
Disclaimer: This state profile has been prepared by Family Watch International and the Protect Child Health Coalition. While the information provided is as accurate as possible and is updated annually, *laws can change with each legislative session and laws are subject to interpretation. Therefore, it is advised that you verify and confirm all information posted on this website.*



SOUTH DAKOTA STATUTES AND LAWS

This profile provides an overview of sex education laws in South Dakota including:

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South Dakota legislative session convened on 1/8/19 and adjourned on 3/29/19. The [South Dakota Laws](#) have been updated on the [South Dakota Legislative website](#) for 2019.

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What should I know about [navigating sex ed terms](#)?

I. SEX-ED REQUIREMENTS QUICK CHART

LEGISLATIVE REQUIREMENTS	YES	NO	NOT INDICATED	LEGISLATIVE CODES
Sex education required		X		§13-1-12.1
Sex education optional	X			§13-3-48
If/When Provided, Sexual Education Must/May:				
Be medically accurate			X	
Be evidence based			X	
Be age appropriate	X			
Be culturally appropriate and unbiased			X	
Reference/stress abstinence*	X			§13-33-6.1
Include HIV/AIDS education			X	
Be LGBTQ inclusive			X	
Include safety against sexual abuse			X	
Parental Role in Sexual Education:				
Parental notification			X	
Parental involvement			X	
Opt-in			X	
Opt-out/withdraw			X	
Access to/review curriculum			X	
*Warning: While statutes might say “abstinence based” or require materials to “stress abstinence” as the standard, many CSE programs only mention abstinence in passing; they do not establish abstinence as the expected standard and fail to emphasize abstinence as the only sure way to protect against pregnancy and sexually transmitted diseases, including AIDS. See harmful elements of CSE here.				

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II. PARENTAL RIGHTS LAWS

The following laws and guidelines apply to sex education and how it is taught according to [South Dakota Education Code Title 13](#).

- No specific legislation or guidelines for *parental rights in sex education* are available for this state.

III. SEX EDUCATION LAWS

The following laws and guidelines apply to sex education and how it is taught according to [South Dakota Education Code Title 13](#).

- No specific legislation or guidelines for *sex education* are available for this state.

[§13-1-12.1](#). Promulgation of rules on classification and accreditation of schools, preparation of certified personnel, eligibility for state aid, career and technical education, and curriculum requirements.

The **South Dakota Board of Education Standards** shall promulgate rules pursuant to chapter 1-26 to **establish standards** for the classification and accreditation of schools within this state, to establish standards for preparation of certified personnel, to set forth procedures ... to establish curriculum requirements for a recommended high school program for all public and nonpublic schools within the state. The requirements of the recommended program shall be aligned to the academic content standards developed pursuant to § 13-3-48 and shall, at a minimum, include the content standards tested pursuant to § 13-3-55.

[§13-3-48](#). Standards revision cycle--Content standards.

The secretary of the Department of Education shall prepare and submit for approval of the South Dakota Board of Education Standards a standards revision cycle and content standards for kindergarten through grade twelve.

[§13-1-43](#). Board and department to develop standards and practices for students.

The South Dakota Board of Education Standards and the Department of Education shall work jointly with other state government agencies to ensure that children enter the K-12 education system ready to learn. The board and the department shall jointly work to develop standards and practices that ensure that, by the third grade, all children, to the best of their abilities, have learned fundamental reading, mathematics, language, science, and technology skills that form the foundation for further learning. The board and the department shall work together to develop standards and practices that ensure that, by completion of the twelfth grade, all students, to the best of their abilities, have learned the educational and personal skills that will allow them to enter adulthood as responsible members of society.

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§13-33A-1. School health services--Coordination by registered nurse.

A public school system shall provide school health services coordinated by a registered nurse, whose services may be shared by one or more school systems. The services shall include assessment and implementation of services for students with special needs, administration of medications, and performance of specialized health care procedures.

§13-33-6.1. Character development instruction.

Unless the governing body elects, by resolution, effective for not less than one or more than four school terms, to do otherwise, character development instruction shall be given in all public and nonpublic elementary and secondary schools in the state to impress upon the minds of the students the importance of citizenship, patriotism, honesty, self discipline, self respect, sexual **abstinence**, respect for the contributions of minority and ethnic groups to the heritage of South Dakota, regard for the elderly, and respect for authority.

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IV. CONSENT LAWS

[Age of Majority](#) - Based on South Dakota Code [§26-1-1](#), anyone under the age of 18 is considered a minor, while those 18 years old and older are considered adults.

[Age of Consent](#) - Based on South Dakota Code [§22-22-1](#), the age when children can legally consent or agree to sex is 16.

Warning! Most CSE programs put parental rights at risk by either encouraging or requiring that parents not be notified and/or by instructing children how to access such things as abortion, contraception and other so-called health services **without parental notification or consent**. It is particularly dangerous to encourage students in this way, particularly considering the fact the laws often support what is being taught in CSE programs. For example:

- **Without notifying or receiving consent from their parents**, minor children in South Dakota may consent to:
 - [§34-23-17](#) Treatment for STD's
 - [§34-23-16](#) treatment by physician - valid--Prophylactic treatment
- **Parental consent** is required for Abortion services
 - [§34-23A-7](#) Forty-eight hour notice to parent or guardian for minor
- See "State Laws that address High-Impact HIV Prevention Efforts" at cdc.gov

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V. OBSCENITY LAWS

The following laws and guidelines apply to sex education and how it is taught according to [South Dakota Obscenity Laws](#).

South Dakota recodified its criminal law based in part on the ALI-MPC in 1977.

S.D. Codified Laws [§ 22-24-28](#) Disseminating material harmful to minors as misdemeanor

Any person who disseminates material harmful to minors is guilty of a Class 1 misdemeanor.

Credits

Source: SL 1968, ch 29, §§ 3, 9 (b); SDCL Supp, §§ 22-24-13, 22-24-20; SL 1974, ch 165, § 18; SL 1976, ch 158, § 24-6.

SDCL [§ 22-24-29](#) Possession, sale, or loan as disseminating material harmful to minors

A person is guilty of disseminating material harmful to minors if that person knowingly gives or makes available to a minor or promotes or possesses with intent to promote to minors, or if that person knowingly sells or loans to a minor for monetary consideration any material described in subdivision § 22-24-27(4).

Credits

Source: SL 1974, ch 165, § 18 (1); SL 2005, ch 120, § 304.

SDCL [§ 22-24-31](#) Defenses for disseminating materials harmful to minors

In any prosecution for disseminating material harmful to minors, it is an affirmative defense that:

- (1) The defendant had reasonable cause to believe that the minor involved was eighteen years old or more. A draft card, driver's license, birth certificate, or other official or apparently official document is evidence establishing that the minor was eighteen years of age or older;
- (2) The minor involved was accompanied by a parent or guardian, or by an adult and the adult represented that he or she was the minor's parent or guardian or an adult and the adult signed a written statement to that effect;
- (3) The defendant was the parent or guardian of the minor involved; or
- (4) The defendant was a bona fide school, college, university, museum, or public library, or was acting in the capacity of an employee of such an organization or a retail outlet affiliated with and serving the educational purposes of such an organization.

Credits

Source: SL 1974, ch 165, § 20; SL 1993, ch 213, § 107; SL 2005, ch 120, § 307

[§ 22-24-37](#). Activities and persons excepted

The provisions of §§ 22-24-27 to 22-24-37, inclusive, do not apply to any persons who may possess or distribute obscene matter or participate in conduct, otherwise proscribed by those sections, if such possession, distribution, or conduct occurs:

- (1) In the course of law enforcement and judicial activities;
- (2) In the course of bona fide school, college, university, museum, or public library activities or in the

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course of employment of such an organization or retail outlet affiliated with and serving the educational purposes of such an organization; or

(3) In the course of employment as a moving picture machine operator, or assistant operator, in a motion picture theater in connection with a motion picture film or show exhibited in such theater if such operator or assistant operator has no financial interest in the motion picture theater wherein that operator or assistant operator is so employed other than wages received or owed; or like circumstances of justification if the possession, distribution, or conduct is not limited to the subject matter's appeal to prurient interests.

Credits

Source: SL 1973, ch 148; SDCL Supp, § 22-24-12.1; SL 1974, ch 165, § 2; SL 2005, ch 120, § 311.

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VI. STATE DEPARTMENT OF EDUCATION POLICIES

The following laws and guidelines apply to sex education and how it is taught according to [South Dakota Department of Education](#).

“The first South Dakota Health Education Standards (SDHES) were developed in 1995 using the newly developed National Health Education Standards (NHES) as a model. The (first) SDHES were approved by the South Dakota Board of Education in 1996. Further review and revisions were conducted as outlined in the SDHES revision timeline. The current [South Dakota Health Education Standards](#) were approved by the South Dakota Board of Education Standards in March of 2018.” ~ South Dakota Department of Education.

Compare [state laws](#) with [state department of education](#) policies for alignment.

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