SDAS Receives National Recognition

by Tim Neyhart

South Dakota, like many other states, has had increasing numbers of young people being incarcerated and placed in out-of-home placements by the court system. Many of these children are referred to the court system by public schools.

South Dakota Advocacy Services (SDAS) became aware of this trend due to the number of calls received through its intake process. Parents indicated that children are being suspended, expelled, or sent home from school without the provision of due process procedures; others stated the school had contacted law enforcement to address their child’s behavioral issues. The parents called SDAS seeking information about how to address these concerns.

The Intake staff encourages parents to call the school to find out the basis for the removal if the school has not provided this information to them. Parents often report the school administrator told them the problem was behavioral in nature and not an educational issue. School personnel frequently refer parents to the local States Attorney's office to file a Child in Need of Supervision (CHINS) petition so that their children can get the help they need. Parents call back to SDAS to share this information with the Intake staff. As SDAS received more and more of these calls, we began tracking them in order to study the issues and seek possible solutions for these problems. Based on the number of calls and the complexity of the issues, SDAS developed a priority in several of its component programs to attempt to address these issues.

At first, the case activity focused on trying to get kids back into school. We provided training and information to parents about what filing a CHINS petition means in regard to their rights as parents. SDAS also began to have conversations with the Department of Education and Court Services about this issue. Staff made contacts with local alternative placement agencies to encourage them to have parents contact SDAS. This effort was effective, in that fewer parents were selecting the option of filing a CHINS petition and were instead asking the school systems to do testing to determine if the issues presented by their children were related to a disability versus being labeled as behavioral/conduct issues.

Congratulations Partners in Policymaking Class of 2015! (see p. 14)

Juvenile Justice Award
(Continued on page 4)
THE WORKFORCE DIVERSITY NETWORK OF THE BLACK HILLS

by Marie McQuay

Friends of the Library hosted a “Lunch and Learn” program with Catherine Greseth, Executive Director of The Workforce Diversity Network of the Black Hills. She presented an overview of the Network and its mission and purpose.

Catherine shared her story about how, in an instant, both her and her daughter’s lives changed because of an unexpected disabling condition. Approximately 92 percent of disabilities come from a sickness or disease, and three out of four people will become disabled in some way during their lifetime. People with disabilities are brave and courageous people because they learn to overcome their disability. When they are employed, they not only give back to society, but by doing so, it helps to increase their own self worth.

WHO THEY ARE

The Workforce Diversity Network of the Black Hills is a domestic non-profit organization which was incorporated in June of 2014. It has a Board of Trustees consisting of eight people from various corporations and agencies. This network recognizes that a healthy workforce is diversified and inclusive of persons with disabilities. The Network’s members are local business owners, employers, and human resource managers with a vested interest in improving the workforce in the Black Hills region by creating a more diverse and inclusive workforce.

WHAT THEY DO

- Network with other employers and businesses to help them understand the benefits of hiring persons with disabilities.
- Sponsor numerous educational and awareness events on topics of interest to employers and human resource managers.
- Act as a resource for employers regarding worksite accommodations and modifications and issues concerning the employment of people with disabilities.
- Work closely with the Department of Human Services, Division of Rehabilitation Services, to link employers to prospective employees with disabilities.

For more information on The Workforce Diversity Network of the Black Hills, contact Catherine Greseth at (605) 787-2590. One can also email her at director@workforcediversitynetworkbh.org.

South Dakota Advocacy Services (SDAS) is an independent (not a part of state or federal government or any service provider), private, non-profit corporation established in the State of South Dakota and designated by the Governor to provide protection and advocacy services to eligible South Dakotans with disabilities. SDAS is funded in part by the U.S. Department of Health and Human Services, U.S. Department of Education, and Social Security Administration. Articles are intended for informational purposes only and are not intended as legal advice. Comments on SDAS services and priorities are welcome.

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South Dakota Board of Elections
Approved Voting Devices 101 . . .
Everything you wanted to know about the devices you may use to vote
by C.J. Moit

The simplest voting device and the most familiar of those used in South Dakota is the paper ballot and number 2 pencil or blue ink pen. Blue ink is used because tabulating machines scan blue ink easier than black. As part of the effort to make voting more accessible to persons with disabilities, the Automark Voter Assist Terminal was brought to South Dakota in 2006. As with all technology, the Automark has begun to age. The State of South Dakota has started the process of replacing them with a new device, ExpressVote Universal Voting Device, manufactured by Electronic Systems & Software (E&S&S).

The ExpressVote is a universal vote capture device designed for all voters. It creates a voter-verified paper record that is digitally scanned for tabulation. This system combines paper-based voting with touch screen technology. The ExpressVote includes a mandatory voter summary screen that requires voters to confirm or revise selections prior to using the internal thermal printer to print the summary of ballot selections. Once printed, E&S&S ballot scanners process the vote summary card. The ExpressVote can serve all voters, including those with disabilities, allowing voters to cast ballots autonomously. Both devices underwent testing by the Secretary of State’s Office to ensure that an individual used them they would record the ballot correctly (Department Author; Certification, 2014, pp. 2-4). For individuals who need, or choose, to use the Automark or ExpressVote devices, both will automatically fill the ovals for their choices correctly.

Once you have utilized a voting device, there are ballot scanning devices designed to process and count all ballots placed into the ballot box at your local polling place. The Secretary of State’s Office has been hard at work testing software updates for the Optical Scan Tabulators. Secretary of State personnel test ballots by marking some incorrectly. The test ballots are processed through the scanning machines. This process ensures the tabulators are counting the votes correctly and disregarding those that are marked incorrectly. They also deliberately tear, fold, and otherwise mutilate the ballots to ensure the ballots can still be processed for absentee voting when ballots are sent through the mail. Once the tests are completed the Secretary of State determines the software and devices are working as they should, the information is then presented to the Board of Elections for approval to use on Election Day.

One of the issues seen when using the age-old paper and pencil/pen is an “over fill” or “under fill” of the oval that is filled in to mark a voter’s choice. The tabulating machines are so sensitive they will only count correctly filled ovals. To address this, voters will see the new instructions below on future ballots demonstrating how to properly fill-in the ovals:

**TO MARK THE BALLOT**

- Completely fill in the oval () next to the name or ballot question. Use only the pencil or marker given to you!
- Do not make any marks other than filling the oval.

- [ ] [ ] [ ] [ ]

Do not erase anything on your ballot.
Do not rip your ballot or make holes in it.
Do not write in a name.

**IF YOU MAKE A MISTAKE**

- If you make a mistake, give the ballot back and get a new one.
- If you cast more votes than allowed in a race, give the ballot back and get a new one.

It is up to individual counties to determine whether, or when, to purchase ExpressVote devices. The change will occur gradually as counties decide to replace their AutoMark machines. Some counties may decide utilize both machines.

**Bibliography**

Department Author; Certification. (2014). E&S&S Voting System 5.2.0.0 System Overview 9.0 Omaha, NE, USA: Electronic Systems & Software.

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**Your Input is Needed**

South Dakota Advocacy Services (SDAS) is seeking comments from the public on its priorities for services. You can access the current priorities by going to the agency’s website at [www.sdadvocacy.com](http://www.sdadvocacy.com), contact us at 1-800-658-4782, or visit an SDAS office in Pierre, Rapid City, Yankton, or Sioux Falls.

**Your comments are important!!** Please tell us how SDAS can better serve you and what the important issues are for people with disabilities in our state. Feel free to contact us in person or by telephone.

You can also provide comments online by completing the [public comment survey](http://www.sdadvocacy.com) located on our website.
Juvenile Justice Award
(Continued from page 1)

In 2010, the state received a grant for a Juvenile Detention Alternatives Initiative (JDAI) project to study the issue of juvenile detention. One element of this grant was to create pilot sites for implementing JDAI standards in Minnehaha and Pennington Counties. SDAS staff was invited to be part of the Facility Inspection Teams to assess these juvenile detention centers and their policies and procedures. P&A staff focused on services available to youth with disabilities, including educational services, policies being verbally explained to juveniles who could not read, etc. Implementation of JDAI standards resulted in a significant decrease in children sent to the juvenile detention centers and in their average length of stay. For example, the average daily population in the Minnehaha County Juvenile Detention Center decreased from 38.38 in 2009 to 16.55 in 2014, while the average length of stay decreased from 13.56 to 10.01 days. This is an ongoing effort; following the facility inspection process, SDAS Legal Affairs Director, John Hamilton, was appointed to and remains on the oversight committee in Minnehaha County. He continues to advocate and address issues regarding services for juveniles with disabilities.

Due to the successful implementation of JDAI in Minnehaha and Pennington Counties, JDAI is now in the process of expanding statewide. The Unified Judicial System took over the state implementation process. The Chief Justice of the South Dakota Supreme Court has been an active participant in developing this process. After receiving information and data from the JDAI process, he took the initiative to develop the information to propose a legislative change in the Juvenile Corrections law. The aim was to reduce incarceration, increase supervision in the community, and break the cycle of young people going to jail for anything other than serious offenses. These changes took place on July 1. SDAS will monitor the impact of these changes in an effort to determine if the changes have a positive impact on clients.

SDAS also works with students who are already in the Juvenile Justice system. When a case is assigned, the staff member works to assure proper services and programming is available to the client in the juvenile corrections setting. The goal of the advocacy work is to make sure the clients receive needed services and are not placed out of their home and community any longer than necessary. One example of the impact of the work is described in the following case scenario:

Dianna Marshall, Director of SDAS’ Protection and Advocacy for Persons with Mental Illness (PAMI) Program, worked with a young lady who had been placed by the Department of Corrections in a psychiatric residential treatment facility for youth under the age of 21 (PRTF). The client struggled in the placement and did not appear to be benefiting from the plan that was in place. As a result, her time in the placement kept getting extended. The grandmother/guardian contacted SDAS regarding her concerns with what was happening.

Dianna, who works in SDAS’ Rapid City office, was able to meet with the client and guardian to learn what was important to them and what was important for them in developing a plan to present to the PRTF treatment team and the client’s Juvenile Corrections Agent. With support, the guardian and client became actively involved in meetings with the facility and the Juvenile Corrections Agent. The advocate offered ideas and alternatives to the services that were being provided. The young lady began to make progress on her treatment goals and was discharged back to her home and school within a few months. Their self-advocacy efforts, in conjunction with the support from SDAS, are testimony to how to resolve issues involving the juvenile justice system. In addition to successfully completing the requirements of the Juvenile Justice process, she is also a recently minted high school graduate who was able to graduate on time with her class. SDAS extends our congratulations to her and her family.

These activities were described in the annual reports that SDAS is required to provide to its federal funding agencies. Diane Smith Howard, a staff member of the National Disability Rights Network (NDRN), reviewed this information and identified these activities as worthy of recognition at the NDRN national conference held in June in Indianapolis, IN. SDAS, along the young lady and her grandmother, were invited to the NDRN annual meeting to be recognized for their efforts in advocating in the Juvenile Justice setting.

SDAS staff members, Emily Garcia and Cole Uecker, along with SDAS Board member, Jack Mortenson, attended the week-long training and were on-hand to accept the NDRN Advocacy Award. SDAS is honored to receive the award and looks forward to continuing the work in this important area.

Juvenile Justice Award
(Continued on page 5)

Pictured, l-r: Peggy Gruenstein; Jack Mortenson, SDAS Board member; Curt Decker, NDRN Executive Director; Skylee Seizler; Emily Garcia, SDAS PADD Director; and Cole Uecker, SDAS CAP Director.
This Could Have Been Me ...

A parent’s advocacy efforts allow her child to fully enjoy after-school program

by Emily Garcia

"W"e won't be able to accommodate Macy* in our program," the after-school program coordinator reported to Diane*. "Her needs are just too great and we have to keep our staffing ratios in proportion."

Diane was devastated to learn that Macy, her then 5-year old daughter with Down Syndrome, would not be able to join her siblings and classmates in their school’s after-school program. That meant Diane, a single, working mother, or her ex-husband, would have to arrange to leave work to transport Macy 20 minutes from her school to an after-school program specifically designed for children with special needs before returning their workplaces. After work, one of them would have to travel back to pick up Macy and then travel the 20 minutes to pick-up their other children from the "regular" after-school program.

Macy is a spunky young lady who captures the hearts and minds of all people she meets. She is excellent at keeping adults on their toes with her zest for everything and eagerness to explore what life has to offer. Macy enjoys playing with her older siblings, along with her twin sister.

Although Macy seemed to benefit from her "other" after-school program, Diane struggled with how she would explain to Macy the reason she had to go to the other program was due to her disability and the needs that accompanied her. This led Diane to contact South Dakota Advocacy Services (SDAS) regarding her concerns. Diane is a vigorous advocate for her daughter, but she did not know how she could address this with the after-school program.

SDAS assigned an advocate to work with Diane and Macy to address this issue. The advocate began by researching the affiliation of Macy’s school with the after-school program. Schools that receive federal funding fall under the jurisdiction of Section 504 of the Rehabilitation Act and are prohibited from discriminating against a person based on disability (Office for Civil Rights - Department of Education). Because the after-school program is operated in school facilities and the school promotes the after-school program to its students, the advocate found there is to be strong connection between the school and the after-school program. After consulting with SDAS staff attorneys, the advocate decided to pursue this case under Section 504 regulations.

The advocate made an initial contact with the school’s special education director and the program director for the after-school program. A meeting was set with the school personnel and parents to review the information and revisit Macy’s eligibility for the after-school program. At the meeting, employees from the school were surprised to learn of their obligation under Section 504 to allow Macy to participate in the after-school program. Macy’s parents remained positive, engaged team members throughout the entire meeting. In fact, they willfully and optimistically stated their daughter’s needs and why she should be able to fully participate in the same program as her peers. All agreed that there was no reason why Macy should be prohibited from this program and the team worked to develop a plan to meet Macy’s needs in the after-school program. Currently, Macy is fully integrated with her peers at the after-school program and is fully enjoying all the benefits of it.

Macy’s situation may not sound unique to many parents of children with special needs. There were several factors that contributed to the success of this situation. First, the parent came to SDAS with a specific and targeted goal of getting her daughter into the after-school program. This assisted the advocate in finding applicable laws that supported the position that Macy should be integrated in the program. Second, school and after-school program staff did not come to the table with animosity toward the parent or child. They had true intentions of listening to the parent and thoughtfully considering how they could make appropriate changes to their programming to accommodate the child. Third, the parents worked hard at remaining positive while clearly stating what they felt was suitable for their daughter. They were willing to negotiate with staff in creating an appropriate plan. Because of the positive collaboration between SDAS, school and after-school staff, and the parents, Macy’s life has been significantly improved.

*Names have been changed

Bibliography


Juvenile Justice Award

(Continued from page 4)

If you have questions or would like more information about advocating for a family member with a disability when they are suspended, expelled, referred to law enforcement, or already placed in the juvenile corrections system, please call 1-800-658-4782. Please ask to speak to the Intake Specialist. Intake hours are Monday through Friday from 9:00 A.M. to 3:00 P.M. All services provided by SDAS are free and all information is kept confidential.
Dianna Marshall Awarded the YAMWI Board of Directors Award

by Twila Stibral

Dianna Marshall was awarded the Yankton Area Mental Wellness, Inc. (YAMWI) Board of Directors Award during the 17th Annual YAMWI Conference held June 3-4, 2015, on the Mount Marty College campus in Yankton, SD. The award recognizes Dianna’s involvement in the progress made by YAMWI and her outstanding support and service for the YAMWI Conference.

Dianna is the Director of the Protection and Advocacy for Persons with Mental Illness (PAMI) Program for South Dakota Advocacy Services (SDAS). Dianna works in the SDAS Rapid City office.

Dianna has attended the YAMWI conference for 17 years. She has been a presenter for breakout sessions. She has utilized the SDAS goal-setting process to assure that funds are identified within the PAAMI budget for SDAS staff and Advisory Council members to attend this conference. She ensures funds are provided yearly to YAMWI to sponsor a speaker and provides funds to purchase “anti-stigma” items that are distributed to all persons attending YAMWI.

Dianna joined SDAS in May 1987 and has dedicated herself to assisting South Dakotans with disabilities by promoting and advocating their rights. She encourages full inclusion and independence of individuals with disabilities in all aspects of society.

She has served on numerous committees and boards, including Missouri Shores Women’s Resource Center and the Homeless Coalition. She is a member of the Pennington County Health and Human Services Resource Board and South Dakota Urban Indian Health. She is involved with the Mental Health Anti-Stigma Committee through the PAAMI Advisory Council. This committee works on projects to improve public awareness of the need to end stigma regarding people with mental illness.

SDAS congratulates Dianna on this very deserving recognition.

Ahrendt Resigns

Valorie Ahrendt resigned from her position as Protection and Advocacy Assistive Technology (PAAT) Program Director/Advocacy Services Representative. Her last day was May 15. Valorie began working at SDAS in 2005, initially as an intern while completing her Paralegal Degree. She then applied for and was hired for an open Advocacy Services Representative position in Sioux Falls. “I supervised Valorie as an intern and throughout her employment with SDAS. She was, without a doubt, one of the best employees we have ever had. She was passionate about her work, did an excellent job in serving her clients, and was a joy to work with. Her high level of competency will be missed by SDAS, clients, and advocates alike,” stated John Hamilton, Legal Affairs Director.

Valorie was appointed PAAT Program Director in 2013. SDAS wishes her well in her future endeavors.

New PAAT Director

Carrie King (Geppert) has recently become a member of the SDAS family. As a Year 23 Partners in Policymaking graduate, she is excited and humbled at the opportunity to advocate for others as the new Protection and Advocacy Assistive Technology (PAAT) Director in Sioux Falls. Prior to joining the advocacy team, Carrie had worked for Sanford Health for 19 years.

Originally from Glendale, AZ, Carrie moved to Sioux Falls, SD in the summer of 1992. She resides in Tea, SD, with her fantastic five children. Samantha (age 17) will be a senior, Brady (age 15) will be a sophomore, Benjamin (age 14) will be a freshman, and Cashmere and Caj’monai (age 8) will be in 2nd grade.

One wintery Partners in Policymaking weekend in Pierre, Carrie met her future husband (Travis Geppert). They plan to be married August 8, 2015. “When people say Partners in Policymaking has changed my life, they really weren’t kidding!”

Travis works for Bank West and has four amazing children. Daxon (age 18) will be a freshman in college, Madelynn (age 14) will be a freshman, Morgan (age 10) will be in 4th grade, and Teigen (age 8) will be in 2nd grade. Carrie and Travis are forever grateful for SDAS, and the many blessings that have come from it.
The parental right to an independent educational evaluation (IEE) at school expense when parents disagree with an evaluation conducted by a school district has been a powerful procedural safeguard for the past forty years. It helps protect children with disabilities from being denied eligibility or certain special education services due to something potentially wrong regarding the district’s evaluation(s). It seems odd that a procedural safeguard that has been part of IDEA for so long would remain an area of confusion or contention, but questions continually arise.

Under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), parents of children with disabilities have the right to an IEE at public expense if they disagree with an evaluation conducted or otherwise obtained by a local school district. 34 C.F.R. § 300.502(b)(1). This right attaches to both the initial evaluation and any reevaluations. When conducting an evaluation, the school district is required to use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child that may assist in determining whether: 1) the child is a child with a disability; and 2) the content of the child’s individualized education program (IEP), including information related to enabling the child to be involved in and progress in the general education curriculum. 34 C.F.R. § 300.304(b)(1). The district’s evaluation is supposed to be sufficiently comprehensive to assess the child in all areas related to the suspected disability, and must identify all of the child’s special needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. § 300.304(c)(4) and (6).

At times, parents will disagree with the evaluation(s) conducted or obtained by the district. That disagreement may be based on any of several factors:

- The parent disagrees with the evaluation results;
- The parent believes the evaluator was not qualified to conduct the particular evaluation;
- The parent believes the evaluator used an improper test instrument; or
- The parent believes the evaluation was not thorough enough to sufficiently evaluate an area of concern.

When this occurs, the right to obtain an IEE at school expense attaches.

Right vs. Request

The federal regulation contains language that can be confusing and appears contradictory, which contributes a great deal to the issues that continue to arise regarding IEEs. In the first sentence of the regulation, it clearly describes a parent’s right to an IEE. 300.502(a)(1). However, in the very next sentence, the regulation refers to a parent’s “request” for an independent educational evaluation. 300.502(a)(2). Section 300.502(b)(1) again refers to the “right” (“A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency”), while (b)(2) and (b)(4) again refer to a parent “requesting” an IEE.

So, is an IEE a right or something parents must request? “Request,” of course, means to ask for something, such as an additional session of physical therapy or other needed services. Requests can be denied. With IEEs, school districts do not legally have the option of simply “denying the request.” That is because there is really no “request” involved that a district can simply deny. The right to an IEE is one of IDEA’s procedural safeguards. When a parent chooses to exercise the right to an IEE, the school district has two options, neither of which have anything to do with saying “no.”

District’s Response to IEE

The parental right to an IEE, however, is not absolute. The regulation states: “(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either — (i) Initiate a hearing under § 300.507 to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under § 300.507 that the evaluation obtained by the parent did not meet agency criteria. (3) If the public agency initiates a hearing and the final decision is that the agency’s evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.” 34 C.F.R. §300.502(b)(2)-(3). The district’s options are to ensure the evaluation is paid for at public expense or to file for a due process hearing if the district wants to attempt to prove its evaluation was appropriate. In reality, it is extremely rare that a district will exercise this.

IEEs

(Continued on page 8)
right because it would cost the district much more in attorneys’ fees to go to a hearing than to pay for the independent evaluation(s).

Agency Criteria

As noted above, a district can also challenge whether the independent evaluation(s) obtained by the parents met district criteria. Two parts of the regulation address “district criteria.” First, section 300.502(a)(2) states: “Each public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.” Thus, if the district has created “agency criteria” for IEEs, such information must be provided to parents when the district becomes aware the parent is seeking an IEE. Section (e) of the regulation further states: “(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent’s right to an independent educational evaluation. (2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.”

This portion of the regulation contains some significant language. Basically, it states the criteria a district may use for IEEs consists of location (such as a mileage radius) and qualifications of the examiner. However, the U.S. Department of Education has established policy that districts may set reasonable cost limits: “To avoid unreasonable charges for independent educational evaluations (IEEs), a school district may establish maximum allowable charges for specific tests. If a district does establish maximum allowable charges for specific tests, the maximum cannot simply be an average of the fees customarily charged in the area by professionals who are qualified to conduct the specific test. Rather, the maximum must be established so that it allows parents to choose from among the qualified professionals in the area and only eliminates unreasonably excessive fees. When enforcing reasonable cost containment criteria, the district must allow parents the opportunity to demonstrate that unique circumstances justify an IEE that does not fall within the district’s criteria. If an IEE is not conducted, the district must be publicly funded. See May 4, 1989 letter to Mr. W.N. Kirby [see EHRLR 213:233].” Letter to Anonymous, 22 IDELR 637 (OSEP February 2, 1995). While districts may set criteria, any criteria set cannot be so restrictive that it essentially negates the right to an IEE. It must also allow for exceptions based on the individual child and what area(s) need to be evaluated.

As mentioned above, a school district may also file for a hearing once an IEE is completed to attempt to prove that the IEE the parent obtained did not meet the school district’s criteria. If a school was successful at such a hearing, it would not be responsible for paying for the IEE.

The language contained in section (e) is also significant because it states schools cannot set any additional conditions or timelines. For example, it would violate IDEA for a district to have in its policy/criteria that an IEE must be sought within so many days or months of the district’s evaluation.

One IEE Per Disagreement

Parents are entitled to one IEE at school expense per evaluation with which they disagree. 34 C.F.R. §300.502(b) (5). In other words, if a parent disagrees with a speech evaluation conducted/obtained by the district, the parent may have one IEE conducted at public expense in the area of speech. If a parent disagrees with several evaluations conducted/obtained by the school, the parent is entitled to one IEE at public expense for each evaluation in which the parent disagrees. The right re-attaches the next time the school conducts reevaluations. Parents, of course, may obtain independent evaluations at their own expense at any time.

Informing of Area(s) of Disagreement

One of the more interesting later additions to the regulation is contained at 34 C.F.R. §300.502(b)(4). It begins by stating a district may ask parents for their reason(s) for disagreeing with the district’s evaluation(s). It goes on to state, however, that a district may not require the parent to provide an explanation “and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.” While parents certainly may inform the district of their area(s) of disagreement, they are not required to do so and a district cannot condition paying for an IEE on the parents supplying this information. For that matter, there is no legal requirement that parents inform the district at all prior to getting an IEE completed. If they desire, parents may have an IEE completed and submit the bill or request reimbursement from the district. That may not be the best practice for parents for other reasons discussed herein, but it is certainly allowed.

Timeline for District’s Response

One of the concerns parents have, of course, is cost and the need to know whether the district is going to pay for the IEE or file for a due process hearing. How long can a district wait before either agreeing to pay for the IEE or filing for a due process hearing? Unfortunately, there is no specific timeline in the regulation. As discussed above, the regulation simply states a district may not “unreasonably delay” in either paying for the IEE(s) or filing for a hearing. If parents inform a district of their intent to obtain an IEE and have received no response within a week, they should contact the special education director to ask when they will receive a response. If parents still receive no response and no notice that the district has filed for a due process hearing after a couple weeks, parents may want to consider filing a State Complaint against the district due to the delaying tactics.

IEEs

(Continued on page 9)
IEEs  
(Continued from page 8)

Who chooses Independent Evaluator(s)?

When a district becomes aware that parents are interested in seeking an IEE at district expense, the district is required to provide parents “information about where an independent educational evaluation may be obtained.” 300.502(a)(2). Districts typically do this by providing parents with a list of qualified examiners. “If, however, the district wishes to limit parents to using examiners from a list, the list must be exhaustive; that is, all qualified examiners in a geographic location must be included. In addition, a parent may use an examiner not on a list if a child’s unique needs establish that no one on the list is qualified.” Letter to Young, 39 IDELR 98 (OSEP 2002). So long as the evaluator meets the district’s criteria, it is entirely up to the parents to choose who conducts the IEE.

Have All the Questions Been Answered?

Near the beginning of this article, readers were provided with a list of potential reasons for disagreement with a school district evaluation. Are there more? What about the district evaluation that did not occur? Do parents have a right to an IEE if a district failed to evaluate a particular area? As discussed below, the federal Department of Education has stated, “YES.”

The Office of Special Education Programs (OSEP) recently responded to that question. OSEP stated, “When a parent disagrees with the evaluation because a child was not assessed in a particular area, the parent has the right to request an IEE to assess the child in that area to determine whether the child has a disability and the nature and extent of the special education and related services that child needs.” Letter to Bous, 65 IDELR 81, 115 LRP 8855 (OSEP February 23, 2015).

This policy memo is significant because it clears up an ongoing source of disagreement between parents and schools. For example, assume a parent requested an assistive technology evaluation, an Autism evaluation, or a transition services evaluation and the district declined to evaluate in the identified area. Frequently, if parents informed the district they wanted to obtain an IEE at school expense, the response they received was that they had no right to an IEE because the right to attach, the district must first evaluate that area. Therefore, because the district did not evaluate in the area of assistive technology, Autism, or transition services, parents were told they had no right to obtain an IEE. OSEP has now clearly opined that the right to an IEE does attach in this circumstance. What does this policy memo mean in practice? Schools will probably be less reluctant to evaluate an area with their own evaluators, knowing if they do not conduct the evaluation, parents may obtain an IEE at public expense.

One question not answered in this policy memo from OSEP is whether the right to an IEE at district expense attaches when a district simply refuses to evaluate; not certain areas, but refuses to evaluate at all. SDAS was recently involved in a situation where the district refused an initial evaluation and the parent informed the district she wanted to obtain an IEE at district expense. The district responded that the parent did not have the right to an IEE because the district had not completed an initial evaluation. Before that question could be addressed through other means, the district reversed course and agreed to evaluate. The evaluations showed the student eligible in three IDEA categories. While OSEP teaches that a refusal to evaluate in a “particular area” causes the right to an IEE at district expense to attach to “determine whether the child has a disability and the nature and extent of the special education and related services that child needs,” it is easy to extend that language to two or more areas a district refused to evaluate. Since the right to an IEE at district expense attaches “to determine whether the child has a disability,” it is also easy to see how the language of the policy memo could also be applied to a district that refuses to evaluate at all.

Conclusion

Independent Educational Evaluations continue to be a challenging area for parents and schools. Understanding it is a right that attaches every time a parent disagrees with an evaluation conducted/obtained by a school district is the first step toward eliminating any confusion. If you have questions about IEEs, please contact SDAS at 1-800-658-4782.

ATTENTION

South Dakota Advocacy Services’ Protection and Advocacy for Individuals with Mental Illness (PAIMI) Program is seeking individuals to fill three upcoming vacancies on its advisory council: (1) Former/current recipient of mental health services; (1) Family member with a child under the age of 14 with mental health needs; (1) Mental health service provider.

In addition, the Council currently has one vacancy to be filled under the former/current recipient of mental health services category.

The role of the Advisory Council is to advise the PAIMI Program on policies and priorities to be carried out in protecting and advocating the rights of individuals with mental illness. If you are interested in serving on the PAIMI Advisory Council, please submit a letter stating your interest and reasons why you wish to serve on this council to:

South Dakota Advocacy Services
PAIMI Program Advisory Council
1575 N. LaCrosse St., Suite K
Rapid City, SD 57701

If you would like more information about the PAIMI Advisory Council, please feel free to call 605-342-3808 or toll-free at 1-800-658-4782. You can also email the PAIMI Program Director at marshald@sdadvocacy.com.
Special Education
Legal Clinic

Do you have questions or concerns related to your child’s special education services?

If so, please join us for a
Free Legal Clinic on
Wednesday, August 12, 2015 2:00PM to 8:00PM @
EmBe Downtown Location Gymnasium
300 W. 11th St., Sioux Falls, SD 57104

Volunteer attorneys and SDAS staff will be available throughout this time to answer your special education questions.
New CAP Director

SDAS would like to welcome a new member to the team. Cole Uecker recently accepted the position of CAP Director in the Pierre office. His first day was May 26. Moving to Pierre is a return home, as he grew up and attended school in Pierre. Before leaving Pierre for the military, he enjoyed fishing and hunting, earned a second degree black belt with Pierre Tae Kwon Do, wrestled for the Pierre Governors, and worked on an area produce farm.

After a short stint of raising hogs at a local farm, Cole decided to continue his education at the University of South Dakota School of Law. While living in Yankton S.D., Cole married his girlfriend Jennifer, whom he has known since he was about five years old when he lived in a small house next-door to her home. Cole and Jennifer have two sons: Layne (14) and Chase (13). They are active in competitive swimming and archery, volunteer at the local humane society, and are excellent students. Layne will be entering high school in the fall and Chase is excited to start his year in 8th grade. Jennifer owns and operates a small luncheonette and custom cakery. She has a real passion for making personalized cakes and cupcakes for the special events in people’s lives. The whole family pitches in for this endeavor; the boys participating in all aspects of the creation of the treats and Cole sweeps the floor and can often be found washing many, many dishes.

Cole is looking forward to a very busy summer of moving his family back to Pierre, buying a house, studying for the Bar Exam, settling into a great new career, and catching lots of fish with his dad, brother, and sons. Most of all, he would like to express his appreciation to so many at SDAS for the opportunity to work with such an amazing organization. “It is exciting to work for an agency whose goal it is to help people with disabilities get the services they need.” Cole encourages anyone who might have questions, concerns, or advice for him to contact him at 1-800-658-4782.

Parent/Guardian Survey on Seclusion and Restraint

By Emily Garcia

Many states have codified the definition and use of seclusion and restraint in school settings. South Dakota currently does not have administrative rules or statutory language that specifically regulates the use of seclusion or restraint in school settings. There is, however...

♦ A reference to schools and the use of “physical force when reasonable and necessary” to control students on school premises. (S.D.C.L. 13-32-1)
♦ A definition of seclusion within the statutory framework pertaining to people with developmental disabilities. The statute references schools who receive public funds cannot engage in the practice of secluding a person with a developmental disability. Seclusion in this statute is defined as a “placement of a person alone in a room or other area from which egress is prevented...” (S.D.C.L. 27B-8-42)
♦ School policies which may describe the use of seclusion and restraint.

The South Dakota Department of Education has recently brought together key individuals to participate on a restraint and seclusion stakeholders group. This group has met and is working on developing administrative rules pertaining to the use of physical restraint and seclusion in school settings.

South Dakota Advocacy Services (SDAS) is conducting a survey to find out how prevalent the use of seclusion and restraint is in South Dakota schools, and whether there is a need for state laws and rules to regulate the use of seclusion and restraint. We are looking for information from parents/guardians of children with disabilities whose child was/is restrained and/or placed in seclusion.

This survey has 12 questions and should take approximately 10-15 minutes to complete. To access the survey, go to www.sadvocacy.com and follow the link indicated on the main webpage.
Thank You to the ADA, but ---
Do We Still Judge By Appearances?
“They Don’t LOOK Disabled!”
by Charlene Hay

What do people look like who have a disability? Persons with disabilities who have accessible parking permits have visible and/or invisible disabilities. Some of us judge only by appearances to make up our minds whether people should qualify for an accessible parking placard. Through the years, I have had both visible and invisible disabilities. I used a wheelchair and crutches for almost a year and never received the looks or stares from the public questioning whether I was justified in parking in an accessible parking space. I now have invisible disabilities, which also qualify me for an accessible parking permit. I cringe when someone verbally groups people with invisible disabilities together and says, “Just look at them, you can tell they are not disabled!” I admit, I thought the same thing about people with invisible disabilities many years ago. I stereotyped people with disabilities and had my own visual expectation of what a disability should look like. I was wrong!

An injury or illness that causes an individual to be unable to walk very far may not be obvious, as a prosthesis or healing injury may be hidden under clothing. Some people cannot walk 200 feet because of a transplant, breathing difficulty, recent surgery, etc. I am sure that well-meaning people have reported or personally addressed legitimate permit holders. In other words, because they could not see the disability, they did not feel the person qualified for an accessible parking permit.

Origin of Accessible Parking

People with disabilities obtained the right to park in Accessible Parking spaces with the signing of the Americans with Disabilities Act (ADA) 25 years ago. Thanks to this law, people with visible and invisible disabilities are qualified for services that help level the playing field in life. 28 C.F.R. Part 36, App. A., Section 4.6, of the ADA speaks directly to parking and passenger loading zones. Approximately 53 million Americans have one or more physical disabilities. Prior to the enactment of the ADA, people with disabilities did not have protections under the law to ensure that they had access to the same services as a non-disabled person. This section set into motion the creation of parking spaces reserved for drivers with disabilities. The law determined that the spaces needed to be on the shortest route to an entrance, which meant that they were the closest spaces to the entry of the business. It also determined that the spaces needed to be wider than regular parking spaces with an aisle next to them and that the spaces cannot be on a steep slope and need to be designed as accessible parking.

Accessible Parking
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Donation

South Dakota Advocacy Services (SDAS) recently received a $387.00 donation from First National Bank in Pierre, SD, and its employees. The employee portion of the donation, $287, was raised by staff paying quarters every time they purchased a soda and/or coffee and through proceeds of the bank’s Casual Friday program. The donation will be used by South Dakota Advocacy Services to advocate for individuals with Autism and their family members. Tim Neyhart, SDAS Executive Director, said, “SDAS benefits from donations such as this. These funds are non-restricted funds, which means they are not tied to the federal grants. These funds will be used for things like monitoring the legislative process, allowing participation in rules committees, and other key activities related to individuals with disabilities.” If you or your organization would like to donate to SDAS, please contact Neyhart at 1-800-658-4782.

Pictured, left to right, are Matt Judson, Gail Eichstadt, Tim Neyhart, and Ron Wagner. Judson is the Branch President and Wagner is a Loan Officer at First National Bank in Pierre; Eichstadt is the Sr. Attorney at SDAS in the Pierre office and Neyhart, also located in Pierre, is the Executive Director of the Agency.
The Power of Pets

Pets may just help with Autism Spectrum Disorder
by Norma Vrondran

For decades, science has shown that interacting with pets can have many health benefits, such as lowering blood pressure and cholesterol, a tendency to increase exercise, and a decrease in stress. Early studies are now discovering that children with Autism Spectrum Disorder (ASD) may benefit from pet interaction by showing increased positive social behaviors when they are with animals. Some of the improved behaviors included increased talking, physical contact, and eye contact, while showing less negative behavior such as crying, frowning, and whining. Although a relatively new area of practice, animal-assisted therapies have shown to be beneficial to its participants.

What is the difference between a Service Dog, a Therapy Dog, and an Emotional Support/Companion Dog?

The Americans with Disabilities Act describes a Service Animal as any animal that has been individually trained to provide assistance or perform tasks for the benefit of a person with a physical or mental disability. Service Dogs (also called Guide Dogs) are specifically trained to perform work or tasks directly related to the handler’s disability. For example, if a child with ASD has a compulsive behavior, such as darting out into traffic, a Service Dog could be specifically trained to help with personal safety by preventing a child from bolting into traffic or wandering off (specifically trained to perform work or a task). This dog is considered a Service Animal because it is trained to help with personal safety. Service Dogs are allowed in both housing and public places.

A Therapy Dog is trained to provide comfort and affection to people in long-term care, hospitals, retirement homes, schools, mental health institutions, and other stressful situations including disaster areas. Therapy Dogs provide people with and without disabilities with animal contact. They may work in animal-assisted activities and animal-assisted therapy. Therapy Dogs are often owned by the person handling them and are considered the handler’s pet. Therapy Dogs are allowed in housing under the Fair Housing Act (FHA), but, unlike Service Dogs, may not be permitted in public places. A Therapy Dog may or may not have special training.

Companion Dogs, unlike Guide Dogs, are there more for emotional support. For children with ASD, the belief is that it gives the child a focal point. A trained Companion Dog can be the link between a child with ASD and the world around them. Companion Dogs are kind, gentle, and show unconditional love and patience by being tolerant of children who may make noises, are non-verbal, or have compulsive behaviors. Companion/Emotional Support Dogs are also allowed in housing under the Fair Housing Act, but may not be permitted in public places.

The data collected is promising. However, experts warn that these studies and results are preliminary. Each child’s sensitivities and family dynamics need to be considered. There is no one-size-fits-all solution. Long-term results will also need to be studied and discussed.

Accessible Parking
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South Dakota’s requirements for disabled plates/placards

To qualify for “disabled parking” placards and license plates in South Dakota, one must have a physical disability that limits or impairs his or her ability to walk. A licensed physician must certify that the person meets one or more of the following criteria:

- Cannot walk 200 feet without stopping to rest;
- Cannot walk without the use of or assistance from a brace, cane, crutch, another person, a prosthetic device, wheelchair, or another assistive device;
- Is restricted by lung disease to such an extent that the person’s forced (respiratory) expiratory volume for one second (when measured by spirometry) is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
- Uses portable oxygen;
- Has a cardiac condition to the extent that the person’s functional limitations are classified in severity as Class III or Class IV according to the American Heart Association leaflet, “The Functional and Therapeutic Classifications of Patients with Diseases of the Heart” (printed June 1, 1990); or
- Is severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.

Blindness or impaired vision by itself is not a valid criterion to receive disabled reserved parking privileges.

Applying for Permits and License Plates

Submit a completed Physically Disabled Parking Permits and License Plates application to your local county treasurer’s office. *(Taken directly from the SD Department of Revenue web site under Disability Parking.)*

Violations

There are multiple sites on the Internet that speak to the misuse of accessible parking permits. A few examples of placard misuse are:

- using a deceased person’s disability parking placard;
- borrowing a friend’s disability parking placard;
- using a photocopy of a disability parking placard; and
- altering the expiration date on the disability parking placard.

Accessible Parking
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South Dakota Governor, Dennis Daugaard, told the over 350 people who attended the 23rd annual graduation for Partners in Policymaking, “You are the people who will make things happen. You are the ones who can make the difference.” The Governor addressed the 26 graduates from the Class of 2015 and guests at the Ramkota Inn in Sioux Falls on April 25, 2015. The Governor was awarded the annual Protection & Advocacy Developmental Disabilities (PADD) Program Legislative Advocacy Award for his work in helping to secure employment for South Dakota citizens with disabilities. During his address, the Governor noted the importance of gatherings and training events such as Partners in Policymaking: “If we want to make a difference and change attitudes, we all need to join together and start with the basics and this is the place to make it happen. Individuals with disabilities can, and WILL be successful employees.”

Governor Dennis Daugaard

Partners in Policymaking in South Dakota is sponsored in part by grants from the South Dakota Council on Developmental Disabilities, USD Center for Disabilities, and South Dakota Parent Connection. Other funding sources are three programs from SD Advocacy Services --- Protection and Advocacy Developmental Disabilities, Protection and Advocacy for Individuals with Mental Illness, and Protection and Advocacy Individual Rights. National and state speakers include, Jonna Powell, Char Steuck, and D.J. Titus of Pierre; Wendy Figland, Mitchell; Theodora First In Trouble, White River; Jill Furun and Crystal Reuter, Sioux Falls; Howard Green, Zach McFail, and Anthony White of Hot Springs; Carrie King, Tea; Tania Kostal, Tyndall; Ethel Left Hand Bull, Harrold; Kraig Leichtenberg and Mindi Noisy Hawk, Huron; Janessa Longbrake Hughes, Ft. Pierre; Joyce Molitor, Custer; Monique Runnels, Mobridge; Jill Trego, Aberdeen; and Kandi Weismantel, Aberdeen.

Elaine Roberts, Executive Director of SD Parent Connection, was the keynote speaker. She congratulated the class on their many accomplishments and thanked the class for including her in the festivities. “I enjoy it every time I get to be involved with this fantastic training. Partners not only complete the course with self-esteem and empowerment, but graduates of this program grow and change and tackle obstacles and challenges with confidence and success.”

Governor Dennis Daugaard

Lorri Bohm with Tim Neyhart

Honored guests in attendance included House Majority Leader, Rep. Brian Gosch, of Rapid City; Kati Seymour of Rapid City, representing Senator Partners in Policymaking

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Partners in Policymaking
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Mike Rounds; and Taylor Hoekstra and Andrew Curley of Sioux Falls, representing, respectively, Senator John Thune and Representative Kristi Noem. Receiving special recognition was Lorri Bohm of Crooks, who received the Robert J. Kean Advocacy Award, which is given by the Board of Directors of SDAS. Cabinet Secretaries from the Department of Human Services (Gloria Pearson) and Department of Health (Kim Malsam-Rysdon), along with Division of Developmental Disabilities Director, Dan Lusk, and Assistant Director, Daryl Milner, were also present at the festivities.

Several legislators were in attendance, including State Representatives: Paula Hawks, Hartford-District 9; Kris Langer, Dell Rapids-District 25; Mathew Wollman, Madison-District 8; Jim Bolin, Canton-District 16; Roger Hunt, Brandon-District 26; Isaac Latterell and Herman Otten, Tea-District 6; David Anderson, Hudson-District 16; and from Sioux Falls, Arch Beal, District 12; Mark Willadsen, District 11; Larry Zikmund, District 14; Jim Stalzer, District 11; Steve Westra, District 13; and Don Haggar and Steve Haugaard, District 10.

Partners in Policymaking is conducted by SD Advocacy Services (SDAS). Sandy Stocklin Hook of Pierre is the project coordinator. She noted, “We now have 557 individuals who have completed Partners in Policymaking training. Their voices are being heard!” Stocklin Hook also commented, “We strongly believe that individuals who use services should have a major role in determining what services they are being provided and how they are delivered. It is really exciting to see the Partners’ enthusiasm and commitment to improving national, state and local services.” Tim Neyhart, Executive Director of SDAS, noted, “Partners is a training event that is growing in stature and being recognized as one of, if not the premier advocacy effort in the state.”

Class Speaker - Caty Clement

Class Speaker - John Hodgson

Kraig Leichtenberg

Class Speaker - Monique Runnels

gather all graduates with the current class and offer continuing education and networking. Once a Partner graduates from the course, they are not forgotten,” commented Emily Garcia of Pierre, PADD Program Director for South Dakota Advocacy Services.

Class Speaker - Wendy Figland

Year Twenty-four of Partners in Policymaking will begin in November 2015. Applications are due September 20, 2015. For more information on the program, contact Sandy Stocklin Hook, SD Advocacy Services, 221 S. Central Ave., Pierre, SD 57501, or call 1-800-658-4782. Or you can visit the SDAS website at www.sdadvocacy.com or email hooks@sdadvocacy.com.
South Dakota Advocacy Services  
221 S. Central Avenue, Suite 38  
Pierre, SD 57501  
(605) 224-8294 or  
1-800-658-4782  
FAX: (605) 224-5125  
Email: sdas@sdadvocacy.com  
Website: sdadvocacy.com  

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Accessible Parking  
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Violate laws for Accessible Parking? Ouch! The fines are significant!  

Persons are required to surrender their accessibility plates or placard to the county treasurer’s office within 30 days when they no longer qualify as a person with a physical disability. Failure to do this may result in a Class 2 misdemeanor with up to 30 days in jail and/or a $200.00 fine. If the person is deceased and another individual is using the accessible plates or placard, these fines would apply to the person doing the illegal activity.

It is illegal to park in a designated space designed for accessibility parking. If one is found guilty, it is a Class 2 misdemeanor and the minimum fine is up to $100.00. Anyone who does not have a physical disability who uses another person’s accessibility permit is violating the law.

The enforcement of accessible parking is taken seriously; however, in some communities where people are required to pay to park their vehicle, a trend is developing where non-disabled people are parking in accessible parking spaces. The cost of parking in large communities, such as the Twin Cities, is substantial. Renting parking space comes at a premium cost and therefore parking in an accessible parking site seems like an easy way to save money. To send a loud message to violators in these situations, the fine for violating the accessibility parking provisions has been increased to $500.00 in some states, which can include jail time!

If anyone suspects a violation of accessible parking, one should write down the license number and the accessible parking number on the placard and report it to the police or Department of Motor Vehicles. It is not a perk to receive an accessible parking license or placard; it is a legal right.

For more information on accessible parking, please contact South Dakota Advocacy Services at 1-800-658-4782.

Calendar  
• August 4, 2015 - Presentation to Food Allergy of South Dakota on Section 504, Embrace Church (57th & Southeastern), 7:00 p.m., Sioux Falls  
• August 19, 2015 - PADD Advisory Council, 7:00 p.m.  
• September 3, 2015 - Governor’s Award Presentations, 10:00 a.m., Capitol Rotunda  
• September 18-19, 2015 - SDAS Board of Directors Meeting, Pierre  
• September 20, 2015 - Partners in Policymaking Application Deadline  
• October 12-14, 2015 - Vocational Rehabilitation Fall Conference, Sioux Falls