

# South Dakota Alternative Instruction

<https://doe.sd.gov/oatq/homeschooling.aspx>

During the 2021 legislative session, South Dakota’s statutes related to alternative instruction (home school and nonaccredited school enrollment) were updated through [Senate Bill 177](#). The legislation:

1. made changes to families’ notifications for their plans to provide alternative instruction,
2. removed the requirement for alternative instruction families to report assessment results,
3. clarified truancy statutes, and
4. allowed for consistent participation in school activities, including those sponsored by the local school district and those sanctioned by the South Dakota High School Activities Association.

The legislation became law on July 1, 2021.

The following FAQs were developed in partnership with the Associated School Boards of South Dakota, the School Administrators of South Dakota, and the South Dakota High School Activities Association. The FAQs bring together information from South Dakota codified laws, administrative rules, Department of Education program policies, and policies of the South Dakota High School Activities Association.

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## Frequently Asked Questions – August 2021

### 1. Notification Process

- **1.1: Who must provide notification of their intent to provide alternative instruction?**
  - If a parent, guardian, or other person having control of a child between the ages of 5 and 18 intends to provide alternative instruction for K-12 education, they must notify the local public school district or the South Dakota Department of Education of their intention to do so.
  - Notification must be made on the standard form provided by the department.
  - The department provides an online notification system for parents and guardians to make a simultaneous notification to the school district and the Department of Education. If the family is unable to make an online notification, a paper notification form is available.
  
- **1.2: When must a notification be submitted?**
  - A notification for alternative instruction must be filed within 30 days from the first time the child begins alternative instruction or within 30 days of the following transitions:
    - A child enrolls in a public or nonpublic school
    - A child moves to a different school district
  - All children must attend kindergarten in South Dakota prior to age seven and not before age five. Families should file a notification when instruction begins.
  - All notifications for alternative instruction must be kept confidential by the local school district and the Department of Education.
  - There may be times that an alternative instruction student goes through a transition not noted in the statute that impacts their connection to the school district, particularly related to participation in activities. To ensure clarity for the family and school, families are encouraged to communicate with the district about other relevant transitions such as participation in activities, an open enrollment change, or special education evaluations.
  - For students wishing to enroll in state-sponsored dual credit courses as 11<sup>th</sup> or 12<sup>th</sup> graders, parents or guardians need to update their child's information in the alternative instruction system the semester prior to the child's eligibility. This will trigger the necessary agreements to provide that opportunity for eligible juniors and seniors.
  
- **1.3 Is a birth certificate or affidavit in lieu of a birth certificate required to accompany a notification for alternative instruction?**
  - Parents or guardians are not required to submit a copy of a birth certificate or affidavit in lieu of a birth certificate as part of the notification or to provide alternative instruction.

- For the purposes of participation in many school- and High School Activities Association-sponsored activities, a birth certificate or affidavit in lieu of a birth certificate may be required.
- **1.4 Is school board action required to finalize an alternative instruction notification?**
  - No. Once a parent, guardian, or other person having control of a child formally notifies the local district or the State on the form provided by the Department of Education, the district must consider the notification submitted.
  - Families who submit a notification through the online system will receive a confirmation that their notification has been received, including a final copy of the notification.
  - Families who submit a paper notification form will receive a copy of the signed notification from the entity, either the school district or the Department of Education, whichever receives the notification first.
- **1.5 Must a notification be filed every academic year?**
  - No. A notification for alternative instruction must be filed within 30 days from the first time a child begins alternative instruction or within 30 days of the following transitions:
    - A child enrolls in a public or nonpublic school
    - A child moves to a different school district
- **1.6 Can an alternative instruction student enroll in a public school district on a part-time basis?**
  - Yes, alternative instruction students can enroll for one or more classes on a part-time basis while receiving alternative instruction for the balance of their education.
  - The fall State Aid student count, taken the last Friday in September, will include the portion of time that part-time alternative instruction students are enrolled in the public school for state aid purposes.

## 2. Educational Requirements

- **2.1 What educational requirements must be met to provide alternative instruction?**
  - Alternative instruction students must be provided instruction in, at a minimum by law, the basic skills of language arts and mathematics. The person providing instruction is not required to be a certified educator. No person may instruct more than 22 children in an alternative instruction environment. Education must be provided to lead to a mastery of the English language.
  - It is recommended that the parent, guardian, or other person having control of a child keep a detailed academic record of student learning, including attendance and grades earned. Transcripts issued by the parents/guardians are required for participation in activities, acceptance into public education at a later date, enrollment in the state's dual credit program, acceptance into postsecondary education, and for scholarship applications.

- **2.2 If a student who has been provided alternative instruction wishes to enroll in the public school, how is placement determined?**
  - The child will be placed at his/her demonstrated level of proficiency as established by one or more standardized tests. The child's placement may be in one grade level higher than warranted by the child's chronological age, assuming entry into the first grade at age six and annual grade advancement each year thereafter.
    - After initial placement, the child may be advanced according to his/her demonstrated performance.
  - For students in middle or high school, they must be placed in English and math courses at the level of achievement demonstrated by one or two standardized tests, and in all other subjects on a review of transcripts according to the policy formally adopted by the school board.
    - The student's placement may be in one grade level higher than warranted by the child's age. After initial placement, the child may be advanced according to demonstrated performance.
  - If a parent or guardian is dissatisfied with the placement of their child, they can appeal it to the secretary of the Department of Education.
  
- **2.3 Are textbooks available from the public school for alternative instruction?**
  - Yes, public school boards are required to loan textbooks without charge to all persons, ages five through nineteen, who are enrolled in school (including alternative instruction), so long as the students reside in the district but are not enrolled in the public school. The textbooks must be nonsectarian and be those normally used in the public school.
  - Textbooks include any instructional materials that are the principle source of teaching and learning for a given course of study and approved by the school board, including print and digital materials, but not including computer hardware.

### 3. Open Enrollment

- **3.1 How might open enrollment regulations play into alternative instruction?**
  - Open enrollment is an enrollment options program for South Dakota families. Learn more and access the Open Enrollment form at <https://doe.sd.gov/openenrollment.aspx>.
  
- **3.2 Is approval by a school board required for open enrollment, including for alternative instruction students?**
  - Yes, the nonresident school district is required to take action on open enrollment applications. The resident district is not required to take any action.
  - All public school districts in South Dakota have policies that set the standards by which open enrollment applications are accepted or rejected in that district.
  - Open enrollment requests must be made on the forms provided by the Department of Education. Applications for open enrollment must be submitted prior to the last Friday

- in September for the first semester and prior to the last Friday in January for the second semester.
- Once the school board makes a final decision, the district must notify the family of its decision within five days.
- **3.3 Is approval for open enrollment required before an ‘Open Enrolled District’ can be provided an alternative instruction notification?**
  - The parent or guardian should complete the open enrollment process with the nonresident district prior to indicating an ‘Open Enrolled District’ on the alternative instruction notification. This field can be updated on the notification form following initial submission.
- **3.4 Can alternative instruction families select the attendance center they wish to enroll in, whether through open enrollment or in their resident district?**
  - All families residing in a school district are assigned to an attendance center according to school board policy.
  - Local board policies govern the assignment of students between school buildings when there is more than one attendance center at a grade level.
  - Families may choose to open enroll to another attendance center subject to district policy. Contact the local school district to understand the local policies and timelines for enrolling and processes for requesting a transfer to a different building.
- **3.5 How do the SD High School Activities Association (SDHSAA) transfer rules apply to open enrollment?**
  - South Dakota statutes define open enrollment for students. SDHSAA open enrollment transfer rules apply to high school sanctioned activities. A student must be open enrolled in a nonresident public district before SDHSAA transfer rules apply. More information is available at <https://www.sdhsaa.com/>.
  - High school students who have open enrolled can apply through their school district to the SDHSAA for a transfer related to participation in sanctioned activities. Every high school student is eligible for one open enrollment transfer.
  - The SDHSAA transfer rules do not apply to middle school students as SDHSAA middle school activities are not sanctioned events.

#### 4. Assessment

- **4.1 What nationally standardized achievement tests are required of alternative instruction students?**
  - Alternative instruction students are no longer required to take and submit the results of nationally standardized achievement tests in fourth, eighth, or eleventh grades.
  - Students receiving alternative instruction may take nationally standardized tests as the person providing alternative instruction deems appropriate for the child’s educational

progress. These assessments are at the expense of the child's parent, guardian, or other person having control of the child.

## 5. Special Education

- **5.1 What responsibilities do school districts have for special education 'child find procedures' for alternative instruction students?**
  - Parents or other individuals knowledgeable about the child can make a referral to the district for evaluation. The district must proceed with evaluation or provide documentation as to why an evaluation is not necessary. In most cases, evaluations should be conducted.
  - After the evaluation, eligibility will be determined and an offer of Free Appropriate Public Education (FAPE) made, if appropriate.
    - For special education services to be provided, the student must enroll in the district on at least a part-time basis, depending on the required services.
  - If parents or guardians refuse public school enrollment for special education services, no further action is needed by the district.
  - If the student enrolls in the future, eligibility should be reviewed again and an Individual Education Program (IEP) should be developed based on the impact of the disability, if appropriate.
  - Districts should continue to follow the location, evaluation, and identification requirements of state regulations, including:
    - A written description of the district's annual public awareness campaign (ex. Notice in area newspapers) and
    - Procedures for collecting, maintaining, and reporting current and accurate data on all child identification activities, which must be on-going and include children not currently enrolled in the public school.
- **5.2 What responsibilities do school districts have if they have set a precedent of providing services for alternative instruction students beyond state requirements?**
  - If services have previously been provided to full-time alternative instruction students, equitable consideration of services for any student eligible should be considered and offered.
  - If the district wants to change this precedent or policy, the school board should take public comment on a proposed policy before acting.
- **5.3 Can special education students open enroll for required services?**
  - For special education services to be provided, the student must enroll in the district. Enrollment may be part-time, depending on the required services.
  - The nonresident district in which the family is seeking to enroll must conduct a review of relevant educational records of the student and speak with the family and resident district to determine if they have an appropriate educational program and facilities for the student.
    - If the nonresident district confirms they can provide appropriate services, the open enrollment process continues with board consideration of the application.

- If the nonresident district is unable to confirm they can serve the student through the records review and consultation, a joint IEP team meeting with the resident and nonresident districts must be held. The intent of the joint IEP team meeting is to verify whether the nonresident district has an appropriate program for the student who is seeking to enroll. After the determination is made, the nonresident district will proceed accordingly to consider the student's application for open enrollment.

## 6. Dual Credit

### • **6.1 What is dual credit?**

- Dual credit is an opportunity for 11<sup>th</sup> and 12<sup>th</sup> graders who meet admissions standards to enroll in public technical colleges and universities in South Dakota and simultaneously earn credits for both their high school diploma and postsecondary degree or certificate.
- Dual credit courses are offered by the postsecondary institution's faculty members, are governed by the postsecondary institution's policies, and follow the postsecondary institution's established processes for admissions, registration, billing, and grade reporting. Courses include college-level content and subject matter. Students choosing to participate will be held to the same expectations and standards as college students.
- Dual credit coursework is available to high school students in grades 11 and 12 at a significantly reduced rate.
- Learn more at <https://sdmylife.com/prepping-for-college/dual-credit>.

### • **6.2 How can alternative instruction students participate in the state's reduced tuition dual credit program?**

- Alternative instruction families who are interested in enrolling students in the state's reduced tuition dual credit program must have a notification on file with the Department of Education and work directly with the department to start the enrollment process for the reduced-cost courses.
  - School districts are not able to enroll alternative instruction students in dual credit courses.
- In addition to the alternative instruction notification being filed, a signed memorandum of understanding (MOU) and registration form must be submitted to the Department of Education to start the enrollment process. These forms can be accessed through the online notification system.
- After verifying a correct alternative instruction notification, a registration form, and signed MOU are on file, the department will forward the students' registration to the public university or technical college. Once the student meets the admission requirements at the postsecondary institution, he/she can enroll in dual credit courses.

## 7. High School Equivalency Test

- **7.1 How old must a student be to take a high school equivalency test?**
  - A child who is at least sixteen years of age may be approved to take the high school equivalency tests in South Dakota. Find more information at [https://dlr.sd.gov/workforce\\_services/individuals/high\\_school\\_equivalency/default.aspx#age](https://dlr.sd.gov/workforce_services/individuals/high_school_equivalency/default.aspx#age)

## 8. Truancy

- **8.1 What penalties are there for not providing alternative instruction in South Dakota?**
  - Any person having control of a child of compulsory school age who fails to have the child attend school in South Dakota, including alternative instruction, is guilty of a Class 2 misdemeanor for the first offense. For each subsequent offense, the violation is a Class 1 misdemeanor.
- **8.2 Is a school district responsible for truancy reports for alternative instruction students?**
  - Superintendents, or presidents of school boards without superintendents, are responsible for maintaining accurate records of attendance for all students *enrolled under their supervision*. They must provide regular reports to the truancy officer for students who do not or irregularly attend.
  - If an alternative instruction student also enrolls in a class(es) in the public school district, the district is responsible for reporting lack of or irregular attendance to the truancy officer for the class(es) the student is enrolled in.
  - If alternative instruction students are not enrolled in public school courses, the district is not responsible for making truancy reports for the children.
  - School boards are responsible for warning parents and guardians of school-aged children who have not enrolled in school, not enrolled in a high school equivalency test preparation program (if eligible), or not given notification of alternative instruction of the parents'/guardians' responsibility for children to enter school and attend regularly.
    - If the warning is not heeded, the board is required to report the parents or persons in control of the children to the district's truancy officer.
- **8.3 Who can make a complaint of truancy?**
  - Any citizen may make and file a truancy complaint before a circuit court judge against any person having control of a child of compulsory school age who is not being provided with alternative instruction.
  - The complaint must state the name of the parent, guardian, or person responsible for the control of the child. The complaint must be verified by oath at the time of the complaint. Upon filing of a complaint, the judge of a circuit court shall issue a warrant of arrest to the county sheriff with direction to bring the defendant before the court and to summon witnesses required to ascertain the facts of the case.



- If probable cause is not established, the complaint will be dismissed upon motion of the defendant to the circuit court judge.

## 9. Activities Participation

### ● **9.1 What school activities can alternative instruction students participate in?**

- Alternative instruction students of all ages may participate in all activities offered by their resident district, including school-sponsored activities and those sanctioned by the South Dakota High School Activities Association.
  - Examples include clubs like robotics or chess, spelling bee, prom, athletics, and fine arts.
  - For club activities run by community organizations or parents (i.e., not sponsored by the school or sanctioned by the High School Activities Association), families must work with the club to participate in those activities.
- No student is conferred any vested right to be selected for competition in any activity.
- An alternative instruction student may not participate in activities in multiple districts or school systems unless school districts have a cooperative athletic agreement in place.
- If a student is open enrolled, parents/guardians should work closely with the nonresident school district to ensure all requirements are met for participation in activities.
  - For activities sanctioned by the High School Activities Association, high school students must also submit an activity transfer form through their district to the association.

### ● **9.2 What qualifications must alternative instruction students meet to participate in activities?**

- Participation in activities, school-sponsored or High School Activities Association-sanctioned, is a privilege, not a right for all eligible students.
- Alternative instruction students must meet the same requirements as publicly enrolled students to participate in these activities.
  - Examples of requirements include submission of grade and/or attendance reports on set schedule, age/grade parameters, enrollment in certain courses, fees, training rules, codes of conduct, behavior policies, volunteer hours or fundraising, and tryouts for teams.
  - Discipline protocols for breaking district or state requirements applies to alternative instruction students as well.
- Alternative instruction students participating in some activities must submit proof of age to the school for many activities (i.e., birth certificate or affidavit in lieu of a birth certificate).
- Students participating in High School Activities Association-sanctioned activities are held to the organization's transfer and non-academic eligibility rules.

- **9.3 Can school districts set requirements for the *number of classes* that alternative instruction students must be enrolled in to participate in activities?**
  - No. The statutory changes in 2021 opened participation in activities to alternative instruction students without any requirements for enrolling in a certain number of classes in the resident public district.
  - Some activities, like orchestra or FFA, might include a requirement for enrollment and full participation in a course to participate in the out-of-school activity.
  
- **9.4 How often are alternative instruction families required to notify the school for participation in activities?**
  - Parents, guardians, or others in control of alternative instruction students must follow the same notification for activities participation as is required for public school students. For most activities, this includes on annual sign-up and submission of required documents (ex. SDHSAA alternative instruction checklist, physical documentation, etc.).
  - The school district is responsible for sharing information on activity enrollment periods, required documentation, and other qualifications. It is recommended that parents/guardians make the school aware if their students are interested in participating in activities, so information can be shared easily.
  - Signing up for school activities is a process separate from notification for alternative instruction.
  
- **9.5 How do the SD High School Activities Association (SDHSAA) transfer rules apply to open enrollment?**
  - High school students who have open enrolled can apply through their school district to the SDHSAA for a transfer related to participation in sanctioned activities. Every high school student is eligible for one open enrollment transfer.
  - The SDHSAA transfer rules do not apply to middle school students as SDHSAA middle school activities are not sanctioned events.
  - If an alternative instruction high school student is open enrolled, the family should contact the school district to submit an application for transfer through the SDHSAA, if desired.
  
- **9.6 Can out-of-state students participate in activities at South Dakota schools?**
  - Students from North Dakota, Iowa, or Minnesota who have open enrolled (or meet the requirements for tuition regulation programs) for educational programs can participate in activities.
    - South Dakota has cross-border agreements with these states. More information, including agreements and applications, can be found at <https://doe.sd.gov/openenrollment.aspx>.
  - South Dakota statutes define open enrollment for students. SDHSAA open enrollment transfer rules apply to high school sanctioned activities. A student must be open enrolled in a nonresident public district before SDHSAA transfer rules apply. More information is available at <https://www.sdhsaa.com/>.

- **9.7 Can alternative instruction students participate in activities through a nonpublic school?**
  - Any agreements for participation in nonpublic school activities must be made between the administration of the nonpublic school and the parent or guardian of alternative instruction students. State statutes do not cover these agreements.
  
- **9.8 Who is responsible for providing transportation for alternative instruction students related to activities?**
  - The parent, guardian, or person in control of the alternative instruction student is responsible for providing transportation to the school or location where the school activity is hosted.
  - If the school district provides transportation to an off-site activity from school property, alternative instruction students must be provided the same transportation option(s) as public school students.
  
- **9.9 What responsibilities do the parents, guardians, or other persons having control of alternative instruction students have regarding students' participation in activities?**
  - If an alternative instruction student does not meet the eligibility or training rules required for the activities he/she is participating in, the parent or guardian is responsible for notifying the appropriate school official on the reporting timeline required by the district (ex. weekly).
  - The eligibility requirements, training rules, and reporting periods for alternative instruction students are the same as those required for students enrolled in the public school. Training rules include both academic and non-academic components such as grades and attendance at practices.
  - Before the current season of the sport or activity the alternative instruction student is participating in, the parent or guardian of the child must provide the appropriate school official with a copy of a complete transcript of the previous semester's completed coursework.
  - Mirroring requirements for public school students, the documents required by the district for participation in activities must be completed, signed, and submitted as required before students can begin participation.
  - If participating in SDHSAA sanctioned activities, the parent or guardian must annually complete the SDHSAA Eligibility Checklist for Alternative Instruction Students.
  
- **9.10 Is there a 'sit out' period for activities for those students who were public school students and will be provided alternative instruction?**
  - Yes, public school students who transition to alternative instruction are ineligible for activities during the balance of the current season of the sport or activity the student is participating in, at the time of notification of alternative instruction.

- **9.11 Can alternative instruction students participate in Career and Technical Student Organizations (CTSOs) in South Dakota?**
  - Alternative instruction students may participate in Career and Technical Student Organizations so long as they meet the eligibility requirements established by the organization.
  - Each organization has co-curricular (classroom) requirements set at the national and/or state level. Alternative instruction students must meet those requirements for eligibility and follow deadlines set by the student organizations.
  - Like in athletics or fine arts, students are not guaranteed a seat on competitive teams. All competitive roster seats must be earned through local qualifications.
  
- **9.12 What are the membership qualifications for each CTSO?**
  - Contact the student organization the student wishes to join for specific requirements. Information on South Dakota's CTSOs can be found here: <https://sdmylife.com/prepping-for-career/student-organizations>; a listing of each organization's state advisor can be found at <https://doe.sd.gov/cte/index.aspx> under the "Career and Technical Student Organizations" tab.
  
- **9.13 Can alternative instruction students participate in All State Band and Chorus?**
  - Students must be enrolled in the local music program and be chosen locally to participate in the state events.