**24:05:26:14.  Protections for students not yet eligible.** A student who has not been determined to be eligible for special education and related services under this article and who has engaged in behavior that violated any rule or code of conduct of the school district, including any behavior described in this chapter, may assert any of the protections provided for in this article if the school district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. A school district is deemed to have knowledge that a student is a student with a disability if:

 (1)  The parent of the student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

 (2)  The parent of the student has requested an evaluation of the student pursuant to this article; or

 (3)  The teacher of the student, or other personnel of the district or other public agency has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the district or to other supervisory personnel of the district.

 A district is not deemed to have knowledge that the student is a student with a disability under this section, if the parent of the student has not allowed an evaluation of the student pursuant to this article, or has refused services under this article, or the district conducted an evaluation consistent with this article and determined that the student was not a student with a disability.

 If the district does not have knowledge that a student is a student with a disability before taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with this chapter.

 If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this chapter, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district shall provide special education and related services in accordance with the provisions of this article including the discipline procedures and free appropriate public education requirements.

 **Source:** 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.