.

Scott received his Bachelor of Arts degree, *magna cum laude*, from Mount Marty College in Yankton. He received his Juris Doctor from the University of South Dakota School of Law where he served on the Board of Editors for the *South Dakota Law Review*.

SWIER LAW FIRM'S EDUCATION LAW PRACTICE GROUP

Having the right legal counsel to guide your school district through the increasingly complex area of education law is essential to the success of any South Dakota school system.

Swier Law Firm's Education Law Practice Group understands the challenges facing South Dakota's education community. Our attorneys, which include a certified school psychologist and former legal counsel for the South Dakota Department of Education, have a tremendous depth of experience and a practical approach to dealing with the myriad of legal issues faced by our state's school districts. Combining a thorough understanding of national, state, and local educational concerns with long-standing relationships within the educational community, our Education Law Practice Group brings a practical, solutions-oriented approach to counseling your school district.

The Group's attorneys serve as general counsel to boards of education throughout South Dakota, as well as special counsel to many school districts and other educational entities, including the School Administrators of South Dakota. Our experience and familiarity with the needs of South Dakota's school districts enhance our ability to provide legal services efficiently and with individualized attention.

LIST OF COMMON ACRONYMS AND ABBREVIATIONS

Public education is full of acronyms which are used in order to abbreviate names or phrases. To assist in this “alphabet soup,” here are some common acronyms and abbreviations and the words they represent.

ABA:	Applied Behavioral Analysis
ACLU:	American Civil Liberties Union
AD:	Activities Director
ADA:	Americans with Disabilities Act
ADHD:	Attention Deficit/Attention Deficit Hyperactivity Disorder
ADM:	Average Daily Membership (actual days a student is enrolled in a school system)
ADR:	Alternative Dispute Resolution
ALJ:	Administrative Law Judge
AP:	Advanced Placement
APE:	Adaptive Physical Education
APR:	Annual Performance Report
ARSD:	Administrative Rules of South Dakota
AS:	Asperger’s Syndrome
ASBSD:	Associated School Boards of South Dakota
ASD:	Autism Spectrum Disorders
ASL:	American Sign Language
AT:	Assistive Technology
BD:	Behavioral Disorder
BIP:	Behavior Intervention Plan
CAP:	Corrective Action Plan
CCL:	Continuing Contract Law

CCSS:	Common Core State Standards
CDC:	Center for Disease Control
CFR:	Code of Federal Regulations
COLA:	Cost of Living Adjustment
DB:	Deaf/Blindness
DD:	Developmental Delay
DFS:	Drug Free Schools
DLA:	South Dakota Department of Legislative Audit
DLR:	South Dakota Department of Labor and Regulation
DOC:	South Dakota Department of Corrections
DOE:	South Dakota Department of Education
DOJ:	United States Department of Justice
DP:	Due Process
DSM:	<i>Diagnostic and Statistical Manual of Mental Disorder</i> by the American Psychiatric Association
DSS:	South Dakota Department of Social Services
EBD:	Emotional and Behavioral Disorders
ECE:	Early Childhood Education
ED:	Emotional Disturbance
EEOC:	Equal Opportunity Employment Commission
EI:	Early Intervention
EIS:	Early Intervening Services
ESD:	Extended School Day
ESEA:	Elementary and Secondary Education Act
ESL:	English as a Second Language
ESY:	Extended School Year
FAPE:	Free Appropriate Public Education
FAS:	Fetal Alcohol Syndrome

FBA:	Functional Behavioral Assessment
FERPA:	Family Educational Rights and Privacy Act
FLSA:	Fair Labor Standards Act
FMLA:	Family and Medical Leave Act
FSP:	Family Support Plan
FTE:	Full Time Equivalent
FY:	Fiscal Year
GAAP:	Generally Accepted Accounting Principles
GED:	General Education Diploma
GOAC:	Government Operations and Audit Committee
GOED:	Governor’s Office of Economic Development
GPA:	Grade Point Average
HI:	Hearing Impaired
HIPAA:	Health Insurance Portability and Accountability Act
IA:	Instructional Assistant
IAES:	Interim Alternative Educational Setting
IDEA:	Individuals with Disabilities Education Act
IEE:	Individualized Educational Evaluation
IEP:	Individualized Education Program
IFSP:	Individualized Family Service Plan
IQ:	Intelligence Quotient
ITP:	Individual Transition Plan
K-12:	Kindergarten through 12th Grade
LEA:	Local Education Agency
LD:	Learning Disability
LEED:	Leadership in Energy and Environmental Design
LEP:	Limited English Proficient

LRE:	Least Restrictive Environment
MDR:	Manifestation Determination Review
MDT:	Multidisciplinary Team
NEA:	National Education Association
NLRB:	National Labor Relations Board
NSBA:	National School Boards Association
OCD:	Obsessive-Compulsive Disorder
OCR:	Office for Civil Rights
ODD:	Oppositional Defiance Disorder
OHI:	Other Health Impairment
OT:	Occupational Therapy
PAC:	Parent Advisory Committee
PALS:	Peer-Assisted Learning System
PAPSC:	South Dakota Professional Administrators Practices and Standards Commission
PBIS:	Positive Behavioral Interventions and Supports
PDD:	Pervasive Developmental Disorder
PP:	Paraprofessional
PT:	Physical Therapy
PTPSC:	South Dakota Professional Teachers Practices and Standards Commission
RS:	Related Services
SASD:	School Administrators of South Dakota
SAT:	Scholastic Aptitude Test
SCHIP:	State Children’s Health Insurance Program
SDAESP:	South Dakota Association of Elementary School Principals
SDASBO:	South Dakota Association of School Business Officials
SDASSP:	South Dakota Association of Secondary School Principals

SD BOE:	South Dakota Board of Education
SD BOR:	South Dakota Board of Regents
SDCL:	South Dakota Codified Laws
SD COSA:	South Dakota Council of School Attorneys
SD DOE:	South Dakota Department of Education
SDEA:	South Dakota Education Association
SDHSAA:	South Dakota High School Activities Association
SDRS:	South Dakota Retirement System
SDSSA:	South Dakota School Superintendents Association
SEA:	State Education Agency
SED:	Serious Emotional Disturbance
SLD:	Specific Learning Disability
SPED:	Special Education
STEM:	Science, Technology, Engineering & Mathematics
TANF:	Temporary Assistance for Needy Families
TBI:	Traumatic Brain Injury
TDD:	Telecommunication Devices for the Deaf
UJS:	South Dakota Unified Judicial System
USC:	United States Code
USDE:	United States Department of Education
VI:	Visual Impairment
VR:	Vocational Rehabilitation
WIC:	Women, Infants and Children (Supplemental Food Program)

INTRODUCTION

Legal issues complicate the work of educators throughout South Dakota. In fact, the legal issues facing administrators, teachers, and policymakers are more complex and nuanced than ever before.

This book is intended for all South Dakota school personnel – superintendents, principals, business managers, special education directors, teachers, curriculum directors, and counselors – as well as school board members and school law attorneys. The most frequently asked questions from school officials are dealt with in a practical question and answer format. The goal of this book is to provide a valuable reference for understanding school law in South Dakota. This book should also be a valuable resource for school law courses and staff development sessions.

School law is difficult and there are few certainties. However, a clear understanding of fundamental school law concepts can assist school officials in addressing these issues with a better sense of confidence. No book can serve as a substitute for competent legal counsel, but hopefully this text can help educators steer clear of legal dangers and focus on their primary responsibility – the success of South Dakota’s K-12 students.

Scott R. Swier
June 2016

CHAPTER 1

SOURCES OF LAW

CONSTITUTIONAL LAW

1:1. What is the United States Constitution?

The Constitution of the United States of America is the supreme law of the nation. Empowered with the sovereign authority of the people by the framers and the consent of the legislatures of the states, it is the source of all government powers and also provides important limitations on the government that protect the fundamental rights of United States' citizens.

1:2. What is the Bill of Rights?

The first ten amendments to the U.S. Constitution make up the Bill of Rights. Written in response to calls from several states for greater constitutional protection for individual liberties, the Bill of Rights lists specific prohibitions on governmental power. Originally, the amendments applied only to the federal government; however, most were later applied to the government of each state through the Fourteenth Amendment.

1:3. Does the U.S. Constitution specifically mention public education?

No. Surprisingly, providing for a public education is not mentioned in the U.S. Constitution or any of the twenty-seven Amendments.

1:4. What role does the U.S. Constitution play in public education?

Because the U.S. Constitution does not provide any authority to the federal government over public education, the Tenth Amendment reserves to each state the power to direct public education.¹

¹ The Tenth Amendment provides, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." (U.S. CONST. amend. X)

1:5. What is the South Dakota Constitution?

The South Dakota Constitution is the basic governing document that establishes and describes the duties, powers, structure and function of the government for the state. The South Dakota Constitution was ratified in 1889 and consists of a preamble followed by twenty-nine articles.

1:6. What role does the South Dakota Constitution play in public education?

Article VIII, Section 1 of the South Dakota Constitution emphasizes the importance of a “general and uniform system of public schools” and places the duty to establish the system on the State Legislature:

The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

The Legislature also has the duty to fund education. Article VIII, Section 15 of the South Dakota Constitution directs the Legislature to provide through general and local taxation as follows:

The Legislature shall make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state.

STATUTORY LAW**1:7. What is a federal statute?**

A federal statute is a law enacted by the United States Congress.

1:8. What role do federal statutes play in public education?

Federal statutes affect South Dakota’s education system in many ways. For example, the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act of 1973, the Equal Access Act, the Family and Medical Leave Act (FMLA), and the Race to the Top grants program (RTTT) are all federal statutes that impact education in our state.

1:9. What is a state statute?

A state statute is a law enacted by the South Dakota Legislature.

1:10. What role do state statutes play in public education?

Most of the statutes passed by the South Dakota Legislature that affect education are grouped together in Title 13 of the South Dakota Codified Laws (Code). The Code is an important source of law because it applies to the daily operations of schools, including the responsibilities of the Department of Education, State Board of Education, local school boards, school district employees, school finance, and student attendance.

ADMINISTRATIVE LAW

1:11. What is administrative law?

An often overlooked source of law is administrative law which includes the rules, regulations, and decisions that are issued by administrative agencies to implement state and federal laws. These laws are designed by an implementing agency to apply the law to the day-to-day realities of schooling.

1:12. What role do state administrative laws play in public education?

In South Dakota, rules and regulations are promulgated by administrative agencies (including the Department of Education) to carry out legislative mandates. The authority to adopt rules is usually granted when the agency has special expertise that the Legislature does not have time to acquire, when frequent changes (such as dates or fees) need to be made, or when a general law needs to be made more specific.

Examples of state administrative rules that affect public education include Special Education (S.D. ADMIN. R. 24:05), School Buses (S.D. ADMIN. R. 24:06), Student Due Process (S.D. ADMIN. R. 24:07), and Teacher Performance Standards and Evaluation (S.D. ADMIN. R. 24:57)

CHAPTER 2

STATE GOVERNMENT'S ROLE IN EDUCATION

2:1. How are the state's government powers divided?

In South Dakota, the powers of the government are divided into three distinct departments - the legislative department, the executive department, and the judicial department. (South Dakota Constitution, Article II)

THE LEGISLATIVE DEPARTMENT

2:2. What is the size of the Legislature?

The South Dakota Legislature consists of a thirty-five member senate and a seventy member house of representatives.

2:3. When does the Legislature meet?

The Legislature meets each year in Pierre on the second Tuesday of January for a maximum of forty legislative days. (South Dakota Constitution, Article III, Section 6 and Section 7) In recent years, it has become a common practice to save one or two legislative days at the end of the session. This allows the Legislature to reconvene approximately two weeks later to consider gubernatorial vetoes and emergency measures.

2:4. What are the qualifications to hold the office of state senator?

A person can hold the office of senator if he is a qualified elector in the district from which he is chosen, a citizen of the United States, has attained the age of twenty-one years, and has been a resident of the state for two years next preceding election. (South Dakota Constitution, Article III, Section 3)

2:5. What are the qualifications to hold the office of state representative?

A person can hold the office of representative if he is a qualified elector in the district from which he is chosen, a citizen of the United States, has attained the age of twenty-one years, and has been a resident of the state for two years next preceding election. (South Dakota Constitution, Article III, Section 3)

2:6 What public officers are ineligible from holding legislative office?

A judge or clerk of any court, secretary of state, attorney general, state's attorney, recorder, sheriff or collector of public moneys, member of either house of Congress, or person holding any lucrative office under the United States, or this state, or any foreign government cannot be a member of the Legislature. (South Dakota Constitution, Article III, Section 3)

2:7. Can a person be disqualified from serving in the Legislature because of a criminal conviction?

Yes. Any person who has been convicted of bribery, perjury, or another infamous crime is ineligible to serve in the Legislature. Also, any person who has been the collector or holder of public moneys and has not accounted for and paid over all such moneys, is ineligible to serve in the Legislature. (South Dakota Constitution, Article III, Section 4)

2:8. What is the term of legislative office?

The term of office for a member of the Legislature is two years. (South Dakota Constitution, Article III, Section 6)

2:9. What does a legislator receive as compensation for his service?

A legislator receives a salary fixed by law and five cents for every mile of necessary travel in going to and returning from the place of meeting of the Legislature on the most usual route.² (South Dakota Constitution, Article III, Section 6)

2:10. Does South Dakota have legislative term limits?

Yes. A person may not serve more than four consecutive terms or a total of eight consecutive years in the senate and more than four consecutive terms or a total of eight consecutive years in the house of representatives. (South Dakota Constitution, Article III, Section 6)

² A legislator's salary is currently \$12,000 for the two-year term.

2:11. Do these term limit restrictions apply to partial terms?

No. These term limit restrictions do not apply to partial terms to which a legislator may be appointed. (South Dakota Constitution, Article III, Section 6)

2:12. Who fills a legislative vacancy?

The Governor makes appointments to fill any legislative vacancies. (South Dakota Constitution, Article III, Section 10)

2:13. Are legislative sessions open to the public?

Yes. The sessions of each house and of the committee of the whole must be open to the public, unless when the business conducted should be kept secret.³ (South Dakota Constitution, Article III, Section 15)

2:14. When do new laws take effect?

No law can take effect until ninety days after the adjournment of the legislative session at which the law passed. (South Dakota Constitution, Article III, Section 22) As a practical matter, most laws passed by the Legislature take effect on July 1.

2:15. May a new law take effect sooner under an “emergency” designation?

Yes. A new law may take effect sooner under an “emergency” declaration approved by a two-thirds vote of the Legislature. (South Dakota Constitution, Article III, Section 22)

2:16. Under what circumstances may a “special session” of the Legislature be convened?

The Legislature may be convened in special session by the presiding officers of both houses upon the written request of two-thirds of the members of each house. (South Dakota Constitution, Article III, Section 31). The Legislature may also be convened in special session by the Governor. (South Dakota Constitution, Article IV, Section 3)

³ Legislators are also granted full immunity for any statements made in any speech or debate in either house of the Legislature. (South Dakota Constitution, Article III, Section 11)

2:17. What is the Legislature's authority to provide for public education?

The South Dakota Constitution emphasizes the importance of a "general and uniform system of public schools" as follows:

The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.

(South Dakota Constitution, Article VIII, Section 1)

2:18. Is it the Legislature's responsibility to fund education?

Yes. The Constitution directs the Legislature to provide for general and local taxation as follows:

The Legislature shall make such provision by general taxation and by authorizing the school corporations to levy such additional taxes as with the income from the permanent school fund shall secure a thorough and efficient system of common schools throughout the state.

(South Dakota Constitution, Article VIII, Section 15)

THE EXECUTIVE DEPARTMENT

2:19. Where is executive power vested?

The executive power of the state is vested in the Governor. (South Dakota Constitution, Article IV, Section 1)

2:20. What are the qualifications to hold the office of Governor?

The Governor must be a citizen of the United States, have attained the age of twenty-one years, and be a resident of the state for two years preceding his or her election. (South Dakota Constitution, Article IV, Section 2)

2:21. What is the Governor's term of office?

The Governor is elected for a term of four years. No person can be elected to more than two consecutive terms as Governor. (South Dakota Constitution, Article IV, Section 2)

2:22. What are the Governor's powers and duties?

The Governor shall be responsible for the faithful execution of the law. He may, by appropriate action or a proceeding brought in the name of the state, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty or right by any officer, department or agency of the state or any of its civil divisions. This authority shall not authorize any action or proceedings against the Legislature.

The Governor shall be commander-in-chief of the armed forces of the state, except when they shall be called into the service of the United States, and may call them out to execute the laws, to preserve order, to suppress insurrection, or to repel invasion.

The Governor shall commission all officers of the state. He may at any time require information, in writing or otherwise, from the officers of any administrative department, office, or agency upon any subject relating to the respective offices.

The Governor shall at the beginning of each legislative session, and may at other times, give the Legislature information concerning the affairs of the state and recommend the measures he considers necessary.

The Governor may convene the Legislature in special session by a proclamation stating the purposes of the session, and only business encompassed by such purposes shall be transacted.

Whenever a vacancy occurs in any office and no provision is made by the Constitution or laws for filling such vacancy, the Governor shall have the power to fill such vacancy by appointment.

The Governor may, except as to convictions on impeachment, grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures.

The Governor may also veto legislative acts.

(South Dakota Constitution, Article IV, Section 3 and Section 4)

THE JUDICIAL DEPARTMENT

2:23. Where is the judicial power vested?

The judicial power of the state is vested in a unified judicial system consisting of a Supreme Court, circuit courts of general jurisdiction, and courts of limited original jurisdiction as established by the Legislature. (South Dakota Constitution, Article V, Section 1)

2:24. What is the state's highest court?

The Supreme Court is the state's highest court and consists of the chief justice and four associate justices. (South Dakota Constitution, Article V, Section 2)

2:25. How is the chief justice selected?

The chief justice is selected from among the justices of the Supreme Court. (South Dakota Constitution, Article V, Section 8)

2:26. What are the qualifications of judicial personnel?

Justices of the Supreme Court, judges of the circuit courts, and any person presiding over courts of limited jurisdiction must be citizens of the United States, residents of South Dakota, and voting residents within the district, circuit or jurisdiction from which they are elected or appointed. Justices of the Supreme Court and judges of circuit courts must also be licensed to practice law in South Dakota. (South Dakota Constitution, Article V, Section 6)

2:27. What are the circuit courts and magistrate courts?

South Dakota's counties are grouped into seven judicial circuits. Circuit court judges are elected in a non-political election for eight-year terms by the voters in each respective circuit or appointed by the Governor. The circuit courts are general trial courts and have original jurisdiction in all civil and criminal cases. They are the only court where a criminal felony case can be tried and determined. The Chief Justice appoints one judge in each circuit to act as the presiding circuit court judge. Presiding judges supervise and administer operations within their circuits.

Magistrate courts are presided over by lay magistrates or magistrate judges. Magistrate judges must be licensed attorneys, while lay magistrates must be high school graduates. Generally, magistrate courts assist the circuit courts in processing minor criminal cases and less serious civil actions.

THE SOUTH DAKOTA BOARD OF EDUCATION

2:28. What is the authority of the Board of Education?

The Board of Education has the power and duty to consider the educational needs of the state and recommend to the Governor and the Legislature any additional legislation, or changes in existing legislation, as the board may consider desirable. (S.D.C.L. § 13-1-39)

2:29. What are the Board of Education's functions?

The South Dakota Board of Education has several functions, including:

1. Promulgating administrative rules to establish standards for the classification and accreditation of the state's schools;
2. Establishing standards for preparing certified personnel;
3. Establishing procedures for determining a school district's eligibility to receive state aid to education funding;
4. Adopting policies and rules necessary to establish standards and procedures for career and technical education; and
5. Establishing curriculum requirements for a recommended high school program for all public and nonpublic schools within the state.

(S.D.C.L. § 13-1-12.1)

2:30. What is the Board of Education's mission?

"As Educational Leaders, we will take a prominent role advocating a dynamic quality education for each student in South Dakota."

Philosophy/Belief Statement

- The South Dakota Board of Education is a strong advocate for the best interest of children and youth in our state's schools and post-secondary technical institutes.
- It is the unique role of the South Dakota Board of Education to listen to, understand, and translate the concerns of a variety of stakeholders into successful education policies.
- The South Dakota Board of Education has a responsibility to ensure every child an opportunity to learn from certified school staff and teachers in our state's Local Education Agencies (LEAs) and post-secondary technical institutes.

- The South Dakota Board of Education has a responsibility to set standards and expectations for the quality of education through the establishment of graduation requirements, accreditation of local schools, certification of professionals, and approval of programs offered by post-secondary institutes and teacher education programs.

Vision Statement

The South Dakota State Board of Education will be a leader in education advocacy for each student in the state by:

- Guaranteeing that students have an opportunity to learn the skills necessary for their future, either for jobs or further education.
- Advocating professional development and teacher education programs.
- Maintaining a strong partnership between the Department of Education and the State Board of Education.
- Setting dynamic standards, both mandatory and advisory.
- Opening pathways between all groups concerned with education.
- Proactively marketing a statewide plan for the continuous improvement of K-12 and postsecondary technical education.

The South Dakota Board of Education's Leadership Role is:

- To ensure access to a system of public education for South Dakota students.
- To communicate a vision for improving public education for all South Dakota students.
- To enhance the professional development of educators through credentials, teacher training programs, and a code of ethics.
- To develop partnerships with all players/stakeholders in the community, such as the Board of Regents, legislators, local school boards, and Parent Teacher Associations.
- To identify the elements affecting the quality of education and evaluate overall student achievement trends.
- To provide leadership for education through policy and advocacy to LEAs.
- To establish education standards and rules within legislative directives.
- To approve programs and agreements designed to operate a system of post-secondary technical institutes.

(Board of Education Mission Statement - Developed September 29, 1995)

2:31. How many members serve on the Board of Education?

The Board of Education consists of nine members. (S.D.C.L. § 1-45-6.1)

2:32. How are the Board of Education's members selected?

The members of the Board of Education are appointed by the Governor with the advice and consent of the senate. (S.D.C.L. § 1-45-6.1)

2:33. What are the terms of office for the Board of Education's members?

The term of office for each Board of Education member is four years and terminates December thirty-first of the fourth year. (S.D.C.L. § 1-45-6.1)

2:34. How is a vacancy on the Board of Education filled?

Any member appointed to fill a vacancy on the Board of Education arising from reasons other than the natural expiration of a term shall be filled and served only through the unexpired portion of the term. (S.D.C.L. § 1-45-6.2)

2:35. How frequently does the Board of Education meet?

The Board of Education must meet at least four times each year. (S.D.C.L. § 1-45-6.2)

2:36. Can the Board of Education hold special meetings?

Yes. The Board of Education may hold special meetings at the call of the president, or in his absence a majority of the Board, or at the call of the Secretary of the Department of Education. (S.D.C.L. § 1-45-6.2)

2:37. Are the state's technical institutes entitled to have membership on the Board of Education?

Yes. Two of the Board of Education's members must represent vocational education in South Dakota. (S.D.C.L. § 1-45-6.3)

2:38. What role does the Board of Education have in developing standards and practices for students?

The Board and the Department of Education are required to jointly work with other state government agencies to ensure that children enter the K-12 education system ready to learn.

The Board and the Department are also required to jointly work to develop standards and practices that ensure that, by the third grade, all children, to the best of their abilities, have learned fundamental reading, mathematics, language, science, and technology skills that form the foundation for further learning.

The Board and the Department are also required to work together to develop standards and practices that ensure that, by completion of the twelfth grade, all students, to the best of their abilities, have learned the educational and personal skills that will allow them to enter adulthood as responsible members of society.

(S.D.C.L. § 13-1-43)

THE SOUTH DAKOTA DEPARTMENT OF EDUCATION**2:39 What divisions and agencies comprise the Department of Education?**

The Department of Education consists of the divisions of workforce and career preparation, education services and resources, library services, and any other divisions and agencies as created by law, executive order, or administrative action, and placed within the department.

Each division performs its functions, subject to the following:

- (1) The Secretary must review and make recommendations concerning each division's annual budget request;
- (2) The Secretary may approve comprehensive education plans for the department;
- (3) The Secretary must perform any functions assigned to the secretary under federal law;
- (4) The Secretary must perform the functions transferred from other agencies as specified in this chapter; and
- (5) The Secretary must perform other personnel, organization, staffing, directing, coordinating, and reporting functions as assigned by law or executive directives of the Governor.

(S.D.C.L. § 1-45-4)

2:40. Who leads the Department of Education?

The Secretary of Education leads the Department of Education. (S.D.C.L. § 1-45-2)

2:41. What are the qualification for the Secretary of Education?

The Secretary of Education must be qualified by training and experience to administer the programs of the Department of Education and shall have such other qualifications as may be specified by statute. (S.D.C.L. § 1-45-3)

2:42. What are the duties of the Secretary of Education?

The Secretary has several duties, including:

Supervising all accredited elementary and secondary schools and postsecondary technical institutes in the state, including adult education, kindergarten, preschool, and summer schools (subject to the policies established by the Board of Education. (S.D.C.L. § 13-3-1.4)

Classifying and accrediting all public and nonpublic schools under the administrative rules established by the Board of Education. (S.D.C.L. § 13-3-47)

Preparing and submitting for the Board of Education's approval a standards revision cycle and content standards for kindergarten through grade twelve. (S.D.C.L. § 13-3-48)

Establishing a uniform system for gathering and reporting educational data for the keeping of adequate educational and financial records and for the evaluation of educational progress. (S.D.C.L. § 13-3-51)

Accepting and fairly distributing commodities, moneys, goods, and services which may become available from the state or federal government or from other sources. (S.D.C.L. § 13-1-23)

Supervising school libraries (S.D.C.L. § 13-1-31)

2:43. Does the Department of Education serve as coordinator of services to visually and hearing impaired children?

Yes. The Department of Education is charged with developing and implementing a plan to identify and evaluate hearing and visually impaired children and coordinating delivery of educational programs and services to meet the needs of all visually and hearing impaired children in South Dakota. (S.D.C.L. § 1-45-4.4)

CHAPTER 3

SCHOOL DISTRICT ORGANIZATION

3:1. What is the definition of a school district?

A “school district” is any territory organized for the express purpose of operating not less than a thirteen-year school program and governed by an elected school board as defined to be a school district. (S.D.C.L. § 13-5-1)

3:2. What corporate and proprietary powers does a school district have?

A school district may sue and be sued, contract and be contracted with, purchase, hold, sell, dispose, and use personal and real property for school purposes. (S.D.C.L. § 13-5-1)

3:3. If a school district overlaps county boundaries, what county is considered to be the school district’s “county of residence”?

A school district which overlaps boundaries of a county is considered to be in the county where the majority of the children belonging to the district reside as determined by the fall submission of student enrollment data. (S.D.C.L. § 13-5-14)

3:4. Can a school board change a school district’s name?

Yes. A school board may propose to change the school district’s name. (S.D.C.L. § 13-5-17.1)

3:5. Can a school district’s residents change a school district’s name?

Yes. A school district’s residents may propose to change the school district’s name by submitting a petition signed by fifteen percent of the registered voters of the school district to the school board. (S.D.C.L. § 13-5-17.1)

3:6. What procedures must be followed to change a school district’s name?

A petition to change a school district’s name must include the reason for the name change and the proposed name for the school district.

The school board must hold a hearing on the proposed name change after publishing a notice of the hearing in the school district's legal newspaper once a week for two consecutive weeks.

The notice must include the time and place for the hearing, the reason for the hearing, and the proposed name for the school district.

At the hearing on the proposed name change, the school board must allow any interested resident of the school district a reasonable opportunity to testify (either orally, in writing, or both) at the hearing.

After the hearing, the school board must consider the testimony regarding the proposed name change, and if the proposed name change is in the school district's best interest and no other school district in the state has the same name, the school board must change the school district's name.

The school board must then report the school district's new name to the Secretary of Education.

(S.D.C.L. § 13-5-17.1)

3:7. May a school district request a waiver from complying with state administrative rules?

Yes. A school district may apply for a waiver from complying with state administrative rules if a majority of the school board agrees that the rules limit the school district's ability to make specified reforms and are unnecessary for maintaining the quality of education within the school district. (S.D.C.L. § 13-5-34)

3:8. What is the procedure for requesting an administrative rules waiver?

Before applying for a waiver, the school district must hold a public hearing within the district to seek public comment on its school reform plan and the waiver being sought.

The justification for the waiver being sought must then be submitted to the Department of Education at least sixty days before the date that the waiver is to occur. The waiver request must provide a method for evaluation which includes the involvement of students, parents, teachers, and administrators.

The Secretary of Education may approve waivers of up to four years. A school district which is aggrieved by a decision of the Secretary may, within thirty days, appeal to the South Dakota Board of Education.

(S.D.C.L. § 13-5-34)

3:9. May a new school district operate only an elementary school?

No. After July 1, 1998, no school district may be formed unless it operates both an elementary school and a secondary school within the boundaries of the district. (S.D.C.L. § 13-5-35)

SCHOOL BOARDS AND SCHOOL DISTRICT OFFICERS**3:10. What is a school board?**

A basic principle of American public education is local governance which is carried out by a local school board. Each school board is comprised of a group of local citizens whose selection is determined by state law. Nationally, there are almost 15,000 school districts ranging in size from a few dozen students to districts with over one million students.

In South Dakota, a school board is an elected body created under the laws of the state to serve as the governing board of a school district for the purpose of organizing, maintaining, and locating schools and for providing educational opportunities and services for all citizens residing within the school district.

(S.D.C.L. § 13-8-1)

3:11. What are a school board's powers?

A school board has the general charge, direction, and management of the district's schools and the control and care of all property belonging to the district's schools.

A school board may levy taxes, borrow money, employ any necessary personnel, lease real and personal property, carry liability and other insurance, or in lieu of insurance make other arrangements, including entering into agreements with others, which agreements may create separate legal or administrative entities pursuant to S.D.C.L. 1-24 to protect and assist a school board in meeting obligations arising from such acts or omissions for which a school board may be legally liable.

A school board may also purchase necessary books and equipment, purchase real property, and erect necessary buildings for the operation of the school district.

(S.D.C.L. § 13-8-39)

3:12. What is the composition of a school board?

A school board includes five, seven, or nine members whose terms must be from one to three years initially, and three years thereafter. However, each school board member is entitled to complete the term of office to which he was elected. (S.D.C.L. § 13-8-2)

3:13. Are school board elections partisan or non-partisan?

School board members are elected on a non-partisan basis.

3:14. May retired school district employees serve on a school board?

Yes. State law does not prohibit former school district employees from serving on a school board.

3:15. Does an individual school board member have the authority to take official action on the board's behalf?

No. A school board is only empowered to act as a corporate body and no individual board member has any authority to take official action on the board's behalf.

3:16. Under what circumstances could a school board member have a conflict of interest?

No school board member may participate in discussing or vote on any issue in which he has a conflict of interest. Each school board member must decide if any potential conflict of interest requires him to be disqualified from participating in discussion or voting. However, no school board member may participate in discussing or vote on an issue if: (1) the school board member has a direct pecuniary interest in the matter before the school board; or (2) at least two-thirds of the school board votes that the member has an identifiable conflict of interest that should prohibit him from voting on a specific matter. (SDCL § 6-1-17)

3:17. What is the legal remedy if a school board member participates or votes on a matter in which a conflict of interest exists?

If a school board member with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that member's vote. (SDCL § 6-1-17)

3:18. May a school board retain an attorney?

Yes. A school board has the authority to retain an attorney to represent the board on a wide range of issues, including personnel, discipline, contracts, policy, special education, litigation, construction, and board governance matters.

3:19. May the number of school board members be increased?

Yes. The voters of a school district may increase the number of board members to seven or nine by a majority vote at an election. (S.D.C.L. § 13-8-3)

3:20. What is the procedure for increasing the number of school board members?

If a petition is signed by ten percent of the registered voters of a school district (based upon the total number of registered voters at the last preceding general election) and presented to the board requesting that an election be called for the purpose of voting upon the question of the change of number of board members, the board must call an election. A school board may also, by resolution, call for an election for the purpose of voting upon the question of the change of number of board members.

The question must be submitted to the voters at an election to be held not less than forty-five nor more than sixty days from the date of the filing of the petition with the business manager. If the petition is filed less than one hundred twenty days prior to the next annual election, the question must be submitted at the annual election. Any increase in the number of board members must be implemented at the next succeeding annual election.

(S.D.C.L. § 13-8-3)

3:21. May school board representation areas be established or discontinued?

Yes. The voters of a school district may establish or discontinue school board representation areas by a majority vote of all voters at an election. (S.D.C.L. § 13-8-3)

3:22. What is the procedure for establishing or discontinuing school board representation areas?

If a petition is signed by ten percent of the registered voters of a school district (based upon the total number of registered voters at the last preceding general election) and presented to the board requesting that an election be called for the purpose of establishing or discontinuing school board representation areas, the board must call an election.

A school board may also, by resolution, call for an election for the purpose of voting upon the question of the establishment or discontinuation of school board representation areas.

The question must be submitted to the voters at an election to be held not less than forty-five nor more than sixty days from the date of the filing of such petition with the business manager. If the petition is filed less than one hundred twenty days prior to the next annual election, the question shall be submitted at the annual election.

(S.D.C.L. § 13-8-3)

3:23. If the number of school board members is increased, what are the terms of office?

If an increase in the number of board members is authorized after an election, the school board may designate the number of vacancies and the number of years, not to exceed three years, in each vacancy so that all later annual elections will have, as far as practicable, the same number of vacancies to be filled. (S.D.C.L. § 13-8-4)

3:24. May the number of school board members be decreased?

Yes. The voters of a school district may decrease the number of board members by a majority vote at an election. (S.D.C.L. § 13-8-4)

3:25. What is the procedure for decreasing the number of school board members?

If a petition is signed by ten percent of the registered voters of a school district (based upon the total number of registered voters at the last preceding general election) and presented to the board requesting that an election be called for the purpose of voting upon the question of decreasing the number of board members, the board must call an election. A school board may also, by resolution, call for an election for the purpose of voting upon the question of decreasing the number of board members.

The question must be submitted to the voters at an election to be held not less than forty-five nor more than sixty days from the date of the filing of the petition with the business manager. If the petition is filed less than one hundred twenty days prior to the next annual election, the question must be submitted at the annual election. Any decrease in the number of board members must be implemented at the next succeeding annual election.

(S.D.C.L. § 13-8-3; S.D.C.L. § 13-8-4)

3:26. If an election is held to change the size of school board membership, is there a waiting period before another election may be held?

Yes. If the question of any change in number of school board members is held, another election cannot be submitted again for two years. (S.D.C.L. § 13-8-5)

3:27. May a school board establish school board member representation areas?

Yes. A school board may establish school board member representation areas. A school district's electors may also establish school board representation areas by a majority vote at an election held under the provisions of S.D.C.L. §§ 13-8-3 to 13-8-5. The representation areas, if established, become effective January first of the following year. (S.D.C.L. § 13-8-7.1)

3:28. How are the school board member representation areas established and elected?

Each representation area must include a population with a variance of not more than five percent and must be reapportioned at least once every ten years.

If board member representation areas are established, the school board member candidate must be a resident voter and reside within the representation area to qualify.

Before the school board member representation areas are established, the entity responsible for establishing the representation areas must state whether the board members will be elected at large, elected by the voters who reside within the representation area, or elected by any combination.

All current board members are allowed to serve the balance of their terms. At the time of an election or vacancy, board members must be elected or appointed so that each representation area will have a resident board member.

(S.D.C.L. § 13-8-7.1)

3:29. When is a school board's annual meeting held?

A school board's annual meeting must be held on the second Monday of July unless otherwise designated by the board at the prior regular meeting. (S.D.C.L. § 13-8-10)

3:30. What actions are taken at the school board's annual meeting?

At the annual meeting, the school board must organize by electing a president and a vice president who serve until the next annual meeting. The school board must also designate the depository or depositories and the custodians of all accounts and designate the school district's legal newspaper. (S.D.C.L. § 13-8-10)

3:31. What constitutes a quorum of the school board?

A majority of the school board's members constitutes a quorum for the purpose of conducting business. (S.D.C.L. § 13-8-10)

3:32. When is a school board's regular meeting held?

A school board's regular meeting must be on the second Monday of each month unless otherwise designated by the board at the annual meeting. (S.D.C.L. § 13-8-10)

3:33. Does a school board action require a majority vote?

Yes. Any school board action may be taken if it is approved by a majority of the members voting. (S.D.C.L. § 13-8-10)

3:34. Under what circumstances may a special meeting of a school board be held?

A special meeting of a school board may be held upon the call of the president, or in the president's absence, by the vice-president, or a majority of the board members. (S.D.C.L. § 13-8-10)

3:35. How is notice of a school board's special meeting provided?

Notice of a school board's special meeting must be given by the business manager to the school board's members, either orally or in writing, in sufficient time to permit their attendance. (S.D.C.L. § 13-8-10)

3:36. May a school board become a member of an association with other school boards in the state?

Yes. Any school board may, by a majority vote, become a member of an association with other school boards in the state upon payment of the annual dues to the

association by the school district. All school board members of the district become members of the association for the period covered by the payment of the dues.⁴ (S.D.C.L. § 13-8-10.1)

3:37. When does a newly elected school board member take office?

A newly elected school board member takes his office at the annual July meeting of the school board. (S.D.C.L. § 13-8-14)

3:38. When does an appointed school board member take office?

An appointed school board member takes his office at the next meeting following his appointment. (S.D.C.L. § 13-8-14)

3:39. Does a school board member take an oath or affirmation?

Yes. An elected or appointed school board member takes and subscribes to an oath or affirmation to support the laws and Constitution of the United States and the State of South Dakota and to faithfully perform the duties of school board membership. (S.D.C.L. § 13-8-14)

The oath or affirmation for a school board member is:

“Do you solemnly swear, or affirm, that you will support the Constitution of the United States and the Constitution of the State of South Dakota; and that you will faithfully and impartially perform your duties as a member of the school board of _____ school district, _____ County, South Dakota, to the best of your ability, and in accordance with the laws now in effect and hereafter to be enacted, during your continuance in said office, and until your successor is elected and qualified?” (The answer is: “I do.”)

Board Member's Signature

⁴ For instance, Associated School Boards of South Dakota (ASBSD) is a private, non-profit organization representing more than 850 local school board members, the school districts they govern, and the students they serve. ASBSD provides services and support to local school boards and local school districts, specializing in assisting members with aspects related to the governance of public education. As the state school board association, ASBSD advocates in the interest of local school board members for continued advancement of the K-12 education system. (ASSOCIATED SCHOOL BOARDS OF SOUTH DAKOTA, <http://asbsd.org/>)

3:40. Who files and administers a school board member's oath or affirmation?

A school board member's oath of office is filed with the business manager (note that a business manager's oath of office is filed with the county auditor). The business manager and school board president is empowered to administer oaths in all matters in which their school district may be a party. (S.D.C.L. § 13-8-15)

3:41. What happens if an elected or appointed school board member fails to qualify?

If a school board member-elect or appointee fails to qualify, a vacancy occurs which may be filled by appointment. (S.D.C.L. § 13-8-16)

3:42. What happens if a successor school board member is not elected or qualified?

If a school district fails to elect a person to succeed a school board member whose term has expired, or an elected board member fails to qualify, the term is considered vacant, and the incumbent continues to act in an official capacity until the vacancy is filled. (S.D.C.L. § 13-8-22)

3:43. What type of events create a school board vacancy?

A school board vacancy occurs if any of the following events happen before the expiration of a school board member's term. If the school board member:

- (1) Dies;
- (2) Is removed from the board;
- (3) Fails to qualify as a board member as provided by law;
- (4) Ceases to be a resident of the school district or representation area where elected;
- (5) Is convicted of any infamous crime or of any offense involving a violation of the member's official oath;
- (6) Has a judgment obtained against the member for breach of the member's official bond;
- (7) Is incapacitated and is unable to attend to the duties of the position;
- (8) Assumes the duties of an office incompatible with the duties of a school board member; or
- (9) Resigns.

(S.D.C.L. § 13-8-23)

3:44. When does a school board member's resignation become effective?

A school board member's resignation requires a successor to be appointed to fill the vacancy and the resignation is not effective until the successor is appointed and qualified. Until that time, the resigning school board member continues to serve in an official capacity as a school board member. (S.D.C.L. § 13-8-24)

3:45. How is a school board vacancy filled?

A school board vacancy is filled by appointment. The vacancy must be filled by all school board members, including the vacating member, if the vacancy is created by:

- (1) A school district's failure to elect a person to succeed a school board member whose term has expired;
- (2) An elected school board member's failure to qualify as specified in S.D.C.L. § 13-8-14; or
- (3) A school board member's resignation.

If the vacancy occurs due to an event listed in S.D.C.L. §§ 13-8-23(1), (2), (4), (5), (6), (7), or (8), the vacancy is to be filled by the remaining school board members. The appointee must qualify as if elected at or before the next school board meeting and serve until the next succeeding election at which time a successor is elected to serve the unexpired term.

(S.D.C.L. § 13-8-25)

3:46. Who has the authority to appoint school board committees?

The school board president appoints all school board committees. (S.D.C.L. § 13-8-26)

3:47. Who presides over school board meetings?

The school board president presides over the school board meetings. (S.D.C.L. § 13-8-26)

3:48. Who is authorized to countersign checks on the school district's behalf?

The school board president, or in his absence any other designated school board member, is authorized to countersign all checks or warrants drawn by the business manager which the school board has authorized. (S.D.C.L. § 13-8-26)

3:49. Who approves and signs the school board's minutes?

The school board must approve the minutes of every meeting within forty-five days after the meeting. The presiding officer and the business manager must sign the minutes of all annual, regular, and special meetings after they have been approved. (S.D.C.L. § 13-8-34)

3:50. When do the school board's minutes need to be published?

Within twenty days after a school board meeting, the board must publish in the designated legal newspaper, a full account of the unapproved proceedings of the meeting. (S.D.C.L. § 13-8-35)

3:51. What do the school board's minutes need to include?

The school board's minutes must include a detailed statement of all expenditures of money, with the names of persons to whom payment is made, showing the service rendered or goods furnished, a detailed statement of receipts, and balance on hand. Expenditures and receipts of trust and agency funds may be published in total only. (S.D.C.L. § 13-8-35)

3:52. What is the procedure for changing the school board's minutes?

If the published minutes of a previous school board meeting are modified, amended, or corrected after publication and before approval by the board, the changes must be reflected in the meeting's minutes at which the modifications, amendments, or corrections are made. (S.D.C.L. § 13-8-35)

3:53. What publication rates does a school board pay?

A school board pays a publication rate not to exceed ninety percent of the legal line rates for weekly newspapers and not to exceed the legal line rate for daily newspapers, as provided in S.D.C.L. § 17-2-19 and S.D.C.L. § 17-2-20. (S.D.C.L. § 13-8-36.1)

3:54. What is the compensation for school board members?

Each local school board sets the amount of per diem that each member may receive. However, the amount of per diem established by the school board may not exceed the per diem authorized for the members of the South Dakota Board of Education under

S.D.C.L. § 4-7-10.4. The per diem may be paid for each meeting actually attended by the member and also for each day a member was actually engaged in the service of the board when authorized by the board. (S.D.C.L. § 13-8-37)

3:55. Are school board members allowed a travel allowance?

Yes. In addition to the per diem provided in S.D.C.L. § 13-8-37, a school board member may receive the travel allowance authorized by the State Board of Finance. (S.D.C.L. § 13-8-38)

3:56. Does a school board have the authority to provide day care services for the children of enrolled students?

Yes. A school board may provide day care services for the children of enrolled students. (S.D.C.L. § 13-8-39.2)

3:57. May a school district charge a fee for this type of day care program?

Yes. A school district may charge a fee for this type of day care program. (S.D.C.L. § 13-8-39.2)

3:58. Does a school board have the authority to provide before or after school programs for students?

Yes. A school board may provide programs before or after the regular school term or school day, including weekends, for children who are of school age and are enrolled in a school within the district. (S.D.C.L. § 13-8-50)

3:59. May a school board charge a fee for these before or after school programs?

Yes. A school board may charge a fee for these programs. (S.D.C.L. § 13-8-50)

3:60. If a school board charges a fee for these before and after school programs, where are the fees deposited?

Any fees paid to a school district under S.D.C.L. § 13-8-50 are deposited into the school district's public enterprise fund as contained in S.D.C.L. § 13-16-2. (S.D.C.L. § 13-8-50.1)

3:61. May a school board charge a fee under this law for high school extracurricular activities?

No. Any program provided by a school district for which a fee may be charged under this law does not include any high school extracurricular activities. (S.D.C.L. § 13-8-50)

3:62. Does a school board have to file an annual report with the Department of Education?

Yes. Before August first, a school board must file an annual report with the Department of Education. (S.D.C.L. § 13-8-47)

3:63. What does this annual report need to include?

The report must include all the educational and financial information and statistics of the school district as requested in a format established by the Department of Education. The report must also contain, for each month of the fiscal year, the month-end cash balances of the school district's general fund, capital outlay fund, pension fund, and special education fund.

Beginning in 2016, the report must also contain the following information for the school district from the preceding fiscal year: (1) Total teacher compensation, which is defined as the total amount spent on instructional salaries and benefits for certified instructional staff; (2) The total amount spent on instructional salaries for certified instructional staff; (3) The total amount spent on benefits for certified instructional staff; (4) The total number of certified instructional staff employed by the school district; and (5) Any other information necessary to comply with the provisions of SL 2016, ch. 83. (S.D.C.L. § 13-8-47)

3:64. Who makes and files this annual report?

The school district's business manager, with assistance from the Secretary of the Department of Education, must make the annual report, which is then approved by the school board. The business manager must then sign the annual report and file a copy with the Department of Education as provided in S.D.C.L. § 13-13-37. The Department of Education must audit the report and return one copy to the school district. (S.D.C.L. § 13-8-47)

3:65. What are the potential consequences if a school district employee fails to file a required report or fails to perform any official action?

If any school district employee who is required to make a report to any county auditor, school board, or the Secretary of the Department of Education willfully neglects to make the report or fails to perform any of his official duties, the school board must withhold the employee's last month's salary until the reports or records are filed and accepted. (S.D.C.L. § 13-8-48)

3:66. What is the amount of a school district business manager's bond?

The bond required for a school district's business manager is fixed and approved by the school board. (S.D.C.L. § 13-8-18)

3:67. Where is the school district business manager's bond filed?

The school district business manager's bond is filed with the county auditor. (S.D.C.L. § 13-8-19)

3:68. May a school board establish or discontinue an attendance center?

Yes. A school board has the authority to establish and discontinue attendance centers by resolution. An action to close an operating school must be taken by December first prior to the closure. However, if an emergency exists, the school board may close the school after notice to the patrons. (S.D.C.L. § 13-23-1)

3:69. May the voters of a school district direct the school board to establish or discontinue an attendance center?

Yes. The voters of a school district have the power to direct the school board to either establish or discontinue an attendance center by holding a special election, as provided in S.D.C.L. § 13-23-3. However, the voters are limited in their power as the school board is limited by law in providing educational opportunities. (S.D.C.L. § 13-23-1)

3:70. May a school board submit the issue of discontinuing an attendance center to a public vote?

Yes. A school board may submit the issue of discontinuing an attendance center for the next school fiscal year to a vote of the people upon resolution of the board. The question must be submitted to a vote of the people upon the filing of a petition on or before January fifteenth. (S.D.C.L. § 13-23-3)

3:71. May a school district's voters petition for the discontinuance of an attendance center?

Yes. A school board must submit the issue of discontinuing an attendance center to a public vote upon the filing of a petition on or before January fifteenth with the school district's business manager calling for the vote and signed by at least fifteen percent of the registered voters of the district, based upon the total number of registered voters at the last preceding general election. (S.D.C.L. § 13-23-3)

3:72. When does a vote for the discontinuance of an attendance center have to be held?

The vote for the discontinuance of an attendance center must be held before the first of March. If a majority of the voters cast their votes in favor of the question, the school board is bound by the decision for the next school fiscal year. (S.D.C.L. § 13-23-3)

3:73. Is a school district required to provide school health services?

Yes. A school district must provide school health services coordinated by a registered nurse. These services may be shared by one or more school districts and the services must include assessment and implementation of services for students with special needs, administration of medications, and performance of specialized health care procedures. A school board must also provide the school district and its employees with liability insurance to cover these school health services. (S.D.C.L. § 13-33A-1; S.D.C.L. § 13-33A-3)

3:74. May these school health services be delegated?

Yes. However, the registered nurse is responsible for training and supervising any school employee to whom providing these services is delegated. (S.D.C.L. § 13-33A-1)

THE RELATIONSHIP BETWEEN THE SCHOOL BOARD AND ITS EMPLOYEES

3:75. What is the role of the school board in employing personnel?

The school board has the power to employ any necessary personnel and establish the duties and compensation of each person. (S.D.C.L. § 13-10-2)

3:76. May the school board obtain group life and health insurance for employees and retirees?

Yes. The school board can enter into group life and group health insurance contracts, including contracts for dental and vision insurance provided by private carriers, for the protection and benefit of its employees, the immediate families of its employees, and former employees who have retired. The school board can pay any part or all of the necessary premiums for the insurance. The school district can also self-insure if it chooses to do so. (S.D.C.L. § 13-10-3)

3:77. May the school board enter into a retirement pension agreement with its employees?

Yes. Subject to the provisions of S.D.C.L. § 3-12-65 and § 3-12-66, the school board can enter into a retirement pension agreement with its employees and pay any part or all of the necessary premiums. (S.D.C.L. § 13-10-4)

3:78. May the school board levy a tax for the school district's retirement system?

Yes. The school district can levy an annual tax not to exceed thirty cents per thousand dollars of taxable valuation of the school district for the current year in order to maintain a continuing fund for paying a pension to retired employees. This levy cannot be included in determining the tax levy limitation of the school district. (S.D.C.L. § 13-10-6)

3:79. Where is this pension money kept?

All money collected from this tax must be kept by the school district's business manager in a special pension fund. (S.D.C.L. § 13-10-6)

3:80. What must the pension money be used for?

The money cannot be used for any other purpose except for the pension fund. (S.D.C.L. § 13-10-6)

3:81. What happens to the pension money if the school discontinues its pension system?

If the school district discontinues its pension system, any unexpended balance must be transferred to the school district's general fund. (S.D.C.L. § 13-10-6)

3:82. May the school board discontinue its retirement system?

Yes. The school board can discontinue its retirement pension system at any time. Once this decision is made, all pension payments must be terminated. (S.D.C.L. § 13-10-8)

3:83. May the school board obtain liability insurance for its employees?

Yes. The school board has the ability to obtain public liability insurance to protect its employees against liability suits which might be brought against them for negligent acts that occur while the employee is performing duties on behalf of the school district. (S.D.C.L. § 13-10-9)

3:84. What is an “at-will” employee?

South Dakota is an “employment-at-will” state. An “at-will” employee has no specified term and may be terminated at the will of either party on notice to the other, unless otherwise provided by statute. In the school context, examples of an “at-will” employee often include bus drivers, custodians or kitchen workers. (S.D.C.L. § 60-4-4)

3:85. May a school district enter into a contract with the state or other government subdivisions?

Yes. A school district is authorized to enter into contracts and agreements with the state, its agencies and institutions, and any political subdivisions for educational purposes and services. (S.D.C.L. § 13-15-1)

3:86. May school districts agree to share employees?

Yes. A school district may contract with another school district to share the services of employees. (S.D.C.L. § 13-15-1.1)

3:87. Does a school district have to conduct criminal background investigations of its employees?

Yes. Each person over eighteen years of age hired by a school district must submit to a criminal background investigation, by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. (S.D.C.L. § 13-10-12)

3:88. How is the background investigation completed?

The school district must submit a completed fingerprint card to the Division of Criminal Investigation before the prospective new employee enters into employment. If no disqualifying record is identified at the state level, the fingerprints are forwarded by the Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history record check. (S.D.C.L. § 13-10-12)

3:89. May a person be temporarily employed pending the background investigation results?

Yes. Any person whose employment is subject to these background investigation requirements may enter into employment on a temporary basis pending the results of the background investigation. (S.D.C.L. § 13-10-12)

3:90. May a school district withdraw its employment offer after receiving the background investigation results?

Yes. The employing school district may (without liability) withdraw its employment offer or terminate the temporary employment without notice if the background investigation reveals a disqualifying record. (S.D.C.L. § 13-10-12)

3:91. May a school district pay for the background investigation's costs?

Yes. The employing school district may pay any fees charged for the cost of fingerprinting or the criminal background investigation for any person whose employment is subject to the requirements of this section. (S.D.C.L. § 13-10-12)

3:92. Are certain individuals exempt from the background investigation requirement?

Yes. Any person hired to officiate, judge, adjudicate, or referee a public event sponsored by a school district is not required to submit to a background investigation. Also, any instructor employed by a postsecondary technical institute is required to submit to a background investigation at the time of initial employment. (S.D.C.L. § 13-10-12)

3:93. Does a school district have to conduct background investigations of its student teachers?

Yes. A school district must conduct background investigations for its student teachers. A student teacher's background investigation conducted by a school district may be provided to any other school in which the student engages in student teaching. Also, the school district conducting the student teacher's background investigation may rely upon those results if that person is employed by the district. (S.D.C.L. § 13-10-12)

3:94. Do separate background investigations need to be conducted for an employee who is employed in multiple school districts?

No. A school district employee who is employed by more than one school district is only required to obtain one criminal background investigation, if the background investigation was conducted no more than five years before the person is first employed by the additional school district. The results of the background investigation must be transferred to any additional school district from the initial school district that obtained the criminal background investigation if the additional school district or the school district employee requests in writing to the initial school district that the results be transferred and the school district employee who was the subject of the criminal background investigation signs a written release authorizing the transfer. (S.D.C.L. § 13-10-12.1)

3:95. May a school district consider criminal convictions when making hiring decisions?

Yes. A school district may refuse to employ a person who has been convicted of a crime involving moral turpitude.⁵ Also, no person may be employed by a school district if the person has been convicted of a crime of violence,⁶ a sex offense,⁷ or trafficking in narcotics. Finally, a school district is not prohibited from considering any criminal conviction in making a hiring decision. (S.D.C.L. § 13-10-13)

⁵ "Moral turpitude" is "an act done contrary to justice, honesty, principle, or good morals, as well as an act of baseness, vileness, or depravity in the private and social duties which a person owes to his fellow man or to society in general." (S.D.C.L. § 22-1-2(25)).

⁶ A "crime of violence" is "any of the following crimes or an attempt to commit, or a conspiracy to commit, or a solicitation to commit any of the following crimes: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact as defined in § 22-22-7, felony child abuse as defined in § 26-10-1, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device." (S.D.C.L. § 22-1-2(9)).

⁷ The various types of "sex offenses" are listed at S.D.C.L. § 22-24B-1.

3:96. Are a school district's long-time employees exempt from background investigations?

Maybe. Any person employed by a school district on July 1, 2000 and who remains continuously employed by the same school district for consecutive school years is not required to submit to a background investigation. (S.D.C.L. § 13-10-14)

3:97. What are the reporting requirements if a school district employee is suspended, terminated, or resigns because of a criminal conviction?

If a school board suspends or terminates an employee or an employee resigns as a result of a criminal conviction, the superintendent or chief administrator must, within ten days of the suspension date or the date the employment is severed, report the circumstances and the name of the employee to the Department of Education. Any superintendent or chief administrator who fails to make this report is subject to sanctions found in S.D.C.L. § 13-8-48.⁸ (S.D.C.L. § 13-10-15)

3:98. What is the definition of a "conviction"?

Under these school employee background investigation laws, the term "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere in this state or any other state. (S.D.C.L. § 13-10-16)

⁸ S.D.C.L. § 13-8-48 provides:

When any school district employee, required by law or regulation to make a report including an inventory under the provisions of chapter 5-24 to any county auditor or school board or the secretary of the Department of Education, willfully neglects to make such report or fails to perform any of his official duties, the school board shall withhold the last month's salary of such employee or employees until such reports or records are filed and accepted or such official duties performed.

APPENDIX 3-1

ANNUAL MEETING AGENDA ITEMS⁹

1. Install newly elected members.
2. Select officers: President and Vice President.
3. Superintendent or business manager to conduct meeting until chairman is elected.
4. Designate official depositories.
5. Designate official legal newspaper.
6. Authorize continuation of existing funds or accounts and the establishment of any new accounts, if necessary.
7. Establish date, time, and place for regular meetings.
8. Establish number of votes required to take action.
9. Adopt board policies and schedule for review.
10. Establish advisory committees (when necessary).
11. Review of bonds for business manager and other bonded personnel.
12. Appoint administrator of trust and agency accounts.
13. Appoint individual(s) authorized to direct federal programs.
14. Authorize administrator to institute school lunch agreement.
15. Re-designate Robert Rules of Order or other rules as parliamentary procedures.
16. Investment resolution: Authorize business manager to invest and reinvest funds in institutions which serves greatest advantage to school district.
17. Establish admission prices for year.
18. Establish closing of school motion: Authorize superintendent to close school in emergency situations and in case of inclement weather and set chain of command in the event superintendent is absent.
19. Designate truant officer for the school year.
20. Establish school board member per diem for the school year.
21. Designate legal counsel for the school year.

⁹ Associated School Boards of South Dakota, *School Board Handbook: An Introduction to School Board Service*, page 52.

The South Dakota School Law Deskbook is the essential resource for every school administrator, school board member, and teacher. This comprehensive book provides practical explanations of complex school law concepts in an easy-to-follow question and answer format. In this book, you'll learn about:

- School district organization and elections
- Family Educational Rights and Privacy Act (FERPA)
- Teacher employment
- Collective bargaining
- The South Dakota Open Meetings Law
- The South Dakota Public Records Act
- Student search and seizure
- Student discipline and supervision
- Special education laws and regulations
- Open enrollment
- And much more. . .



SCOTT SWIER leads Swier Law Firm, Prof. LLC's Education Law Practice Group. He serves as legal counsel for the School Administrators of South Dakota and many school districts throughout the state. Scott is an adjunct professor at the University of South Dakota School of Law where he teaches the popular "Education and the Law" course. He also serves as Editor of the SASD's monthly publication – *South Dakota School Law Notes*.

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