**24:05:20:23.01.  Hearings on eligibility for federal funds.** The applicant's chief executive officer may file a hearing request as follows:

 (1)  The applicant must request the hearing within 30 days after the action of the department;

 (2)  Within 30 days after it receives a request, the department shall hold a hearing on the record pursuant to SDCL chapter 1-26 and shall review its action;

 (3)  No later than 10 days after the hearing the department shall issue its written ruling, including findings of fact and reasons for the ruling;

 (4)  If the department determines that its action was contrary to state or federal statutes or rules that govern the applicable program, the department shall rescind its action;

 (5)  If the department does not rescind its final action after a review, the applicant may appeal to the U. S. secretary of education. The applicant shall file a notice of the appeal with the U. S. secretary of education within 20 days after the applicant has been notified by the department of the results of the department's review. If supported by substantial evidence, the decision of the department is final;

 (6)  The U.S. secretary of education may also issue interim orders to the department as necessary and appropriate pending appeal or review; and

 (7)  If the U.S. secretary of education determines that the action of the department was contrary to the Individuals with Disabilities Education Act and implementing regulations, the secretary shall issue an order to the department to take appropriate action.

 The department shall make available to the applicant during regular business hours all records of the department pertaining to any review or appeal it is conducting under this section, including records of other applicants.

 If the department does not comply with any provision of this section, or with any order of the U.S. secretary of education, the secretary shall immediately terminate all assistance to the department under the Individuals with Disabilities Education Act or issue such other orders deemed appropriate to achieve compliance.

 **Source:** 20 SDR 33, effective September 8, 1993; 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.