**24:05:13:02.  Free appropriate public education (FAPE) defined.** For purposes of this article, the term, free appropriate public education, or FAPE, includes special education and related services which meet the following requirements:

 (1)  Are provided at public expense, under public supervision and direction, and without charge;

 (2)  Meet the standards of the state board in this article and the implementing regulations for Part B of the Individuals with Disabilities Education Act as in effect December 3, 2004, and 34 C.F.R. Part 300, published in the Federal Register on August 14, 2006, and December 1, 2008;

 (3)  Include preschool, kindergarten, elementary school, and secondary school education in South Dakota; and

 (4)  Are provided in conformity with an individual educational program and this article.

 FAPE shall be made available to any eligible individual child with a disability who needs special education and related services even though the child has not failed or been retained in a course or grade and is advancing from grade to grade. FAPE shall also be provided to eligible children with disabilities who have been suspended or expelled from school consistent with chapters 24:05:26 and 24:05:26.01. The determination that a child is eligible under this article must be made on an individual basis by an IEP team.

 **Source:** 16 SDR 41, effective September 7, 1989; 18 SDR 158, effective March 31, 1992; 20 SDR 33, effective September 8, 1993; transferred from subdivision 24:05:13:01(10), 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007; 36 SDR 96, effective December 8, 2009.

 **General Authority:** SDCL 13-37-1.1.

 **Law Implemented:** SDCL 13-37-1.1.