



South Dakota REPORT

Advocating the Rights of South Dakotans with Disabilities

THE PROTECTION AND ADVOCACY SYSTEM FOR SOUTH DAKOTA

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ABLE Accounts – A New Option

by Shelly Pfaff

SD Coalition of Citizens with Disabilities

ABLE Accounts are tax-advantaged savings accounts for individuals with disabilities and their families. They were created as a result of the passage of the Stephan Beck, Jr. Achieving a Better Life Experience Act of 2014, better known as the “ABLE Act.” ABLE Accounts were created because millions of individuals with disabilities and their families depend on a wide variety of public benefits for income, health care, and food and housing assistance. Eligibility for these benefits (SSI, SNAP, and Medicaid) requires meeting a means or resource test. This limits eligibility to individuals who report cash savings, retirement funds and other items of significant value – resources – of \$2,000 or less. To remain eligible for these public benefits, an individual must remain poor.

For the first time in public policy, the ABLE Act recognizes the extra and significant cost of living with a disability. These costs are present for both families raising a child with significant disabilities and working age adults with disabilities. These include costs for accessible housing, accessible transportation, personal assistance services, assistive technology, and health care services not covered by insurance, Medicaid or Medicare.

For the first time, eligible individuals and their families will be allowed to establish ABLE savings accounts that



will not affect their eligibility for SSI, Medicaid, and other public benefits. Language from the legislation explains that an ABLE account will, with private savings, “secure funding for disability-related expenses on behalf of designated beneficiaries with disabilities that will supplement, but not supplant, benefits provided through private insurance, Medicaid, SSI, the beneficiary’s employment and other sources.” The beneficiary of the account is the account owner, and income earned by the account will not be taxed. Contributions made by any person (the account beneficiary, family, and friends) will be made using post-taxed dollars and will not be

tax-deductible. States with state income tax may allow for state tax deductions for contributions made to an ABLE account.

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Currently, the ABLE Act limits eligibility to individuals with significant disabilities with an age of onset of disability before turning 26 years of age. If a person meets this age criteria and is also receiving benefits under SSI and/or SSDI, the person is automatically eligible to establish an ABLE Account. If an individual is not an SSI and/or SSDI recipient, but still meets the age of disability onset requirement, he or she could still be eligible to open an ABLE Account if he/she meets Social Security's definition and criteria regarding significant functional limitations and receive a letter of certification from a licensed physician. Again, eligibility is based on age of onset, not one's current age. An individual of any age may be eligible for an ABLE Account, so long as the disability occurred prior to the individual's 26th birthday.

The total annual contribution by all participating individuals (beneficiary, family, and friends) for a single tax year is \$14,000. This amount may be adjusted periodically to account for inflation. Under current tax law, \$14,000 is the maximum amount that individuals can make as a gift to someone else and not report the gift to the IRS (gift tax exclusion). The total limit over time that can be made to an ABLE Account will be subject to the individual states in which they are established and their specific limits for education-related 529 savings accounts. Many states have set this limit at more than \$300,000 per plan. However, for individuals with disabilities who are SSI recipients, the ABLE Act sets some further limitations.

The first \$100,000 in ABLE Accounts would be exempted from SSI's \$2,000 individual resource limit. If and when an ABLE Account exceeds \$100,000, the beneficiary's SSI cash benefit would be suspended until such time as the account falls back below \$100,000. It is important to note that while the beneficiary's SSI cash benefit is suspended, this has no effect on the beneficiary's ability to receive or be eligible to receive medical assistance through Medicaid.

Each eligible individual is limited to one ABLE Account. Regardless of where one lives and whether one's state has decided to establish an ABLE program, eligible individuals are free to enroll in any state's program so long as that state accepts enrollees from across the country.

Finally, many people ask, "How is an ABLE Account different than a special needs trust or pooled trust?" An ABLE Account provides more choice and control for the beneficiary and family. The cost of establishing an account will be considerable less than either a Special Needs Trust or Pooled Income Trust. With an ABLE Account, account owners have the ability to control their funds, and if circumstances change, they have other options available to them. Determining which option is the most appropriate will depend upon individual circumstances. For many, the ABLE Account will be a significant and viable option in addition to, rather than instead of, a Trust program.

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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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REVUP Event a Huge Success

by C.J. Moit



South Dakota Advocacy Services (SDAS), in collaboration with South Dakota Coalition of Citizens with Disabilities, South Dakota Council on Developmental Disabilities, and USD Sanford School of Medicine — Center for Disabilities, joined the Registration, Education, Vote, Use your Power (REVUP). REVUP is a nationwide voting awareness campaign to help spread the word that disability votes count. This past summer and fall, these agencies participated in activities such as Public Service Announcements (PSAs), voter registration booths, and distribution of voter information materials to help raise awareness that *all* voices count.

The year-long initiative to bring education regarding registration, voting rights, and accessibility to individuals with disabilities culminated with a voter education and registration event held October 17 at Main Street Square in Rapid City. The event was greeted by lightning, thunder, hail, and rain, but was nevertheless a huge success.

South Dakota Advocacy Services and Black Hills Works, along with Ms. Wheelchair America, Dr. Alette Coble-Temple, hosted the non-partisan event. SDAS staff and volunteers from People First participated by assisting individuals to complete voter registration forms and providing informational materials regarding the right to register and vote. Flutter Productions, an all-ability production company, provided entertainment. Artists from the Suzie Cappa Art Center displayed their various works.

The ability to vote is a fundamental right for all United States citizens. However, individuals with disabili-

ties' right to vote is often impeded by inaccessibility. In an interview with KEVN news, Dr. Alette Coble-Temple shared, "The first time I tried to vote, I showed up to my polling place. I couldn't get into it. It was up five steps." Click the link to see the complete interview with Dr. Coble-Temple. <http://www.blackhillsfox.com/content/news/RevUp-South-Dakota-campaign-encourages-people-with-disabilities-to-register-to-vote-397388751.html>

The REVUP campaign supported numerous individuals to be educated, registered, and to be able to have their voice heard by exercising their right to vote. SDAS requests that all readers take the time to share their own voting experience by clicking the link below or by going to the website <https://www.surveymonkey.com/r/PollingPlace>.

SDAS is conducting a survey on polling place accessibility. Click to do a short survey on your polling place accessibility.



(l-r): C.J. Moit, SDAS PAVA Program Director; Dr. Alette Coble-Temple and Ready; and Emily Garcia, former SDAS PADD Program Director



Dr. Alette Coble-Temple, center, with members of Flutter Productions

WHEN DOES A PERSON WITH A DISABILITY NEED A GUARDIAN? (IT DEPENDS)

by Tim Neyhart

As United States citizens, we routinely exercise many choices. It is part of who we are as a people and it is part of the culture of the United States. It is such a part of everyday life, it is difficult to define this choice-making process. One may call this freedom. Freedom has many names - liberty, freedom of choice, self-determination, personal decision-making, etc. Depending on whom you ask and under what circumstances, the number of different answers may exceed the number of people whom you ask the question. The idea of making one's own decisions and having the right to live with the consequences, good or bad, lies at the heart of American traditions and sense of fairness.

Times and circumstances can create an adverse impact on the ability of a person to make adequate personal decisions. Such circumstances can occur at birth, following an illness or accident, or due to the loss of decision-making support from family and friends. When this happens, the question arises as to how to fairly determine and adequately address the need for decision-making supports or interventions. There is no Federal law regarding the concept of substituted decision-making. Historically, states have legislated this process.

It is important to note that third parties regularly act on behalf of others on simple matters. These agreements are usually made orally, are short-term in nature, and allow for decisions and discretion on the part of the person acting on one's behalf. However, more important decisions usually require a formal process. A signed document is particularly important if the acts or decisions of the assigned party are to be honored by others. There are important questions that should be considered and asked prior to establishing a formalized process to make decisions on behalf of others: What authority will be used; who is involved; what is covered; what are the timeframes; how/when does the authority begin; what are the guidelines; when is the authority terminated; etc. State statutes are in place to attempt to address these issues. Examples of statutes that are used in South Dakota to establish substitute decision-making on behalf of others are:

- ◆ Power of Attorney (SDCL 59-2)
- ◆ Health Care Consent (SDCL 34-12C)
- ◆ Living Wills (SDCL 34-12D)
- ◆ Guardianship/Conservatorship (SDCL 29A-5)
- ◆ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (SDCL 29A-5A)
- ◆ Trusts

Hamilton Trust (DSS/MSM #84-24)

ITFDIUA65 (DSS/APM #94-34)

Each one of these areas of law has a specific purpose and specific limits in regard to the implementation of substitute decision-making on behalf of a person. Thus, depending on the situation, there may be an alternative to limiting the rights of someone through a formal guardianship process. One can use this information to ask questions about these topics and work with the IEP/ISP team or one's attorney to determine if a person's needs could be met using a lesser restrictive alternative to a full guardianship.

South Dakota's guardianship statutes have several elements that should be understood when considering the possibility of taking formal action regarding substitute decision-making for someone. South Dakota Codified Law (SDCL) §29A-5-402 identifies the responsibility of a guardian who is appointed on behalf of another adult. This section states:

Responsibility of guardian of protected person. A guardian of a protected person shall make decisions regarding the protected person's support, care, health, habilitation, therapeutic treatment, and, if not inconsistent with an order of commitment or custody, shall determine the protected person's residence. A guardian shall maintain sufficient contact with the protected person to know of the protected person's capabilities, limitations, needs, and opportunities.

A guardian shall exercise authority only to the extent necessitated by the protected person's limitations, and if feasible, shall encourage the protected person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian shall, to the extent known, consider the express desires and personal values of the protected person when making decisions, and shall otherwise act in the protected person's best interests and exercise reasonable care, diligence, and prudence.

The underlined portion of this law should be the guiding factor in all discussions prior to developing a plan to establish a guardianship. If supports can be provided by people in a person's life in a less formal manner, a guardianship may not be required.

A perfect time to discuss potential alternatives to guardianship is during the special education process. Special education law requires IEP teams to address the transfer of rights process at an IEP meeting no later than a student's seventeenth birthday. The transfer of rights at the age of majority (age 18 in South Dakota) is part of the transition process that

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takes place when students are in the latter stages of their public school academic careers. Transition planning is a part of the IEP process that calls for the movement of the student from school to post-school activities.

South Dakota's administrative rules regarding the transfer of rights at the age of majority can be found at ARSD: 24:05:30:16.01:

Transfer of parental rights. Consistent with state law, when a child with a disability reaches the age of majority that applies to all children, except for an eligible child who has been determined to be incompetent, the following shall occur: (1) The school district shall provide any notice required by this article to both the individual and the parents; (2) All other rights accorded to parents under this article transfer to the child; and (3) All rights accorded to parents under this article transfer to children who are incarcerated in an adult or juvenile, state, or local correctional institution.

If a state transfers rights under this section, the school district shall notify the individual and the parents of the transfer of rights.

This language has proven to be confusing and anxiety producing for parents and school district staff. Of particular interest is the language about an "eligible child who has been determined to be incompetent." In South

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Currently, the states of Michigan, Nebraska, Ohio, and Tennessee offer ABLE Accounts to eligible individuals nationwide. To learn more in general about ABLE Accounts, or to learn how to contact these states for more information about what their programs have to offer, go to either the National ABLE Resource Center at www.ablenrc.org or the South Dakota Investment Council at sdic.sd.gov.

Staff Changes

by Tim Neyhart

Change is a part of all business; it is no different for South Dakota Advocacy Services. Pamela Stout, Fiscal Manager, Kristy Severson, Intake Specialist, and Emily Garcia, PADD Program Director, have each recently resigned their positions in the past two months.

Pamela Stout began working as the Fiscal Assistant in December of 2013; she took over as the Fiscal Manager in July of 2016. Pamela was instrumental in setting up several elements of the timekeeping and recording system at SDAS. She has great attention to detail and worked very hard in the roll of Fiscal Manager. She decided that her true calling was working in payroll and related matters. Pamela left to take a job in that area of work on November 30.

Kristy (Dozier) Severson, worked at SDAS for 18 years. She worked in several roles, but for the last 15-16 years she was the Intake Specialist, database monitor, and the person responsible for assuring that the computers at SDAS continued to operate. Kristy left her position in mid-

November to take a job with the State of South Dakota. She will be working on database development and implementation for the Department of Labor and Regulation.

Emily Garcia began working at SDAS in September of 2014 as an Advocacy Services Representative. She was promoted to the position of PADD Program Director in December of that year. Emily assisted in setting up many of the computer-based activities related to case work and tracking information from public listening sessions. She was also instrumental in developing and moving forward with the monitoring process. Emily and her family are moving out of state. Her husband is taking a job in the automotive industry and Emily is planning to attend law school.

We are sad to see all of these talented people leave the agency. We appreciate their dedication and service while they were employed at SDAS. I would like to personally thank them for their contributions and wish them success in their new activities.



(l-r): Pamela Stout; Emily Garcia; and Kristy Severson

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Dakota, competency is determined only by the court system. There is no other method described in South Dakota law or rule to determine if a child who reaches the age of majority, but has not been determined incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

Given that a process short of going to court is not spelled out in law or rule, it is often recommended that parents seek guardianship. The year between when students are informed of the transfer of rights and when the transfer actually occurs is a perfect time to discuss, try, evaluate, and implement alternatives.

One method that could be considered is for the IEP team to establish a three-step process to discuss the topic of guardianship.

1. On an individual basis, consider the student's need for supports.
2. Evaluate what supports already exist or could be put into place.
3. Put a plan into place containing the identified supports and evaluate it periodically during the year leading up to the student turning age eighteen.

Using this process, the IEP team can help parents decide if the student will require supports and, if so, how extensive they need to be. If the primary issue is having the parents continue to support the student during his or her educational process after the student turns age eighteen, the student should be informed of the right to invite whomever he or she wishes to his or her IEP meetings, including the parents. If the relationship is such that this solution could meet the need for support, then the matter could be resolved short of a formal guardianship.

Another example of supports could relate to money management. If a student needs assistance managing his or her adult Social Security Disability Insurance or Supplemental Security Income payments, it is possible for the Social Security Administration to appoint a Protective Payee. This may be all that is needed to assist the student in managing the benefits.

If the student has ongoing needs of various types that might require more

complex supports, the IEP team could further evaluate what supports exist and what supports need to be put in place. Are there people on the team who the student can go to for supports in making decisions? If so, is that identified in the IEP and has that information been shared with the student?

Another example of informal supports or coordination of services may relate to independent living. Students who plan to live in an apartment or house may need homemaker supports or health supports. Those services can be coordinated by the school system as part of the school district's responsibilities for providing transition services.

One more example is a Power of Attorney. Students who are competent to make contracts or sign documents can sign a Power of Attorney that authorizes another person of the student's choice to make decisions on his or her behalf. A Power of Attorney can limit the areas in which assistance is needed.

Finally, another alternative to a full guardianship is a Limited Guardian. If a court determines an individual needs a guardian, but not in all areas of life, the court can limit the powers of the guardian to just those areas where a guardianship is truly needed.

These are only some examples of supports that may be available. Guardianship should not and does not have to be the only answer to providing extra decision-making supports for people who need that kind of assistance. The student's needs should be the beginning of

this discussion. The methods to meet those identified needs should be considered and tried with input from the student. Based on the results, a more informed decision can be made whether a guardianship is needed or whether lesser restrictive alternatives will meet the student's needs. As with all things, good planning makes for good outcomes.

New SDAS Intake Specialist

Rod Raschke joined South Dakota Advocacy Services in mid-November as its new Intake Specialist. Rod grew up near Gregory/Winner, South Dakota and graduated from Winner High School. He graduated from the University of South Dakota and has worked at a Community Service Provider (CSP) as an Addiction Counselor.



Rod and his wife have two grown children, two grandchildren, and three dogs. Rod enjoys outdoor activities.



SDAS Executive Director, Tim Neyhart, center, with outgoing SDAS Board members Jill Furan and Tim Lemke. Not pictured: Chris Beesley and Cary Grone-meyer. SDAS thanks these former Board members for their invaluable insight and commitment to SDAS over the past several years.

Teacher Training - Remembering *Sioux Falls School District v. Koupal* and the Last Laugh

by John A. Hamilton

Those who were involved in special education over 20 years ago may remember *Sioux Falls School District v. Koupal*. The case revolved around language in Brett Koupal's IEP that required his teacher to be trained in Autism prior to working with him. The case seemed simple enough, as no one would disagree that a teacher of a child with severe Autism needed to be sufficiently trained in order to provide appropriate services. This article will provide an insider description of the case, its short-term implications, and discuss teacher training today.

Brett's mother, Renee Koupal, and Cathy Maynard, President of the South Dakota Autism Society, first contacted South Dakota Advocacy Services in late 1992, seeking representation at a due process hearing. At that time, SDAS happened to have four other cases where parents were in the process of requesting hearings. Of the five cases, two involved issues where several meetings with schools had gotten nowhere. Another was a complicated placement situation. The other I cannot recall. In thinking about the possibility of five due process hearings, all with nearly identical timeframes, I remember thinking, "at least the *Koupal* case should easily settle at mediation." The *Koupal* case was a prime example of "you never know." Much to my surprise, the other four cases quickly settled once the parents requested due process hearings. The *Koupal* case, however, did not and a long journey began. The case started at the administrative hearing level. It was appealed to State Circuit Court and then to the South Dakota Supreme Court. I believe to this day it is the only special education case heard by the South Dakota Supreme Court. Finally, a *Petition for Writ of Certiorari* was considered by the United States Supreme Court.

At IEP meetings held May 31, 1991, and February 19, 1992, Renee Koupal had brought typed pages to the IEP meetings labeled "Other Related Services," which were attached to the IEPs. The pages were not attached at the end of the IEPs; rather, the pages were co-mingled throughout the IEPs and given page numbers like any other page of the IEPs. The language that became the issue in the case was contained within those pages. It stated:

Due to the complex nature of Autism, and the extensive expertise that is needed to appropriately teach these children, it is of critical importance that those who are working with Brett receive sufficient autism-specific training. *Therefore, Brett's classroom teacher will have received, at the very least, the five-day TEACCH training course prior to working with him.*

TEACCH is a program of instruction or methodology that was used extensively at that time for children with Autism. In South Dakota, the Autism Program at the University Affiliated Program at the University of South Dakota taught a five-day course for up to 25 people, at two sites, once a year.

On May 15, 1992, Renee contacted the Sioux Falls School District (SFSD) because she had discovered the lady who would be Brett's teacher during the summer of 1992 had not had the TEACCH course. Renee quoted the language from the IEP and the SFSD arranged to have the teacher complete all but six hours of the course and provided the teacher additional one-on-one training due to the portion of the course she could not attend.

At an IEP meeting on December 11, 1992, the SFSD attempted to revise Brett's IEP by excluding the second sentence – the language requiring at a minimum that Brett's teacher will have received the five-day TEACCH course prior to working with him. The parents filed for a due process hearing because they believed it was crucial that Brett's teacher have at least a minimum level of training in Autism prior to working with him.

Due Process Hearing

At the hearing, the SFSD argued the pages of the IEP that Renee had brought to the meetings containing the disputed language were not really part of the IEP, as the SFSD considered those pages simply "suggestions." The SFSD had never claimed those pages were not an "official" part of the IEP until the December 11, 1992, IEP meeting. The hearing officer noted that when Brett was to have a teacher without any training in Autism during the summer of 1992, the SFSD acted quickly to remedy the situation once Renee Koupal pointed out the IEP language requiring completion of the TEACCH training. The hearing officer ruled that the SFSD certainly acted as if it believed those pages were part of Brett's IEP. Brett's teacher testified that she believed the TEACCH training requirement was part of Brett's "official" IEP. The hearing officer concluded the SFSD was estopped from now arguing those pages were not part of the IEP.

Of all the due process hearings I have been involved in over the past 27 years, this was by far the least adversarial. The SFSD's special education director, Karen Roth, agreed that if Brett did not have a teacher sufficiently trained in TEACCH, he would regress. Brett's former teacher, Carla Miller, similarly testified it would be very detrimental and he would regress if he had a teacher without TEACCH training. Several witnesses described the five-day TEACCH training as a bare minimum one would need to have the competency needed to teach Brett. This training was so important that Brett's IEP stated if his teacher and her aide were going to be absent, Brett would remain home rather than have an untrained person attempt to implement his IEP. Everyone apparently agreed the minimally adequate amount of TEACCH training offered through the five-day course was needed; the

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SFSD simply did not want the language in the IEP to avoid a situation where it could be found out of compliance with the IEP.

The hearing officer issued his Decision on April 15, 1993. One issue the hearing officer had to decide was whether an IEP can require a teacher to have training above and beyond state requirements for certification. There was no specific requirement for Autism training prior to certification for special education teachers. The hearing officer resolved the issue by finding the law to be silent – it does not allow for teacher training over and above state certification, nor does it prohibit it. The hearing officer concluded that additional teacher training could be part of the IEP as a related service (a supportive service required to assist a child to benefit from special education), especially when dealing with a complex disorder like Autism.

The hearing officer also held the SFSD failed to prove by a preponderance of the evidence that revising Brett's current IEP by excluding the training requirement is appropriate. The SFSD had not provided evidence in the form of an evaluation or otherwise demonstrating Brett's teachers no longer required the minimum amount of training required by the IEP. In fact, the district fully agreed his teacher did require such training. Essentially, since Brett's needs had not changed and both parties agreed his teacher needed at least the five-day TEACCH training course prior to working with him, the hearing officer determined it was not appropriate to remove the language from the IEP. The hearing officer's decision is reported at 19 IDELR 796 (SEA S.D. 1993).

I did not specifically argue that teacher training needed to be contained in the IEP as a related service. I argued that the teacher training language could be contained in the IEP. The hearing officer is the one who concluded teacher training is a related service.

Appeal to State Circuit Court

The SFSD appealed the case to State Circuit Court. Judge Steven L. Zinter heard oral arguments and issued an oral decision on November 15, 1993. On appeal, the SFSD made a number of arguments why the hearing officer's decision should be overturned. Judge Zinter ignored the SFSD's rhetoric. However, he disagreed with the hearing officer that teacher training is a related service, stating that while the list of related services is not exhaustive, every item listed is an identifiable service and the only mention of training is parent training. "So I think as a matter of law that it's not a related service. But I do agree with Brett Koupal that ... it is probably more – I shouldn't say that it is, but that the level of special education is something that can go under an IEP. And I believe that that's not a related service. It's the direct service." He found that although specific competency in TEACCH methodology is certainly something which could be in an IEP, he didn't believe the record requires or mandates that a particular five-day course be included in the IEP. "So what I am leading up to here is that although I do agree that an IEP may contain language which would require com-

petence in the TEACCH methodology for this child, I don't believe the District can be forced to include in an IEP that Brett's teacher will have a particular course, that being the five-day TEACCH course that is referred to here."

Significantly, Judge Zinter ruled that he did not believe teacher training is a related service; rather, it is the direct service and Brett's IEPs may contain language requiring competence in TEACCH methodology. However, he did not like the particular language in Brett's IEP because he believed it was too limiting, as he believed it is possible for teachers to become competent in TEACCH methodology through other means than the specific five-day training. The main problem with this decision is that the teachers who had worked with Brett all testified that the five-day course *was* the minimum amount of training needed to become competent to teach him. One had also taken a six-week course in North Carolina. Another teacher who did not testify had gone through the five-day training course twice. There was no disagreement that taking the five-day TEACCH training course was the best way to achieve that minimum level of competency needed to work with Brett.

Appeal to South Dakota Supreme Court

While Judge Zinter held that language requiring competence in TEACCH methodology could be contained in Brett's IEP, Renee Koupal feared without the specific training requirement as a measuring stick, the SFSD could claim people to be "competent" who had received a short in-service or the like, which could be extremely detrimental to Brett. Renee appealed the case to the South Dakota Supreme Court. As it did at the state circuit court level, the SFSD argued that it had always provided Brett with a teacher who is competently trained in Autism and TEACCH, making the specific language unneeded. Renee's response was that the reason why Brett has had a trained teacher is only *because* of the language in Brett's IEP. Lest one forget, if it was not for the language in the IEP, Brett's teacher during the summer of 1992 would not have had TEACCH training.

The SFSD also argued that allowing IEP Teams to determine matters of teacher competency would set a dangerous precedent, as it cannot staff a special education department if it has 2,300 IEP Teams determining teacher training needs. Given that it is a primary function of the IEP Team to commit school resources based on each child's unique needs, it is of course the IEP Teams that will dictate a district's staffing needs. IEP Teams determine the need for physical, occupational, and speech therapists, as well as which children need counseling, adaptive physical education, a classroom aide, and teachers with various expertise. The SFSD further argued the language in Brett's IEP could cause the district to be out of compliance due to unforeseen contingencies, such as personnel shortages. The SFSD was essentially arguing "administrative convenience," which has never been deemed a sufficient reason for denying special education services.

After briefing was completed, but prior to oral argument, Cathy Maynard contacted me to let me know she had found

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another attorney to help argue the case before the South Dakota Supreme Court. While I will not repeat my first thought, she went on to say that she had met this attorney from Texas, Mark Partin, told him about the case, and asked him if he would like to argue it before the South Dakota Supreme Court if I agreed with that. I actually had known Mark Partin for a few years, as he worked at the Texas P&A. In fact, he had written and submitted an amicus brief in one of my prior cases. Renee was fine with the arrangement and I agreed. The remainder of the case became a collaborative effort. We each took part of our allotted oral argument time, focusing on different aspects of the case.

On December 21, 1994, the South Dakota Supreme Court affirmed Judge Zinter's decision, but it really did not. It was worse. *Sioux Falls School District v. Koupal*, 526 N.W.2d 248, 22 IDELR 26 (S.D. 1994). The South Dakota Supreme Court never mentioned Judge Zinter's ruling that Brett's IEPs may contain language requiring competence in TEACCH methodology. Instead, the Court simply quoted the definition of "related services" and stated, "Under the time honored canon of *ejusdem generis*, where general words in a statute accompany the enumeration of particular classes of things, the general words will be construed as applying only to things of the same general kind as those enumerated. ... Although these definitions may not be all inclusive, the scope of the listed services clearly fails to encompass specific teacher training." The Court concluded, "Inasmuch as teacher training is not a related service under federal law, it cannot be required in an IEP." The Court also found it irrelevant that the language had been in Brett's prior two IEPs, since IEPs are to be reviewed at least annually and revised if appropriate. That was our point: *If appropriate*. Everyone agreed Brett needed a teacher who had received at least the minimally adequate training the five-day TEACCH course provided prior to working with him. There was no educational basis for removing the language from his IEP because Brett's needs had not changed and that was why, despite the fact that IEPs are to be reviewed and revised at least annually, the hearing officer was correct that removing the language from Brett's IEP was not appropriate.

Before leaving the South Dakota Supreme Court's Decision, three other things should be mentioned. First, Brett's IEP also contained teacher training language in the area of facilitated communication. The SFSD apparently had no problem with that language remaining in Brett's IEP.

Second, in 1990, the Act's amendments included definitions of "Assistive Technology Device" and "Assistive Technology Services." The definition of the latter specifically includes "training or technical assistance for professionals (including individuals providing educational and rehabilitation services)." The Act further stated assistive technology services can be included in a child's IEP as special education, related services, or supplementary aides and services. The South Dakota Supreme Court ignored how IDEA already required teacher training language in IEPs. Its ruling made no exceptions and directly conflicted with IDEA.

Finally, while citing the entire definition, the South Dakota Supreme Court seemed to look only at the non-inclusive list of related services, not the entire definition. Related services include "such developmental, corrective, and other supportive services ... required to assist a child with a disability to benefit from special education...." In *Irving Independent School District v. Tatro*, 468 U.S. 883 (1984), the United States Supreme Court found clear intermittent catheterization (CIC) to be a related service, despite the fact that CIC certainly does not look like any of the related services contained in the non-inclusive list in the regulations. The Supreme Court stated, "It is clear on this record that, without having CIC services available during the school day, Amber cannot attend school and thereby 'benefit from special education.' CIC services therefore fall squarely within the definition of a 'supportive service.'" *Id.* at 890. The Court further stated, "A service that enables a handicapped child to remain at school during the day is an important means of providing the child with the meaningful access to education that Congress envisioned. ... Services like CIC that permit a child to remain at school during the day are no less related to the effort to educate than are services that enable the child to reach, enter, or exist the school." *Id.* at 891. "Congress plainly required schools to hire various specially trained personnel to help handicapped children, such as trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel." *Id.* at 893. Teacher training in Autism certainly supported Brett's education and was required to assist him to benefit from special education and access his special education. Remember, his IEP stated if his trained teacher and aide were not at school, Brett was to remain home. Had the Court considered the entirety of the definition of related services and the United States Supreme Court's guidance in *Tatro*, perhaps it would have ruled differently.

The Aftermath

We were naturally stunned, not only by the decision, but also by the South Dakota Supreme Court's failure to address

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Cathy Maynard, Mark Partin, Renee Koupal, and John Hamilton (l-r) following oral argument before the South Dakota Supreme Court on September 12, 1994.

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our arguments and failure to provide any true analysis of the law. We filed a Petition for Rehearing on January 9, 1995, which the South Dakota Supreme Court denied on January 25, 1995.

The South Dakota Supreme Court's decision was quickly picked-up by several publications, such as "Education Daily," "The Special Educator," and the "Mental and Physical Disability Law Reporter." Some just reported the decision, while other national commentators had a field day with the decision. One stated:

This is not a case in which AT devices or services were at issue, but if it is followed, it can have an adverse impact on students seeking AT. Ironically, the definition of AT services, which the court ignored, proves the error in the decision. The definition of AT services expressly includes training for teachers and other staff. (citations omitted) OSEP policy makes clear that AT services, including teacher training provisions, must be added to students' IEPs when they are needed. Letter dated Aug. 10, 1990 to Susan Goodman from Judy Shrag, reprinted at 16 EHLR 1317 (OSEP 1990). And, the IDEA regulations expressly state AT services can be a related service.

The South Dakota Supreme Court decision is wrong because it looked only at the items listed as related services in 34 C.F.R. §300.16, and not at the complete definition of related services. Under the principle of *ejusdem generis* which it applied, the answer should have been to affirm, not reverse the SEA decision. ... The *Special Educator* report presents this case as if it is correct, and it is likely at least some LEAs and SEAs will use it as the basis of policy and practice. The *Special Educator* made no effort to assess whether the decision is correct or not. It is recommended that any time this decision is cited, its patent incorrectness should be noted, and it should be recommended that the decision should be ignored by any reviewing authority. Efforts to get OSEP or OSERS to issue a policy letter repudiating the holding in this decision and to prohibit its use by LEAs or SEAs in decision making under the IDEA are being explored.

I would not say we were overconfident as the case went to State Circuit Court and the South Dakota Supreme Court, but we knew our position was strong and well-grounded in the law. The *Koupal* case became a learning experience, as it taught us to never again let a special education appeal go through the State Court process because our State judges are simply not familiar with the area of law. Learning from *Koupal*, the following year when another district appealed to State court in *Yankton School District v. Schramm*, we immediately had the case removed to federal court.

United States Supreme Court

Unlike state and federal court systems where there is an automatic right to appeal, there is no automatic right to appeal to the United States Supreme Court. One has to file a *Petition for a Writ of Certiorari*, which is essentially a brief to the

Court explaining why the Court should accept and hear the case. The Supreme Court accepts perhaps three-to-five percent of the cases petitioned. That percentage drops to about one percent unless the United States is a party in the lawsuit. Because of the long odds, relatively few cases are petitioned to the United States Supreme Court. Despite the odds, Mark Partin and I believed strongly that this case deserved a shot because of the important issue the case presented.

The Court will often accept cases if there is a split among federal circuits, meaning courts of appeal have ruled opposite on the same legal issue. We did not have a split in federal circuits, but in our *Petition for a Writ of Certiorari*, we argued a conflict with decisions from a number of jurisdictions across the country. We argued the decision conflicted with language in the Supreme Court's prior decision in *Board of Education v. Rowley*, 458 U.S. 176 (1982). We argued the importance of the issues involved in the case warrants exercise of the Court's discretionary jurisdiction because the decision undermines students' right to a free appropriate public education. We also argued the importance of the federal question involved warrants exercise of the Court's discretionary authority because the decision undermines the fundamental purpose of the Act and is at odds with federal Department of Education policy. Our Petition was sent April 24, 1995.

National Conference

With the *Petition for a Writ of Certiorari* before the United States Supreme Court, Mark Partin and I were asked to speak at the National Association of Protection and Advocacy Systems (NAPAS) annual conference in Washington, D.C., in early June of 1995. Since very few special education cases reach the level of a petition to the Supreme Court, for that brief moment in time, Mark and I achieved a semi-celebrity status at the conference. Attorneys and advocates from throughout the country attended our session to hear all about the case. Many people wished us luck and agreed the Court should hear our case.

Certiorari Denied

Sadly, about two weeks after returning from Washington, D.C., we received a letter from the Clerk's Office of the United States Supreme Court dated June 19, 1995, stating simply that our *Petition for a Writ of Certiorari* was denied. 515 U.S. 1143 (1995). Fortunately for students with disabilities, the story does not end here.

1997 Amendments to IDEA – The Last Laugh

When Congress reauthorized the IDEA in 1997, it did not simply add a few amendments. Instead, Congress essentially re-wrote much of the law, emphasizing outcomes for children with disabilities. Congress found that the law's initial goal of access to education had been met, but the results of that access were having little impact on the futures of children with disabilities because expectations remained so low. Congress changed the purposes of the law to not only provide for a free appropriate public education, but also to prepare students for independent living and employment (Congress added "further education" to the purposes of the law in 2004).

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Along with the change in purpose, Congress redefined IEP content. Congress required measurable annual goals. It required children with disabilities to receive education in the general curriculum. It reversed the assumption regarding placement in regular classrooms, meaning instead of starting at zero asking how much time students will spend in the regular classroom, schools were to start with the presumption of 100 percent and instead ask how much time may a student be removed.

Among the many IEP changes, one in particular jumped off the page, and that was the new IEP content requirement for “special education and related services.” It stated: “The IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or ***supports for school personnel*** that will be provided to enable the child: to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum ... and to participate in extracurricular and nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the activities described in this section.” 34 C.F.R. §300.320 (a)(4). [Note: this citation is to the current 2006 regulation.]

Supports for school personnel to enable a child to advance toward attaining annual goals, be involved in and progress in the general curriculum, etc. – what does that mean? Whenever I am speaking at a conference or doing training on IDEA, I always pose this question: Pretend you are a regular classroom teacher and you find out that a child with Autism is going to be in your classroom – what specific supports are you going to need? I have never heard more than one answer, and that answer has been an unanimous “TRAINING.”

Yes, just about two years after the South Dakota Supreme Court’s unfavorable decision in *Koupal*, Congress just happened to amend the federal law to require that supports for school personnel be included in IEPs. To rephrase that – just two years after South Dakota’s Supreme Court held that teacher training could not be included in IEPs *at all*, Congress amended the law to specifically require that teacher training be contained in IEPs when appropriate based on the unique needs of the child.

Was the *Koupal* case was the cause of the amendment requiring supports for school personnel to be included in IEPs, or was the addition to IDEA purely coincidental? I truly do not know, but I would like to hope that the *Koupal* case provided the impetus for the change. Approximately two years later, the fol-

lowing explanation was contained in the Federal Register in response to comments about the proposed federal regulations:

Section 300.347(a)(3) makes clear that the focus of the supports is to assist the child to advance appropriately toward (for example) attaining the annual goals, and to be involved in and progress in the general education curriculum. Therefore, while certain supports for school staff may be provided (such as specific training in the effective integration of children with disabilities in regular classes), the ultimate focus of those supports to school personnel is to ensure the provision of FAPE to children with disabilities under Part B, their integration with nondisabled peers and their participation and involvement in the general curriculum, as appropriate. Consistent with the Act’s emphasis on ensuring the provision of FAPE to children with disabilities, and, to the maximum extent appropriate, educating those children in regular classes with nondisabled children with appropriate supplementary aids and services, it is critical that at least one regular education teacher of the child be a member of the IEP team and provide input on appropriate supplementary aids and services, including program modifications and supports for school personnel. It also is essential that the child’s teachers and other service providers who are not members of the IEP team are informed about the contents of the child’s IEP, in whatever manner deemed appropriate by the public agency, so that the IEP is properly implemented by all school personnel.

Conclusion

Having a teacher sufficiently trained in the methodology required to teach Brett Koupal was crucial to implementation of his IEP. The same can undoubtedly be said for countless children with disabilities, whether that means training in a particular disability, training in the particular methodology used

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SDAS collaborated with South Dakota Parent Connection and the Office for Civil Rights (OCR) to present trainings on Section 504, seclusion and restraint, and with special emphasis on illegal exclusion from school. The trainings took place September 20-22, 2016, in Sioux Falls, Pierre, and Rapid City, respectively. Pictured (l-r) from the Sioux Falls training are Carla Miller Executive Director, SDPC; John Hamilton, Legal Affairs Director, SDAS; Paula Sourada, Navigator Program Coordinator, SDPC; and Glenn Grayson and Monica Moncrieffe, OCR.

Pregnancy

by Thomas E. Simmons*

Discrimination on the basis of pregnancy can take various forms, from overt discrimination to failing to accommodate a worker's needs associated with her pregnancy.¹ The options for redressing pregnancy discrimination would presumably include the Americans with Disabilities Act (ADA) and the Pregnancy Discrimination Act (PDA). Unfortunately, while intentional discrimination on the basis of pregnancy is illegal under the current state of the law, employers have no affirmative duty of to make even minor or inexpensive accommodations that would permit a pregnant worker to carry out the basic functions of her job.

Historically, courts have held that the ADA does not recognize pregnancy as a disability because pregnancy fails to meet the definitional requirements of an impairment which substantially limits a major life activity.² Pregnancy is a temporary condition. It is difficult to sustain a finding that any of a woman's major life activities is substantially limited when the effect disappears in less than a year. It is the rare case which finds that a woman's pregnancy substantially limits one or more of her major life activities. In 2008, Congress clarified that even episodic impairments can qualify as disabilities.³ The ADA, however, still treats pregnancy as a non-disability based on the rationale that it is a normal condition and not the result of a physiological disorder.⁴

The Pregnancy Discrimination Act (PDA) characterizes employment discrimination on the basis of pregnancy as constituting sex discrimination under Title VII.⁵ The PDA defines sex discrimination to include acts of discrimination on the basis of pregnancy. An employer who lays off a worker because she is pregnant would have no success in arguing that it did not discriminate on the basis of the worker's sex. The PDA supplies an answer in the form of a definitional rule. Pregnancy discrimination *is* sex discrimination.

The other options for redressing pregnancy discrimination in the workplace can found in state laws enacted or pending in about sixteen states (not South Dakota).⁶ South Dakota has its own set of disability discrimination laws, but they contain a definition of disability even more restrictive than the ADA.⁷ Under the South Dakota Human Relations Act, a disability means "a physical or mental impairment of a person resulting from disease, injury, congenital condition of birth or functional disorder which substantially limits one or more of the person's major life functions."⁸ If pregnancy does not fit within the ADA's definition of a disability, it certainly would not fit within the state law's definition of a disability either.

Pending in Congress is the Pregnant Workers Fairness Act.⁹ That Act was first introduced in 2012, then reintroduced in 2015. Neither this pending bill nor other states' laws are currently of much help to women who have suffered discrimination by their employer on account of pregnancy in South Dakota. Of course, there is the Family and Medical Leave Act (FLMA), but it only guarantees twelve weeks of job-protected leave.¹⁰

The problem is in the gap between the ADA and the PDA when it comes to pregnancy. That gap can viewed clearly in what the stalled-out Pregnant Workers Fairness Act would provide: The legislation would make it unlawful to fail to make reasonable accommodations for pregnant workers unless the accommodations would constitute an undue hardship.¹¹ It would provide ADA-style accommodation rights to pregnant women employees of a covered employer.

The ADA fails to guarantee these protections because it fails to recognize pregnancy as a disability. The PDA fails to guarantee these protections because it requires relatively little in the way of accommodation duties. Since the United States Supreme Court decision in *Young v. UPS* in 2015, the PDA cannot be seen as any real guarantor of accommodation rights for pregnant workers.¹² Instead, the PDA focuses on requiring pregnancy-blind decisions in the workplace, requiring similar treatment for pregnant and non-pregnant employees, but imposing no affirmative duty to accommodate an employee who is pregnant.

Here is a crucial difference between Title VII (outlawing discrimination on the basis of sex, race, etc.) and the ADA (outlawing discrimination on the basis of disability). Title VII requires neutrality (except as to some accommodations for religions practices). The ADA requires something more. It requires employers to actually treat employees with disabilities differently from other employees on purpose. It requires employers to make reasonable accommodations that will permit workers with disabilities to do their jobs. The ADA's imposition of an accommodation duty is unique among other Civil Rights laws. It requires employers "to do something that no federal employment rights statute had ever done before: ... engage with a disabled employee or applicant in a good faith interactive process to find ways to accommodate the employee's disability and enable him to work."¹³

And here, then, is the problem. Seeing as pregnancy does not fall within the ADA and that it only falls within Title VII as a variety of sex discrimination, there are no accommodation duties imposed on employers regarding pregnant workers. Federal law fails to recognize an affirmative right to accommodations for pregnancy. So do South Dakota's state law protections.

**Thomas E. Simmons is an associate professor at the University of South Dakota School of Law.*

¹ See generally, Bradley A. Areheart, *Accommodating Pregnancy*, 67 ALA. L. REV. 1125 (2016), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2534216.

² 42 U.S.C. § 12102 (2013).

³ 42 U.S.C. § 12102(4)(D) (2013).

⁴ 29 C.F.R. pt. 1630, app. § 1630.2(h) (2015).

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First Episode of Psychosis (FEP) Program

by Melissa Tauer

Southeastern Behavioral Health has started a program for individuals experiencing their first episode of psychosis. This program focuses on identifying those individuals who have been experiencing symptoms for less than two years. The goal is to begin working with these individuals as soon as possible to educate clients and their families on the diagnosis, treat the symptoms, and assist them with returning to school or work. The program is based off of the ONTRACKNY model. Southeastern Behavioral Health staff received initial training on using the model and also receive ongoing consultation and training from ONTRACKNY as staff work with the clients in the new FEP Program.

The FEP Program team includes primary clinicians, psychiatrists, a nurse, a supported education employment specialist, and a staff person focused on outreach and recruitment. The team works to offer wrap-around services to these clients and to work closely together to offer services relevant to the goals identified by the client. There is also a focus on family involvement, education, and support.

To qualify for these services, the individual must be between the ages of 16-30, be experiencing his or her first episode of psychosis (meaning the individual has experienced this for less than 2 years), and be experiencing non-affective psychosis (i.e. schizophrenia, etc.). Referrals for this program can come from a variety of sources

within the community, including primary care physicians, Avera Behavioral Health, and the Human Services Center. For more information on this program or to discuss potential referrals, please contact Andrea Heronimus or Melissa Tauer at 605-336-0503. The FEP team can also be reach by emailing FEP@southeasternbh.org.



FEP Team members (l-r): Back row - Afton Artz, Kim Hansen, Amberley Runge, Melissa Tauer, and Donna Nelson. Front Row - Diane Cogley, Andrea Heronimus, Ruth Gunnink, and Jenny Pfeifer.



SDAS welcomes new members of its Board of Directors (l-r): Tammy Lunday, Flandreau; Rebecca Kidder, Rapid City; and Lisa Stanley, Pierre. Not pictured: Lisa Kiser, Rapid City, PAIMI Advisory Council Chairperson.

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⁵ 42 U.S.C. § 2000e(k) (2012).

⁶ See Areheart, *supra* note 1, at 1129 n. 12 (citing state laws and pending legislation).

⁷ S.D.C.L. § 20-13-1(4).

⁸ *Id.*

⁹ S. 1512; H.R. 2654.

¹⁰ 29 U.S.C. § 2612(a) (2012).

¹¹ S. 1512 § 2(1).

¹² *Young v. United Parcel Service, Inc.*, 135 S.Ct. 1338 (2015).

¹³ Areheart, *supra* note 1, at 1157, quoting Linda Hamilton Krieger, *Forward—Backlash against the ADA: Interdisciplinary Perspectives and Implications for Social Justice Strategies*, 21 BERKLEY J. EMP. & LAB. L. 1, 4 (2000).

Partners Begins its 25th Year

by Sandy Stocklin Hook

Twenty-four individuals from fourteen South Dakota counties comprise the Partners in Policymaking Class of 2017 (Year 25). This year's class is made up of eight self-advocates and 15 parents. There are four males and 20 females in the class. Class participants include: Jennifer Arens, Ryan Bartz, Kristi Eisenbraun, Kristin Hendrickson, and Dedric Rose of Sioux Falls; Jamie Benton, Box Elder; Shelly Broghammer, Colman; Amy Heumiller, Salem; Melissa Kelly, Heather Kickery, and Kirstin Pfeiffer of Rapid City; Tina Kenser, Aberdeen; Adam Lalicker, Sturgis; Mari Leichtenberg, Huron; Crystal Long, Lake Andes; Julie Niles, Lisa Stanley, and Josh Sudbeck of Pierre; Kayla Parish, Tulare; Ashlee Rathbun, Ft. Pierre; Cassandra Rogat, Yankton; Julie Reinert and Diana Treadway of Spearfish; and Gwen Watson of Mission.

Partners in Policymaking is an innovative leadership and advocacy training program designed to involve and empower individuals with developmental disabilities, parents of children with disabilities, and other family members. It requires a serious commitment by each participant both during the training and after graduation. The expectation is that each Partner will commit to actively use the acquired skills to encourage positive changes in the areas of community awareness, sensitivity, accessibility, and inclusion for people with disabilities.



Participants attend six two-day training sessions from November through April. Each session, experts in disability and advocacy fields present information and interact with the class. Partners have the opportunity to work on communication skills, assertiveness, decision-making skills, legislative testimony presentation skills, and group activities. Each participant must complete monthly homework assignments.

When selecting the participants for each class, the selection committee uses criteria including representation from varying ethnic and cultural backgrounds, different geographic regions of the state, and a mix of parents and consumers.

The Class of 2017 met November 4-5 at the Governors Inn in Pierre for Session One. Tim Neyhart, SDAS Executive Director, and Sandy Stocklin Hook, Executive Assistant/Partners in Policymaking Coordinator, both of Pierre, welcomed the class to Partners and spoke about SDAS and the DD Network.

Dennis Hook of Pierre opened the session with a fun ice breaker, literally throwing things at the class! Through this exercise, participants learned each other's names and became at ease with each other, all the while learning that it is okay to be afraid of change, but if change does not happen, progress is not made.

Brenda Smith, a Year 5 graduate of Partners in Policymaking from Sioux Falls, presented on Person Centered Thinking, explaining the difference of "important to" and "important for." Smith also spoke of choices, of being prepared, and of coming together for a common goal. She explained a one-page profile and the many different ways and things it can be used for, e.g., classroom, doctor appointments, co-workers, etc.

Kathie Snow of San Antonio, TX, challenged the class to think "different." Snow stressed the importance of Partners Top 10 Values and how car pooling and room sharing all add to the networking



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process of Partners. She spoke of People First Language, putting the person first and the disability second, and how it helps to change attitudinal barriers. "Labels are used for services and for nothing else. People First Language will help change the attitudinal barriers that face people with disabilities on a daily basis." Snow introduced the class to the history of Partners in Policymaking and the positive impact it can have on their lives. She stressed the importance of fulfilling their responsibilities to the program and the empowerment and connections gained by being a Partner. "You have responsibility as a Partner to network together and to change the status quo. Partners will have a positive impact on your life, so be open-minded and ready to accept and generate change."

Snow also discussed the History of the Parent and Independent Living Movement. She told the group that building supports in local communities is the first step in achieving inclusion and it is everyone's responsibility.

Neyhart provided a historical perspective of the landmark decisions that affect individuals with disabilities. He stated, "Building supports in local communities is the first step in achieving inclusion and it is everyone's responsibility. The past is full of examples of discrimination and segregation. There have been many improvements, but discrimination and segregation still exist and it is YOUR job as a Partner to change this!" He said, "Change takes time and perseverance - it doesn't happen overnight."

Eight Partners graduates shared how Partners changed their lives. Heidi Sato of Rapid City (Year 22) told of her experiences and how Partners became her family and gave her emotional support and courage. Angel Maggaard of Pierre (Year 22) stated Partners taught her to think things through and the skills of negotiation. Brendon Sato of Rapid City (Year 24) relayed that the training not only changed and improved his life, but also that of his family. "Partners showed me how to dream, achieve, and to solve challenges. 'No' is not part of my vocabulary after Partners." Sammy Voegelé (Year 24), Charlene Pfeifer (Year 10), and John Hodgson (Year 22),



Transition skit participants (l-r): Dennis Hook; Rod Raschke; John Hamilton; Arlene Poncelet; Sandy Stocklin Hook; and Carrie Geppert

all of Pierre, stated that Partners is about sharing our stories, positive conversation, and working together. Nancy Schlichenmayer, Pierre (Year 22), encouraged the class "to move forward, how to have patience, get involved." Julie Yellow Cloud of Porcupine (Year 15), explained how Partners gave her a voice and she is sharing her voice throughout her reservation, helping families to learn to advocate for their children. "Advocating on a Tribal Nation is totally different than in an urban area, but Partners gave me the knowledge and voice to educate others and to make a difference," stated Yellow Cloud.

The second session was held December 9, 2016. SDAS Legal Affairs Director, John Hamilton of Sioux Falls, presented on the Individuals with Disabilities Education Improvement Act

of 2004 (IDEA) and Section 504 of the Rehabilitation Act. Hamilton helped the class understand the law and the IEP process and answered questions regarding parental rights.

Hamilton also discussed *How To Be A Superhero For Your Child*, explaining 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."

Tim Neyhart, SDAS Executive Director, discussed transition from public school and how it is never too early to

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SDAS Staff Attorney, Kate Hoekstra, was recently admitted to practice in the federal court system. She was sworn in by Judge Karen E. Schreier.

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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start thinking about transition and formulating a plan. "Parents, talk to your student about what he or she wants to do and what supports he or she will need to accomplish this goal," stressed Neyhart. "Take your children to the IEP meetings. Let their voices be heard."

Neyhart narrated a skit on "how your transition IEP meeting should NOT go." Participating in the skit were Arlene Poncelet, Dennis Hook, Rod Raschke, Carrie Geppert, John Hamilton, and Sandy Hook.

Due to weather and flight cancellations, the Friday evening and Saturday session were cancelled.

Sandy Stocklin Hook of SDAS' Pierre office is in her 20th year as Coordinator of the Partners in Policymaking training program. Assisting in Year 25 is Lori Douville of Chamberlain, a Year 7 graduate. Partners is funded in part by grants from the South Dakota Council on Developmental Disabilities, Center for Disabilities at Sanford School of Medicine at USD, SD Parent Connection, and LifeScape.

Calendar

- ◆ **February 14, 2017** - Disability Awareness Day, Capitol Rotunda, Pierre
- ◆ **February 24-25, 2017** - SDAS Board of Directors Meeting, Chamberlain
- ◆ **March 21-22, 2017** - SD Special Education Conf., The Lodge at Deadwood
- ◆ **March 29, 2017** - Catch the Wave, Mitchell Technical Institute, Mitchell
- ◆ **March 30, 2017** - Catch the Wave, WDT and SDSMT, Rapid City
- ◆ **April 4, 2017** - Catch the Wave, STI, Sioux Falls
- ◆ **April 5, 2017** - Catch the Wave, Northern State University, Aberdeen

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for a student, training of personnel to reinforce various therapies in classrooms, training of personnel in use of a student's particular assistive technology device, etc. It is only logical that a provider without sufficient training will not be able to successfully implement an IEP.

"Supports for School Personnel" has been part of IDEA for nearly twenty years. Are supports for school personnel discussed at each IEP meeting? Are there teachers or other providers who would benefit from additional training in order to work with a particular child or children with similar needs? Are those "supports"

included in the particular child's IEP? If the answers to these three questions are not all "yes," should they be? The first question should always produce a "yes" answer, as whether supports for school personnel are needed should always be discussed. Even if the providers have received appropriate training, there may be other types of supports teachers may need based on the unique needs of the child. That is why supports for school personnel should always be discussed at IEP meetings and, if needed, must be included in the IEP.

When a student transitions to adult services, it can be even more important to have trained staff, especially in residential settings. The next issue of the ***South Dakota Report*** will address this topic.