



Disability Rights
South Dakota

South Dakota REPORT

Advocating the Rights of South Dakotans with Disabilities

THE PROTECTION AND ADVOCACY SYSTEM FOR SOUTH DAKOTA

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The struggle of a “Hidden Disability”

by C.J. Moit

A person’s disability is as unique as his or her finger print. A diagnosis does not make people who they are, but simply provides insight that assists in navigating through their daily lives. A person who is visually impaired may use a white cane or service animal to travel safely down the sidewalk. A person who is deaf may read lips and use sign language to communicate. Persons with cerebral palsy may need to use a wheelchair to move throughout their surroundings. When meeting someone who uses assistive devices, people are immediately aware that the individual has a disability.

You hear a child screaming and crying in a grocery store and may think to yourself, “What is wrong with that child? Why doesn’t the parent do something? I would never allow my child to act that way.” What you do not know is that the child is overwhelmed by the lights, noise, and crowds because she has Autism and is only able to vocalize her discomfort through crying.

You see an older man, alone, going into a children’s movie at the theatre. You wonder why he is there if he does not have a child with him. You may begin to make some assumptions. What you do not know is the man has an intellectual impairment and prefers the children’s movies to the other selections which may feature violence or horror.



Partners in Policymaking Year 26 with Governor Dennis Daugaard

You are visiting with a young lady in a line at a local coffee shop. She looks at the money in her wallet and counts it several times. You try to act like you don’t notice, but think it is a little strange. What you do not know is the young lady struggles with Obsessive Compulsive Disorder (OCD) and worries she may not have the right amount of money to pay for her order.

These are examples of what are known as *Hidden* or *Invisible* disabilities. Hidden disabilities are those not immediately apparent to others. It is

estimated that ten percent of people in the United States are diagnosed with a

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Hidden Disabilities

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condition that is not readily observable. Individuals with hidden disabilities work, live, and play in our communities. There is a very high probability your neighbor, co-worker, acquaintance, child's school-mate, or teacher will have a hidden disability.

The Americans with Disabilities Act of 1990 (ADA) defines an individual with a disability as a person who: Has a physical or mental impairment that **substantially limits one or more major life activities**; has a record of such an impairment; or is regarded as having such an impairment. 42 U.S.C § 12102 (2008).

People with psychiatric disabilities make up a large segment of the population with hidden disabilities covered under the ADA. Many individuals with diagnoses such as depression, attention deficit disorder, OCD, schizophrenia, or agoraphobia qualify for disability benefits, yet the impairments are not readily observable simply by looking at the individuals.

Hidden disabilities can make performing everyday tasks extremely difficult, if not impossible. This can be compounded by facing the uphill battle of having to prove one has a disability, as persons with hidden disabilities may be accused, at times, of faking, seeking attention, or imagining their daily struggles.

Hidden disabilities can manifest at any time throughout a person's life for a variety of reasons. Some people are born with disabilities that are not easily observed. Other people may have a disability that occurs due to a traumatic brain injury or a stroke. Many physical impairments (e.g., heart conditions or other health conditions) tend to develop in the later years of a person's life. Because they are not obvious to spot, hidden disabilities may be overlooked and misunderstood, leading to discrimination or exclusion.

There is crucial need for awareness and to change how society views individuals with hidden disabilities. These changes can be started by people telling their stories to help educate and encourage understanding. Individuals with hidden disabilities often worry about being labelled and regularly will go to work or school when not feeling well. They too often are afraid to ask for assistance when they need it. Removing the social stigma involved with talking about an invisible disability will create an environment of openness. By talking about hidden disabilities, we break down barriers enabling individuals to ask for the help they may need.

Every person is exceptional. To make general statements concerning the enablement of all people limits us wholly. It is important to change the way we talk and think about hidden disabilities. Open communication and open minds are vital to ensuring all individuals are treated equally.



"It is not our differences that divide us. It is our inability to recognize, accept, and celebrate those differences."

— Audre Lorde, Our Dead Behind Us

Disability Rights South Dakota (DRSD) 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. DRSD 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 DRSD services and priorities are welcome.

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Keeping Children Safe Online

by Marie McQuay

It takes a village to watch out for our children in this digital age we live in! We, as parents, grandparents, relatives, and friends need to keep our eyes and ears open to keep our children safe. You say, what can possibly happen? The answer is EVERYTHING! When children go online (or anyone for that matter), they leave a digital footprint that can leave them susceptible to cyberbullying, sextortion, pornography, privacy breaches, and inappropriate content. Digital footprints are left when we view videos, participate in blogs, text, use search engines, share photos, go on websites, make purchases, do online postings, and participate in gaming activities. Once a person's information is out there, it cannot be recalled. Servers in foreign countries also have access to our information once we leave that digital footprint! Search engines want our information because they have companies beneath them that get access to sites you have visited. Have you ever wondered why some product you have researched online will pop up when you visit other websites? It is because these companies have gotten access to your information through search engines, like Google, Bing, etc.

Detectives Elliot Harding and Jeremy Stauffacher with the Rapid City Police Department packed a lot of information into a one-hour presentation sponsored by the Western SD Child Protection Council's Education and Awareness Committee. The presentation focused primarily on sextortion, sexting, and cyberbullying. The information in this article is taken from their presentation, "Keep Children Safe Online," and information they have accessed through www.Netsmartz.org.

Everything is done online today, including communicating with others, gaming, social media, research, hobbies, etc. Every device goes online, such as gaming devices, e-readers, iPads, computers, laptops, iPods, and mp3 players. The ability to chat with other players exists in online games such as Minecraft, Xbox, PlayStation, and many others, which makes our children vulnerable to sexual predators. Children with disabilities may be more susceptible due to being more easily influenced, not understanding consequences, or the desire for social acceptance – the same reasons every child is susceptible, but more-so.

Even if children receive plenty of attention from their families, they might still crave attention from others who they feel are older and more mature. Sexual predators on the Internet will offer children special attention and flatter them in an attempt to coerce them into sexting or even sexual acts. If children know they are disobeying their parents by not following rules, they may be reluctant to confide in their parents if they are being lured by a sexual predator for fear of being punished. Many children are taught to respect their elders, so they may be more likely to follow directions given to them by adults. An adult who is looking to harm children may be able to exploit them or influence them easily because of the children's lack of maturity. Some signs to look for that may indicate your child is being lured by an online predator are:

- 1) Your child becomes withdrawn and isolates from family and friends;
- 2) You find inappropriate material or websites visited on the computer;
- or 3) Your child receives mail, money, or various gifts from people you do not know.

Do you know how to recognize cyberbullying? Examples of cyberbullying are: 1) Recurring cruel comments that are posted on social media sites, such as Facebook and Ask.Fm; 2) Embarrassing pictures posted to Instagram and then forwarded to others via cellphone; and 3) Texts that are threatening and harassing that your children receive at all hours of the day and night. Adults should have a conversation with children that it is okay to dislike people, but it is not okay to bully them. If children see evidence of bullying online, these rules should be followed: 1) It is not okay to "like" or share it. Think about how you would feel if it was you being bullied. 2) Do not under any circumstances send a mean comment back, as this will only make the situation worse. Instead, save the evidence and report it. 3) Stand up for those being bullied by posting nice comments.

Sexting is sharing and/or receiving sexually explicit messages and/or nude or partially nude images on cellphones. Sexts can be sent as ordinary text messages or through various apps, such as Snapchat, Kik, and WhatsApp. Sexting is a misdemeanor crime; teens convicted of sexting usually go through a juvenile diversion program. Teens have become desensitized to taking photos of themselves and sharing them on social media. In fact, dating now often consists of sending photos back and forth, as opposed to doing things together like going to a movie. Teens sext for many reasons, such as: 1) Trying to establish intimacy; 2) Trying to be funny; 3) Because all the popular teens are doing it; 4) The person asking for the photo threatens to harm himself or herself if a photo is not sent; 5) They are attention seeking; or 6) They are being threatened or pressured by boyfriends or girlfriends that they will break up with them if they do not send a nude photo. The victims may naively believe that their photos will not be shared with others, but when the photos are shared, the consequences can be devastating for a teen. If your child receives a nude photo, delete it or report it so detectives can get involved. The detective will take the information to the judge, who will decide if a search warrant will be issued. Teens should be made to clearly understand that there are severe consequences if they send or forward a sext. Teens who sext may be suspended from or removed from athletics in school, miss out on future opportunities for college or employment, be socially ostracized, bullied, or harassed, or get into legal trouble. **NEVER ALLOW YOUR CHILDREN TO HAVE THEIR CELL PHONES IN THEIR BEDROOMS AT NIGHT**, as 99% of sexting happens during nighttime hours.

Sextortion is a serious crime that occurs when someone threatens to distribute your private and sensitive materials if

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Avoiding Mental Illness Stereotypes in the Wake of Tragedy

by Katie Demaray

As America finds itself reeling from another act of violence, the nation has polarized as we try to make sense of what happened and offer solutions to try to prevent these acts from continuing to happen. A common call to action in the wake of these events is the need for improved and more accessible mental health treatment and care. This is a call to action that many people are eager to get behind and support; it is a call to action that transcends geographical location, political affiliation, and economic status, as it impacts most people either directly or indirectly. Our nation certainly needs more accessible and improved mental healthcare, but it also needs to avoid another common rhetoric that happens in the wake of these tragedies - the perception that individuals with mental illnesses are violent.

According to the National Alliance on Mental Illness (NAMI), 43.8 million Americans experience mental illness in a given year, with 10 million of those Americans living with a severe mental illness. When those numbers are compared to acts of violence, including, but not limited to, firearms, only approximately 4% of all violence is attributable to a severe mental illness; many mental illnesses such as anxiety, depressive, and attention-deficit disorders, have no correlation to violence at all. These statistics are important because it highlights that the prevalence of violence caused by individuals with mental illnesses is extremely low, yet the public perception can, at times, be quite the opposite. This leads to a fear of individuals with a mental illness; a fear that could lead to the return of pre-Olmstead ideas and policies that infringe on the rights of individuals diagnosed with a mental illness. Individuals with mental illness have the right to live and work in their communities and exercise most of the same rights that individuals without a mental illness

exercise, which in many cases can include their Second Amendment rights. The Bureau of Alcohol, Tobacco, Firearms and Explosives only prohibits individuals who have been “adjudicated as a mental defective or has been committed to a mental health institution” or “is an unlawful user of or addicted to any controlled substance” from purchasing firearms on the grounds of mental illness. It is important to remember that a mental health diagnosis does not necessarily revoke this right or infer that someone would be dangerous or irresponsible with a firearm.

Individuals with mental illness should not be feared. In fact, individuals with certain mental illnesses are up to 130% more likely to be subjected to violence than members of the general public. So, as our nation continues to try to find solutions to acts of violence, it is crucial that we continue to protect individuals with mental illness from unfair labels and preconceived notions

that mental illness causes violence. It is important to remind ourselves that 96% of violence is not attributable to mental illness and we cannot let misinformation and fear encroach on any rights of individuals with a mental illness.

Sources:

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Varshney, M.; Mahapatra, A.; Krishnan, V.; *et al*, Violence and mental illness: what is the true story? *J Epidemiol Community Health* 2016; 70:223-225.

<https://www.nami.org/NAMI/media/NAMI-Media/Infographics/GeneralMHFacts.pdf>

<https://www.atf.gov/rules-and-regulations>

New Administrative Assistant in Sioux Falls Office

Diane Wurtz joined Disability Rights South Dakota as Administrative Assistant in our Sioux Falls office on January 30, 2018. She replaces Debbie Ellingson, who left DRSD in early January.

Diane grew up in Lake Geneva, WI, and attended college at Southern Methodist University in Dallas, TX, for two years. She then lived in several states, from California to Georgia, where she married and started a family. Joey, 24, graduated from USD (Go Yotes!) with a degree in Marketing. Emily, 20, works as a chef in Sioux Falls. Diane worked as a Realtor for fourteen years before joining DRSD. She enjoys reading, swimming, cooking and taking care of her ShihPoo puppy, Bananas.

Diane is thankful and excited to be a valued member of the DRSD family.



Diane Wurtz

Legal Pull-out Section

March 2018

Supported Decision-Making – An Alternative to Guardianship

by John A. Hamilton

Volume 28, Issue 1, of the *South Dakota Report* contained an article discussing the transfer of parental rights at age of majority. 34 C.F.R. § 300.320(c) requires that at least one year prior to a child with a disability reaching age of majority under state law, the IEP must include a statement that the child has been informed of what rights will transfer. Since the age of majority is eighteen in South Dakota, the IEP must include such a statement prior to the child's seventeenth birthday. The article further discussed how, under 34 C.F.R. § 300.520, when a child reaches the age of majority, the school district must provide notice to the student and parents that all rights accorded parents under Part B of IDEA have transferred to the child (including children who are incarcerated), except when a child has a guardianship that takes effect at age of majority.

The emphasis of that article was the *content* of what students and parents are told. The State Department of Education's technical assistance guide to IEPs and its Parental Rights document emphasize the required timelines for notice (as set out above), but they provide little-to-no direction on the content of the discussion that must take place. The article discussed how the notice of transfer of rights can be made more meaningful for both students and parents based on the content of the discussion. The article closed with a section on whether guardianship is appropriate. This article picks-up where the first article left off, specifically discussing aspects of guardianship in more detail and emphasizing alternatives to consider prior to guardianship (Supported Decision-Making and Power of Attorney), how transition services can and should foster such alternatives, and closes with a discussion of the Jenny Hatch case.

For years, DRSD has heard concerns from several other States that schools inform parents they *must* obtain guardianship when their child turns age eighteen. In South Dakota, however, DRSD has often heard that parents are not informed *enough* about guardianship or alternatives from schools. DRSD has not promoted guardianship, but rather the emphasis has been on education - to make sure parents are aware of that option and to make sure parents who believe a guardianship is needed are informed of what they need to do if they want the guardianship in place when the child turns age eighteen. If parents in South Dakota believe they are not informed enough about guardianship, it is a safe bet they are also not sufficiently informed of alternatives to

guardianship. Alternatives, such as Supported Decision-Making, can be part of a child with a disability's transition services.

Supported Decision-Making

Supported Decision-Making (SDM) is the process of assisting persons with a disability to make their own decisions so they can develop and pursue their own goals, make choices about their life, and exercise some control over the things that are important to them. SDM is a process that can be used in both the educational context and for adults with disabilities. SDM provides for a team approach to decision-making. The person with a disability chooses who he or she wants on his or her SDM team and a written agreement is made on the type of decisions in which each team member will assist. The "team" may be one person or several, based on the needs and desires of the individual.

SDM is an important process for persons with disabilities because it allows for self-determination. In the United States, every person is born with unalienable rights – to life, liberty, and the pursuit of happiness. Having rights means having the ability to make choices and make decisions. Having the ability to make choices is called self-determination. Touting that one has rights is meaningless if one is not allowed to actually use them. When people are not allowed to make their own choices, they are stripped of self-determination. It stands to reason if one is stripped of the ability to make decisions about his or her life, that would certainly affect one's self-esteem. One would probably feel helpless, angry, or any number of negative emotions since one would no longer be able to make decisions about one's own life. That is what guardianship does and why it is important to always identify and consider less-restrictive alternatives prior to commencement of guardianship proceedings.

SDM can help individuals with disabilities to understand information, issues, and choices so that they may weigh their options. It ensures decisions are based on the individual's own preferences. It helps individuals with disabilities to make informed choices. All forms of SDM preserve individuals' right to make choices because it allows persons to receive the amount of support needed without giving up the right to make choices. "Supported Decision-Making has the

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Supported Decision-Making

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potential to increase self-determination of older adults and people with disabilities, encouraging and empowering them to reap the benefits from increased control, independence, employment, and community integration.” (Blanck & Martinis, 2015).

The concept of Supported Decision-Making should not sound foreign because it is something the general public utilizes every day. At work, it is common to run something by a co-worker or supervisor before proceeding. At home, it is common for one spouse to get the opinion of the other before making purchases. In the community, it is common to take a friend shopping to get input prior to purchasing a new dress. It is certainly common to consult with professionals, such as an investment broker prior to purchasing investments, an attorney to help understand legal documents, and a doctor to diagnose and explain/treat medical conditions. The examples are endless in terms of how people informally utilize a form of Supported Decision-Making on a day-to-day basis. On the other hand, SDM is a foreign concept for many people with disabilities because most often people are making decisions for them.

SDM in the School Setting

Jonathan Martinis, Senior Director for Law and Policy at Burton Blatte Institute, Syracuse University, describes the IEP as a “laboratory for Supported Decision-Making.” One need not look any further than the “purposes” of IDEA to begin understanding what he meant. One of the purposes is “to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs *and prepare them for further education, employment, and independent living.*” 34 C.F.R. §300.1 (emphasis added). It is the school’s job to prepare students with disabilities for further education, employment, and independent living. Self-determination is the ultimate goal of education. In other words, the purpose of the school system is to teach and prepare all students for the next part of their lives, whether that be further education, employment, enlistment, living independent living, etc., and being able to weigh and make those choices. Clearly, being able to live independently involves much more than learning how to run appliances, pay bills, and drive or take public transportation. To be able to live independently, students need to be taught how to exercise their right to make decisions. They need to be taught self-determination.

Transition planning and services are the most important part of the IEP process. Students with disabilities are eligible to attend school through the year in which they turn age twenty-one in South Dakota, unless they have graduated with a signed diploma. Appropriate transition services are vital because they are supposed to provide students with the skills they will need to navigate life for the next 50+ years! It is the school’s job to help students acquire the skills they need to live each day once they leave the school system. Transition services are required to be contained in the IEP that is in

place when students turn age sixteen (or younger if appropriate). It is vital that transition services begin when required. Over the years, it was common for DRSD to hear from parents or school personnel that a school district does not provide actual transition services until the student’s last year of school. School districts have been required to provide transition services beginning at age 16 (or younger) for 28 years (since 1990), yet just last month DRSD heard again of a district that fails to provide *any* transition services until students are nearing their eighteenth birthday and the services the district eventually provides do little to prepare the students for adult life. Districts that fail to prepare students for further education, employment, and independent living through transition services are failing to meet the purpose of IDEA and violating the law.

Transition services are a coordinated set of activities designed to be within a results-oriented process that is focused on improving the academic and functional achievement of the child to facilitate the child’s movement from school to post-school activities. It includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. 34 C.F.R. § 300.43(a). Daily living skills certainly includes the skills needed for self-determination. For any student at or approaching transition age, it is important that parents ask the school what it has for a self-determination curriculum. How is the district teaching the student to live independently and how is self-determination part of that instruction? If self-determination is not part of the curriculum, the school is probably not properly preparing the student for adult life and thus not meeting the purpose of IDEA.

Schools should be helping students in their ability to set goals, solve problems, make decisions, and advocate for themselves. Schools should also provide students the opportunity to utilize these skills as part of their transition services. If a school says at age eighteen that a student is unable to make decisions, it would be fair to ask what special education and related services have been provided for the past two years to help the student acquire the daily living skill of decision-making? When IDEA’s parental rights transfer to students at age eighteen, students become responsible for making informed decisions regarding all aspects of their educational programming. That is why it is vital that students with disabilities be taught self-determination in the years prior to turning age eighteen.

Going back to Mr. Martinis’ statement about IEPs being a “laboratory for Supported Decision-Making,” there is a lot to that statement. The IEP process, probably more than any other, is set up to not only foster Supported Decision-Making, but *is* a form of Supported Decision-Making when students are allowed to lead the IEP Team meetings. Student-led IEP meetings was supposed to be a logical outcome of the addition of Transition Services to IDEA in 1990, but its use is not widespread. For students with disabilities, success

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Supported Decision-Making

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in life can often be associated with the ability to self-advocate and make decisions (self-determination). Preparing students to lead IEP meetings provides a perfect opportunity to learn and practice these critical life skills. Conversely, if students attend IEP meetings, but have little involvement, the student learns only that his or her voice does not matter and all the adults will make decisions *for* the student.

Student-led IEP meetings fit squarely into the SDM process. Transition services require taking into account “the child’s strengths, preferences, and interests.” The IEP process comes with a team of professionals who can provide students the information needed to make informed decisions. If students are provided the training and supports needed to lead the IEP meeting, this would allow the student to identify goals, including goals/outcomes for post-school activities (such as those set out in the federal regulations - postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and/or community participation). It would assist and allow the student to identify the services the student needs to achieve those goals and outcomes. Combined with a self-determination curriculum, the IEP process should achieve helping students to set goals, solve problems, make decisions, and advocate for themselves, and provide students the opportunity to utilize these skills at the student-led IEP meetings – a laboratory for Supported Decision-Making indeed! As a bonus, the student will already be familiar with SDM as the student leaves the public school, should it be needed in other settings. There is plenty of material available on how to teach and prepare students to lead their IEP meetings, as well as studies on the benefits of student-led IEP meetings.

Power of Attorney

Another alternative to guardianship is the Power of Attorney (POA). The POA originated out of necessity in the area of business. A business owner could not possibly meet with and sign contracts with all customers, so the owner gave authority to do so to other employees. The other employees were deemed to be acting on behalf of the owner. This became known as “agency law.” In this example, the owner would be the “principal” and the employee would be the “agent” or “attorney-in-fact.” The original type of POA would end if revoked by the principal or upon death or incapacity of the principal.

The concept of agency law spread outside of the employment realm and a new type, called a “Durable Power of Attorney,” was established. The idea behind this type was to allow the agent/attorney-in-fact to be able to act on behalf of the principal even after the principal’s incapacity. South Dakota first established the Durable POA in 1977. It must be in

writing and contain specific language conveying intent that authority is exercisable despite the principal’s incapacity. It may grant current authority that extends beyond the principal’s incapacity - “This power of attorney shall not be affected by disability of the principal.” It may also grant authority only upon the principal’s incapacity, which is referred to as a springing authority - “This power of attorney shall become effective upon the disability of the principal.”

The Durable POA allows for additional authorities beyond ability to contract. South Dakota law gives the principal the authority to nominate a guardian or conservator should proceedings concerning the principal take place. SDCL § 59-7-2.4. It may allow the attorney-in-fact to make health care decisions, including admission to and custodial care provided by a licensed health care facility. The Principal can also give authority to consent to, reject, or withdraw consent for medical procedures, treatment, or intervention (SDCL 59-7-2.1) and make health care decisions relating to nutrition and hydration (SDCL 59-2.5-2.7).

A Durable POA is an attractive alternative to guardianship because it does not require a court hearing or court involvement and because of the flexibility in the types of authority it authorizes. In an education setting, a student of age of majority with capacity to understand what he or she is signing could sign a Durable Power of Attorney giving a parent or other individual the authority to act on his or her behalf. The POA could, of course, extend beyond educational decisions to any or all other aspects of the student’s life. The student could make the decisions the student chose to and defer others to the person(s) selected under the POA. A POA is a much less expensive alternative than guardianship since it does not require going to court. The principal retains authority to make decisions, so unlike a guardianship, there are no rights affected. Essentially, it provides for a substituted decision-maker should the principal become unable or unwilling to make decisions.

A Durable POA can be used in conjunction with SDM. A POA is another alternative schools should discuss when providing the initial notice of transfer of parental rights.

Guardianship

Guardianship should be considered *only* after lesser restrictive alternatives have been considered and preferably tried. When a guardianship is put in place, it should be limited to only those areas where the individual actually needs the assistance of a guardian. South Dakota statutes recognize that the need for a guardian should not be automatically assumed and promote considering less restrictive alternatives.

South Dakota’s guardianship statutes require that lesser restrictive alternatives be considered at two steps in the

“The typical ward has fewer rights than the typical convicted felon By appointing a guardian, the court entrusts to someone else the power to choose where they will live, what medical treatment they will get and, in rare cases, when they will die. It is, in one short sentence, the most punitive civil penalty that can be levied against an American citizen.” (House Select Committee on Aging, H.R. Rpt. 100-641 (opening statement of Chairman Claude Pepper)).

Supported Decision-Making

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Supported Decision-Making

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process. Prior to a guardianship hearing, there must be an evaluation. SDCL 29A-5-306 requires that “the evaluation report provides to the court an idea of whether the provision of additional services would avoid the necessity of an appointment.” It requires that the evaluator provide an opinion if a guardian/conservator is needed and, if so, the type or scope. SDCL 29A-5-312 directs the courts’ consideration of the case, stating, in part: “The determination as to whether a guardian or conservator will be appointed, the type thereof, and the specific areas of protection, management and assistance to be granted, shall be for the court alone to decide. In making that determination, the court shall consider the suitability of the proposed guardian or conservator, the limitations of the person alleged to need protection, the development of the person’s maximum feasible self-reliance and independence, the availability of less restrictive alternatives, and the extent to which it is necessary to protect the person from neglect, exploitation, or abuse.”

Clearly, South Dakota judges must consider less restrictive alternatives prior to taking away a person’s rights. However, there have not been many options. Supported Decision-Making is gaining traction as a viable alternative to guardianship across the country. Two or three states have even passed SDM legislation, but it does not need to be in statute to be utilized, as described above. At guardianship hearings, the burden should be on the petitioner to prove a guardianship needed. The court *should* ask what else has been considered and/or tried prior to granting a guardianship.

Even when a guardian is appointed, South Dakota’s guardianship laws are geared toward maximizing and developing a protected person’s independence and self-determination, as set out at SDCL 29A-5-402, the responsibilities of the guardian:

- ◆ To be active and knowledgeable of the protected person.
- ◆ To maintain sufficient contact with the protected person to *know the person’s capabilities, limitations, needs, and opportunities.*
- ◆ To make decisions regarding the protected person’s support, care, health, habilitation, therapeutic treatment, and if not inconsistent with another order, determine residence.
- ◆ *To be guided in his/her activities only by the limitations of the protected person.*
- ◆ *To encourage, if feasible, the protected person to participate in **decision-making**, act on his/her own behalf, and develop or regain capacity to manage personal affairs.*
- ◆ *To consider the expressed desires and personal values of the protected person.*
- ◆ To always act in the protected person’s best interests.

As set out above, a responsibility of a guardian is to build a protected person’s ability. It is the guardian’s job to maximize the protected person’s self-determination and independence. The guardian should work to increase the person’s capacity for self-determination through SDM or other means.

For many, guardianship should be a way station, not the final destination, as a guardianship should be in place only so long as needed. If a lesser restrictive alternative, such as SDM, becomes a viable option, the guardianship should be terminated. Even when a guardian is appointed, it’s scope should be limited to the specific needs of the individual.

Supported Decision-Making for Adults with Disabilities

Both during and after leaving public school, persons with disabilities may work with Vocational Rehabilitation (VR) to obtain a job, regain employment, or get a better job. The VR process also is set up to provide a form of SDM. The VR counselor works with the person, gives the person information to help the person identify and choose an employment goal, the job the person wants, and the services needed to get there based on informed choice. The VR process is also a form of SDM.

For persons receiving adult services, the ISP process is also one that would allow for SDM. Most people receiving adult services, however, already have guardians. While guardians should support and encourage use of SDM as discussed above, the question that must also be answered is whether SDM is an appropriate alternative to guardianship, and if so, whether the guardianship may be removed altogether or revised to a limited guardianship.

Barriers to Supported Decision-Making

Barriers to wide-spread use of SDM are probably two-fold. One is fear of the unknown – fear of what will happen if a guardianship is removed or not put in place. The other barrier is simply that implementation of SDM would require a systemic change in how things have always been done.

Fear of the Unknown

While most people have heard of guardianship, few have heard of SDM. Parents, especially, have fears about their children with disabilities and what will happen if the parents are not in control. This fear can take several forms.

Nationwide, schools are the number one source for recommending guardianship, as parents are told if they do not get guardianship by age of majority, all rights will transfer to the student and parents will no longer be allowed at IEP meetings. While it is true that all rights will transfer, students may continue to have their parents participate in meetings and assist them in making decisions. If SDM is working as it should in the transition services process, even in situations where parents are not participating for some reason, there will be a team to assist the student in making informed decisions.

As an aside, that schools are the number one source nationwide for recommending guardianship should be cause for concern. For the entirety of the students’ education, schools stress providing services in the least restrictive environment. A purpose of IDEA is to prepare students for further education, employment, and independent living and districts are

Supported Decision-Making
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Supported Decision-Making

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required to provide transition services to achieve that purpose. The goal of education is self-determination. For schools to promote and recommend guardianship as a student is about to reach age of majority, as opposed to lesser restrictive alternatives, seems to contradict everything the school and students are supposed to be working toward through the student's transition services.

Another fear is that the person with a disability will not be "safe" without a guardianship in place. "Safety" can mean several things. It could mean safety in crossing streets or not getting into strangers' cars. It could mean safety from physical or sexual abuse. The reality is, having a guardianship in place does not place an impenetrable safety shield around an individual. A guardian typically will not be with the protected person daily, unless perhaps the person is living with the guardian. Having a guardianship in place will typically not have a direct bearing on the protected person's safety. A guardianship will not prevent a person from failing to look both ways before crossing a street. It will not prevent a person from getting into a stranger's car. It will not prevent abuse. Actually, utilizing SDM would have a much more direct effect on ensuring the person with a disability is making informed choices than simply having a guardian in place.

Another fear is that, even with SDM is in place, the person still will not make decisions in his or her best interest. If the decision on whether a guardianship is needed is conditioned only on making choices in one's best interest, everyone would need a guardian. People without disabilities make choices that are not in their best interest every day. Perhaps they eat too much ice cream or drink too much beer. Perhaps they bought exercise equipment they have never used. Perhaps they were talked into doing something by a friend or telemarketer that they later regretted. Self-determination means having the right to make choices, not the ability to always act in one's best interest.

When people without a disability make a bad decision, they may refer to it as a "learning experience." When people with disabilities make a bad choice, society is conditioned to conclude they must need a guardian. They are not allowed to learn from bad choices; rather, the right to make any choices is taken away. How can one learn from mistakes if the right to make those choices and those mistakes is taken away? The fact is, everyone makes bad choices, some more frequently than others. SDM provides the structure so that persons with disabilities are provided with information so that they can understand the issues or choices, weigh the options, and then make an informed choice based on that information and their own preferences. No, every choice may not be in the person's best interest, but if a bad choice

is made, the person may be able to learn from that mistake and not make the same choice the next time. SDM allows the person with a disability to grow as an individual through the increased self-determination.

Need for Systemic Fundamental Change

The notion that persons with disabilities are unable to make choices on their own behalf is historical – going back centuries. Supported Decision-Making is asking people and systems to change the way they have always done things. Change is always difficult, but changes in civil rights require *Fundamental Changes* in how we have always done things.

United States history provides several examples. Prior to 1776, the colonies were ruled by a king. Until 1860, one could purchase, own, and sell another person. Prior to 1919, women could not vote. Until 1990, persons with disabilities had no rights (except against federally-funded entities). While SDM is growing, widespread use of SDM instead of guardianship would

also require a fundamental change to how we have always done things. Jenny Hatch started that fundamental change in 2013.

Justice for Jenny

Margaret Jean (Jenny) Hatch won the first court case in the country where Supported Decision-Making was ordered by the court. Jenny was about 28 years old and had lived in a group home. She has Down syndrome and her IQ had been evaluated to be about 50. Jenny had signed a POA giving her parents (mother and step-father) authority to make certain decisions and she had a third-party representative payee. Jenny had worked at a thrift store for five years and become friends with the owners, Jim and Kelly. Jenny hated living in the group home. A car hit her while she was riding her bike and she needed surgery. After the surgery, Jenny revoked the POA and she began living with Jim and Kelly. Her parents filed a petition for guardianship. The court granted an agency, Jewish Family Services (JFS), temporary guardianship until the case could be heard. Jenny was forced back into a group home and was not allowed to work at the thrift store. JFS took away her cell phone and laptop computer and restricted her visitation. All visitors had to first fill out a visitation form and be approved; all visitors were also forbidden from discussing the guardianship case with her. Because the temporary guardian would not allow Jenny's attorney, Jonathan Martinis, to discuss the case with her, he filed a motion to allow Jenny access to her counsel, which the court granted. At some point, the temporary guardianship was switched to Jenny's parents. After six days of testimony from May 1, 2013, to August 2, 2013, the court issued its decision on Jenny's parents' petition for guardianship.

"Fifty years from now, the disability community will be talking about the Jenny Hatch case." The Washington Post (quoting Denille Francis).

"For anyone who has been told you can't do something, you can't make your own decisions, I give you Jenny Hatch – the rock that starts the avalanche." The Washington Post (quoting Jonathan Martinis).

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Supported Decision-Making

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For the first four pages of the decision, the court discussed statutes and evidence showing why Jenny needed a guardian. On the top of page five, Judge David F. Pugh, Circuit Court for the City of Newport News, Virginia, stated, "However...." Judge Pugh's "**However**" changed history.

The court initially recognized the requirement to give deference to Jenny's preferences, and because of Jenny's animosity toward her mother, the court found it would not be in her best interest for the parents to continue as her guardian. The court instead appointed the thrift store owners, who had intervened in the case, as Jenny's guardians, but placed several conditions on it. It was "a limited guardianship of limited powers and limited duration, with the ultimate goal of transitioning to the supportive decision making model. It is the intent of the Court that the Guardians shall assist [Jenny] in making and implementing decisions we have heard termed 'supported decision making.'" The court set out an expiration date for the limited guardianship at one year. The guardians were given the power to make medical and safety decisions, "giving due deference to the wishes of [Jenny]." The court ordered the guardians to transition Jenny, "in accordance with her wishes, from her group home setting to a private residential environment." The court strongly recommended that the guardians continue to provide supportive decision making assistance in anticipation of the termination of the guardianship at the end of one year.

Jenny got her wish of going home, meaning moving out of the group home and back in with her friends from the thrift store, Jim and Kelly, who were appointed her limited guardians for one year. Jim and Kelly's temporary limited guardianship over Jenny ended in August 2014. Through use of SDM, Jenny now lives and works where she chooses, has friends she chooses, and encourages others to do the same. She has become a sought-after speaker, sharing her inspiring story across the country. The Jenny Hatch Justice Center was named in her honor. While a very determined and engaging young lady, Jenny does not have special abilities. She is a typical person who has Down Syndrome. What is different about her is that she is living her life without a guardian utilizing SDM. She just needed a little help. Her message to other persons with disabilities is simple: If I can do this, so can you.

Conclusion

Supported Decision-Making has proven to be a viable less-restrictive alternative to guardianship. SDM, as well as a Durable Power of Attorney, should be considered prior to concluding a guardianship is required. When a guardianship (and/or conservatorship) is needed, it should be limited to only those areas where the person needs a guardian or conservator. If you have questions about SDM, POA, or guardianship, please contact DRSD.

Sources:

<http://jennyhatchjusticeproject.org/home>

<https://youtu.be/2GnE9yWRL0g>

"What Parents Should Know . . . About Special Education in South Dakota" Now Available Bound / Online

Thanks to funding from the SD Department of Human Services, Division of Developmental Disabilities, and additional financial support from the SD School for the Deaf Foundation, the 240-page book, "What Parents Should Know . . . About Special Education in South Dakota" is now available again from DRSD and SD Parent Connection. It is also now available online on the agencies' websites.

My name is Jenny Hatch I AM 29 years old and I have Down Syndrome LAST year I WAS PLACED in a group Home.. I DID NOT want to be there.. I Told Everyone That I WAS NOT HAPPY and DID NOT Like it.. I JUST wanted to go Home to my Friends Jim + Kelly's..

Jewish Family Services WAS my GUARDIANS. [REDACTED] WAS my CASE worker. She WAS MEAN to me.. She yelled at me AND EVER hit me.. I WAS NOT ALLOWED to go to my JOB AT THE Thrift store.. I worked there for almost 5 years.. I WASN'T ALLOWED to HAVE my Friends or CO-workers VISIT or EVEN CALL me.. I WASN'T ALLOWED to HAVE my cell phone or computer.. I FELT like a PRISONER BUT I DIDN'T DO ANYTHING WRONG..

I WAS Told I HAD RIGHTS AT THE Group Homes, BUT THAT WASN'T TRUE.. JFS TOOK THEM AWAY.. IT WAS like I DIDN'T MATTER.. like I DIDN'T EXIST.. JFS TOOK AWAY my RIGHTS, my CHOICES, my INDEPENDENCE... A GUARDIAN is SUPPOSED TO HELP me REACH my GOALS..

~~I ASKED JFS~~ WAS KEPT INSTEAD I WAS KEPT AWAY From my Community My Church and my Friends.. I KEPT Telling Everyone I WAS UNHAPPY BUT NO ONE LISTENED TO Me..

I LOST A year of my Life BEING FORCED TO STAY in Group Homes, AND FORCED TO WORK AT A JOB I DID NOT WANT.

HOW IS MAKING SURE THAT WHAT HAPPENED TO me, DOESN'T HAPPEN TO SOME ONE ELSE?

WHO IS MAKING SURE THAT JFS IS DOING THE RIGHT THING?

JUST BECAUSE PEOPLE HAVE A DISABILITY DOES NOT MEAN THEY NEED A GUARDIANSHIP.. MANY TIMES THEY MAY NEED JUST A LITTLE HELP.

Thank you.

Jenny Hatch

Free Disability Rights Legal Clinic and Presentations

by Kate Hoekstra

Disability Rights South Dakota (DRSD) will be hosting a free Legal Clinic during the Partners in Policymaking graduation weekend on April 27 and April 28, 2018. The Legal Clinic will be held in conjunction with presentations on several legal topics.

In previous years, the Legal Clinic was intended solely for the public to consult privately with an attorney regarding disability-related issues. Last year, several people attended expecting instead to hear presentations. Because of the public feedback, presentations will precede the legal clinic on both days.

Attorneys and advocates will present on legal topics including: guardianship and alternatives; abuse, neglect and exploitation; and special education. Both days will conclude with a Legal Clinic, at which anyone may consult privately with attorneys to discuss specific disability-related legal issues. The presentations and Legal Clinic are open to the public and attendees need not attend the presentations to attend the Legal Clinic. Attendees may attend one, two, or all three presentations. No registration is required.

The Legal Clinic and the presentations will be held at the Best Western Ramkota Hotel, located just east of I-29 at the Russell St. exit at 3200 W. Maple St. in Sioux Falls.

The presentation on Guardianship and Alternatives will begin at 1:00 p.m. on Friday, April 27, followed by a presentation on Abuse, Neglect and Exploitation at 2:00 p.m. The Legal Clinic will follow from 3:00-5:00 p.m.

Saturday's presentation on Special Education will begin at 9:15 a.m., with the Legal Clinic to follow from 10:15-noon.

If you are unable to attend this event, but have disability-related legal issues, please call DRSD's intake

number at (800) 658-4782 or fill out an intake form on DRSD's website at www.drSDLaw.org.

Free Disability Rights Legal Clinic

Join us for presentations on various legal topics followed by an opportunity to privately discuss specific legal issues with attorneys.

Location

Best Western Plus Ramkota Hotel
3200 W Maple St, Sioux Falls, SD 57107

4/27/2018

1:00-2:00 p.m.

Guardianship and Alternatives

2:00-3:00 p.m.

Abuse, Neglect and Exploitation

3:00-5:00 p.m.

Legal Clinic

4/28/2018

9:15-10:15 a.m.

Special Education FAQ

10:15-12:00 p.m.

Legal Clinic



Disability Rights South Dakota

Protection and Advocacy System for South Dakota

221 South Central Ave., Ste. 38
Pierre, SD 57501

www.drSDLaw.org
(800) 658-4782

For questions or to request accommodations please contact
Kate Hoekstra at kate.hoekstra@drSDLaw.org or (605) 361-7438.

Keeping Children Safe

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you do not provide them images of a sexual nature, give sexual favors, or pay money. The predator is usually an adult posing as a teenager and is often part of a sextortion ring or network. Predators usually lurk in chat rooms and record young people who post live stream sexually explicit images and videos of themselves, or they hack into your electronic devices using malware to get access to your files. They can also control your web camera and microphone without you even being aware of it. If your child is victimized, you should do the following: 1) Make it clear the victimization is not the child's fault; 2) Save all of the evidence; 3) Contact your local law enforcement agency; and 4) Make a report to the CyberTipline at www.cybertipline.com or call 1-800-THE-LOST and provide all the information you have.

File Sharing is another topic of discussion to have with your children. File-sharing services allow children to upload files so that other people can download them. This is a convenient way to share photos and videos. It also has turned into an illegal way to share copyrighted materials such as movies, software, music, and pornography. Downloading copyrighted material is stealing, and if caught, parents may be held responsible for their child's piracy, which can result in a financial penalty or worse. Parents should pay careful attention to what children have downloaded through file-sharing services to make sure they are not infected with viruses and other malware. Parents should also make certain that pornography or other undesirable material has not been downloaded.

We need to teach our children good family values about love, sex, and respect. We do not want the Internet to teach our children. If we find inappropriate pictures on our children's cell phones, we need to deal with it immediately and teach our children that this is wrong. It is a federal offense at age eighteen to have child pornography on your phone. For example, if one turns age eighteen and has nude photos of a younger boyfriend or girlfriend on one's phone and is caught, in addition to being sent to federal prison if con-

victed, one may also be permanently listed on the sex offender registry. If you find inappropriate photos, pornography or cyberbullying on your children's phones: 1) Save the evidence and report it to the police; 2) Block and unfriend anyone sending unwanted sexual requests or photos after reporting it to police; 3) Set up new accounts; and 4) Model good online behavior for your children.

Children may have hidden picture vaults on their phones. If you see two calculators on your child's phone, one of those is probably a hidden picture vault. Another place to stay away from are teen dating sites. Caution your children to NEVER share their electronics with others, and to keep all of their information and passwords private. "My Eyes Only" is a security app that utilizes layers of protected encryption. It includes password protection and insures important data will be safe if one's phone is lost or stolen. Caution your

children to NEVER share passwords, addresses of home and school, locations, school names, and phone numbers online.

The best way to safeguard your children is to take away their smart phone devices. Children and even teens do not need a phone that connects to the Internet. A flip-top phone with no camera, otherwise known as a dumb phone, is ideal. It allows your children to stay in touch with you (the reason most parents give their children cell phones), but keeps them out of trouble because of no Internet access.

One of the worst apps your teen can have on a smart phone is Snapchat. Children and many teens are too immature to have Snapchat, Twitter, or even Facebook accounts. Children nowadays are tech savvy, and they learn

*Keeping Children Safe
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Diane B. Roy Joins DRSD as Staff Attorney and PABSS Program Director

DRS D welcomed Diane Roy, who will also work as a Staff Attorney once licensed in South Dakota, as PABSS (Protection and Advocacy for Beneficiaries of Social Security Disability Benefits) Program Director. She began in February and works in the Pierre office. Diane comes to us with many years of legal experience, including over seven years of state and territorial prosecution experience where she prosecuted felony child abuse and neglect cases. Diane has also served as Assistant Attorney General in American Samoa and, more recently, for the Cheyenne River Sioux Tribe. Formerly a FEMA Ombudsman for displaced disaster victims with disability accommodation needs, she learned the special place persons with disabilities deserve in our society. Her interest in the protection of persons with disabilities has grown over the years in private practice as well while representing those who serve as guardians as well as the par-



Diane B. Roy

ents of children with disabilities. "The daily journeys of persons with disabilities have more and more legal advocacy needs. The growing regulatory processes, as well as the sometimes-cataclysmic emotional and financial nature of disabilities, require more professionals in this field to help," said Ms. Roy.

DOC Trains All Staff on Effective Mental Health Interventions

by Barbara Pierce, Director of Justice Initiatives, Crime and Justice Institute at CRJ, Boston, MA

The South Dakota Department of Corrections (DOC), in collaboration with the Department of Social Services Division of Behavioral Health, has trained all of its prison staff in two nationally recognized interventions—Mental Health First Aid and Dialectical Behavioral Therapy. “Taking care of people with mental illness in our prisons has been a top priority for the DOC,” said Secretary Denny Kaemingk. “Over the past year we have been able to make a substantial investment in training our staff and are now better able to help people manage their illness.”

Mental Health First Aid is an 8-hour course that gives people the skills to help someone who is developing a mental health problem or experiencing a mental health crisis until professional help is available.

Dialectical Behavioral Therapy, known as DBT, targets problematic behaviors by improving a person’s ability to better regulate emotions, tolerate distress or conflict, and communicate effectively with others.

Deputy Warden Jennifer Stanwick-Klimek presented on the DOC rollout of these two trainings at the January 4th meeting of the *Oversight Council for Improving Criminal Justice Responses for Persons with Mental Illness*. This oversight council is legislatively appointed to monitor the implementation of the provisions within HB 1183 (2017). This legislation includes training resources for law enforcement and requires mental health training for stakeholders across the criminal justice system, including probation officers, judges, defense attorneys, and jail and prison corrections officers.

HB 1183 requires that officers within any state prison receive training on recognizing the signs and symptoms of mental health problems and defusing mental health crises. It also necessitates further training at least once every four years. Not only has DOC met the initial training requirement, but it has a plan to ensure officers are re-certified in Mental Health First Aid every three years. “After this training, staff are much better prepared and make more educated decisions,” Deputy Warden Stanwick-Klimek said.

Greg Sattizahn, State Court Administrator and oversight council chair, acknowledged the DOC’s training accomplishment. “I applaud DOC’s commitment to improving outcomes for individuals with mental illness; this is a solid step toward implementation of this important legislation.”

Hay Retires

A familiar voice and name is missing from the Disability Rights South Dakota’s Sioux Falls office. Charlene Hay, an Advocacy Services Representative who joined South Dakota Advocacy Services in January 1990, retired last May. During her years of service, Charlene assisted hundreds or possibly thousands of South Dakotans with disabilities.

No client of Charlene’s could doubt her sincerity or passion for her work. It is difficult to encapsulate over 27 years. Charlene worked in multiple programs within the agency. She used her knowledge of special education law to advocate for countless students at Individual Education Program (IEP) meetings and hold schools accountable. Charlene assisted individuals with mental illness to obtain appropriate services in a variety of settings. She assisted individuals who needed accommodations under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act. Charlene also attended Individual Service Plan (ISP) meetings at community service providers



Charlene Hay

to assist adults with developmental disabilities to be part of their communities. She also assisted individuals in obtaining appropriate vocational rehabilitation services.

Staff at DRSD fondly remember her ability to imitate Louie Armstrong and her ability to share a joke. DRSD wishes Charlene well in this next phase of her life!

Thank You Bev Gunderson!

Beverly J. Gunderson, a psychologist at Avera University Psychiatry Associates, was a part of South Dakota Advocacy Services/Disability Rights South Dakota for 27 years. Bev joined the Board of Directors in 1990 and left the board as a voting member in 2000. During her time on the board, Bev served as Vice President for three years and then served as Board President for five years. When her term ended in 2000, the board created an *ex officio* (non-voting) position, which Bev filled from 2000 through 2017. As a psychologist specializing in clinical child and adolescent psychology, Bev’s knowledge and expertise have been invaluable to the agency. Disability Rights South Dakota thanks Bev for her 27 years of leadership, service, and commitment to DRSD.

Jeopardy Contestant: “I’ll take Name that Training for \$1,000.”

Jeopardy Host: “It brings together leaders from throughout South Dakota to share ideas, challenges, and find solutions.”

Jeopardy Contestant: “What is SD Partners in Policymaking?”

by Sandy Stocklin Hook

With five of six sessions completed, Year 26 of SD Partners in Policymaking is bringing forth the next set of leaders in South Dakota - Leaders who will challenge the status quo, leaders who will research and leave no stone unturned, leaders who will not accept “no” for an answer, and leaders who change the attitudinal barriers facing individuals with disabilities. Over the past five months, the 20 members of Year 26 have gathered in Pierre one weekend a month to learn to be self-advocates and leaders. They have learned how to empower themselves and others.

The class theme/motto is “Remain Calm ... Advocate On.” Graduation and continuing education for past graduates will be held April 27-28, 2018, at the Ramkota Hotel in Sioux Falls.

DECEMBER TRAINING

Disability Rights South Dakota (DRSD) Legal Affairs Director, John Hamilton of Sioux Falls, presented on the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). Hamilton helped the class understand the law and IEP process and answered questions regarding parental rights.

Hamilton also discussed “How to Be A Superhero for Your Child” and explained discussion points that apply equally to parents and self-advocates. He reminded the group that silence is NOT golden when attending meetings.

“ Oftentimes you, the parent, are the only advocate for your child at IEP meetings. You need to know what your child needs and go after that.”

Dr. Patrick Schwarz provided valuable insight and discussed actual experiences for successful inclusion in educational settings. “Inclusion means everyone belongs everywhere - in our schools, in our community, and in our work places,” exclaimed Schwarz. Schwarz is a professor at National-Louis University in Chicago. “Successful school inclusion can lead to successful community inclusion.” He encouraged Partners to be creative and to think outside the box.

Tim Neyhart, DRSD Executive Director, discussed transition and how it is never too early to start thinking about transition and formulating a plan. “Parents, talk to your students about what they want to do and what supports they will need to accomplish their goal,” stressed Neyhart. “Take your children to the IEP meetings. Let their voices be heard.” The session ended with a skit teaching what should not happen at IEP meetings addressing transition services.

JANUARY TRAINING

The January session centered on the legislature - from meeting and working with your legislators to the importance of providing public testimony. Presenter David Hancox, a lobbyist from Minnesota, told the class, “No one can tell your story

like yourself. You have the details, the knowledge, the heart. You can be an effective lobbyist for your cause. Don’t be afraid to talk to your elected officials. They work for you. They are regular people. You are a resource to legislators on all levels and what you bring to the table is important.” Hancox shared pointers on providing effective testimony, explaining that one should always tell the truth and admit if you do not know the answer, but volunteer to find the answer. He also discussed cam-



Sarah Carlson presenting homework

paigns and coalition building and using the media effectively.

After time for preparation, the class used their newly-acquired skills to provide mock testimony on current bills before the South Dakota Legislature. Helping the class to calm their nerves and give them tips and pointers were “bill coaches” Robert J. Kean, Dennis Hook, Arlene Poncelet, Rod Raschke, Cole Uecker, and C.J. Moit of Pierre. Kean is the former Executive Director of DRSD. Poncelet is the Executive Director for the South Dakota Council on Developmental Disabilities. Hook is a former lobbyist at the



Transition Skit

Partners in Policymaking
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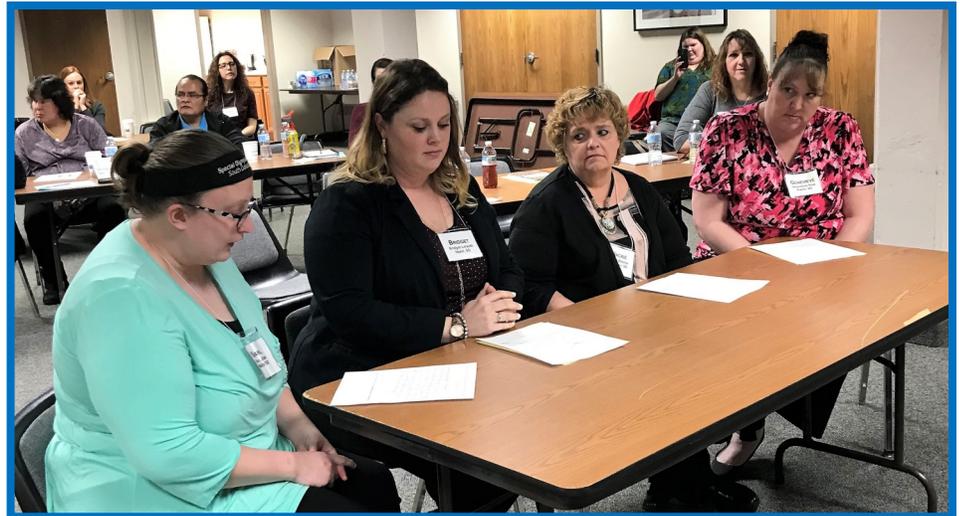
Partners in Policymaking

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South Dakota Legislature. Raschke, Uecker, and Moit are all advocates for DRSD.

The Legislative Panel included: Senate Minority Leader Troy Heinert of Mission; Senate Majority Whip Kris Langer of Dell Rapids; and Senator Alan Solano, Rapid City. Also on the panel were Representatives Jamie Smith, Sioux Falls; Mary Duvall, Pierre; and Oren Lesmeister, Parade. The class also viewed the House and Senate in action and met for a photo with Governor Dennis Daugaard.

Kean explained how to use the Legislative Research Council's web page to



Participants (l-r) Shanel Kube, Bridget Leiseth, Jackie Bosma, and Genevieve Row presenting testimony before the Legislative Panel



Participants (l-r) Vincent Cloud Eagle, DeAnne Friese, and Loretta Sierra presenting testimony before the Legislative Panel

track bills, view committee action, etc. He also spoke about the Americans with Disabilities Act.

FEBRUARY TRAINING

A rare occurrence happened in February. For only the third time in the 26-year history of Partners in South Dakota, the session was cancelled due to weather.

MARCH TRAINING

Kean opened the training discussing who qualifies for Social Security disability benefits (SSI, SSDI) and why, as well as what happens when a Social Security recipient returns to work. Shelly Pfaff, Executive Director of SD Coalition of Citizens with Disabilities in Pierre, spoke on employment and how, when everyone works, everyone wins.

Dr. Wayne Duehn of Arlington, TX, made his 20th trip to South Dakota to present to Partners in Policymaking. Dr. Duehn explained how to detect abuse and

neglect, both physical and sexual. He discussed where, how, and to whom it should be reported, the profile of the perpetrator, and how abuse and neglect occur everywhere, "yes, even in South Dakota." He continued, "Sexual and physical abuse

of our elderly, children, and individuals with disabilities is on the rise and you need to know the signs and how to stop it."

Duehn also provided an overview on human sexuality issues, including suggestions of what and how to educate young children of all abilities on the importance of "it is your body and it is private." He told the group, "No is no and teach your children to say NO."

The sixth and final session of Year 26 will be held April 27-28, 2018, at the Ramkota Hotel in Sioux Falls. The weekend includes continuing education, Common Grounds, and the graduation banquet and ceremony.

Partners in Policymaking in South Dakota is funded in part by the South Dakota Council on Developmental Disabilities, Center for Disabilities at the Sanford School of Medicine at USD, and South Dakota Parent Connection.



Legislative Panel (l-r): Representatives Jamie Smith, Mary Duvall, and Oren Lesmeister; Senators Troy Heinert, Alan Solano, and Kris Langer

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Keeping Children Safe
(Continued from page 12)

quickly to create fake Facebook accounts, and having access to these accounts leaves your children vulnerable to cyberbullying and sexual predators. On the news recently, it reported that Facebook may be in the process of developing a Kids Chat App that targets children as young as 6 – 8 years old.

REMEMBER: Children do not own anything. Even if they bought the phone, it is under the parents' accounts. They live under your roof and your rules! Parents should not have to ask for the password to get into their child's phone; parents should know the password and check their child's phone regularly!

Children may believe that when they post on the Internet, no one except their friends is going to look at their posts. This is very naïve. Children need to understand that parents, teachers, employers and potential employers, universities and colleges, strangers, online predators, and others

who do not like them and may want to make them look bad or engage in cyberbullying will look at them. People remember "bad" stuff posted about others, and they become the bad person matching that information in others' minds.

Parents should stay well informed about current Internet issues involving social networking, instant messaging, using webcams, and blogging, and teach their children to use them safely. Parents should regularly talk to their children about online safety. A good source to utilize is www.netsmartz.org.

Calendar

- ◆ **April 27, 2018** - Disability Rights Legal Clinic and Presentations, 1:00-5:00 pm, Ramkota, Sioux Falls (*see p.11 for details*)
- ◆ **April 27, 2018** - Partners in Policymaking and Common Grounds, Ramkota, Sioux Falls
- ◆ **April 28, 2018** - Disability Rights Legal Clinic and Presentations, 9:15 am-12:00 pm, Ramkota, Sioux Falls (*see p. 11 for details*)
- ◆ **April 28, 2018** - Partners in Policymaking Graduation Banquet, 6:30 pm, Ramkota, Sioux Falls

Representative Payee Program Coming in August !

President Trump recently signed H.R. 4547, which awarded the Protection and Advocacy system a new annual grant program, which is administered by the Commissioner of Social Security. DRSD will conduct reviews of representative payees and develop corrective action plans when needed. Grants will be awarded August 1, 2018. Look for much more detail in the July issue of the *South Dakota Report*.