**24:05:20:13.  Direct service by department.** The department may not distribute funds to a local education agency if the local education agency, in any fiscal year, meets any one of the following conditions:

 (1)  Has not provided the information needed to establish the eligibility of the district or state agency, or elected not to apply for its Part B allotment, under Part B of the IDEA;

 (2)  Is unable to establish and maintain programs of free appropriate public education that meet the requirements of this article;

 (3)  Is unable or unwilling to be consolidated with one or more local educational agencies in order to establish and maintain those programs; or

 (4)  Has one or more children with disabilities who can best be served by a regional or state program or service-delivery system designed to meet the needs of those children.

 The department shall use undistributed funds to ensure a free appropriate public education to children with disabilities residing in the area served by the local education agency. If the local allotment is not sufficient to ensure FAPE, the department may use whatever funding sources are available in the state to meet the FAPE requirements.

 **Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000; 33 SDR 236, effective July 5, 2007.

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

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